

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

Shayana Kadidal

Columbia Center for Oral History

Columbia University

2011

PREFACE

The following oral history is the result of a recorded interview with Shayana Kadidal conducted by Gerry Albarelli on April 22, 2011. This interview is part of the Rule of Law Oral History Project.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose.

3PM

Session One

Interviewee: Shayana Kadidal

Location: New York, NY

Interviewer: Gerry Albarelli

Date: April 22, 2011

Q: Would you start by saying your name, and where and when you were born, and tell me a little bit about your early life?

Kadidal: Sure. My name is Shayana Kadidal. No one calls me Shayana except my parents, so it's been mostly Shane since high school onwards. I was born here in New York City, in Brooklyn, and grew up for a couple of years just outside of Kings County Hospital—which is a little bit of an immigrant ghetto, because all the other new doctors way out there in Brooklyn were from the Philippines, or India, or wherever.

Then when I was school age, my parents moved out to Long Island. I think probably so I would go to school in Long Island. I never really confirmed that with them, but I had a pretty typical suburban upbringing after that. Nothing ever happened. Everyone always wanted to move to New York City proper, meaning Manhattan, when they grew up.

It's just funny, because the office is only five or six blocks away, and it's an eight minute walk in the morning, which is a big reason I work here—since I moved into this apartment eleven years ago, and only started at CCR [Center for Constitutional Rights] nine and a half years ago. When you work in a nonprofit job in Manhattan, almost everyone lives out in Brooklyn, but I always tell people, “My parents worked really hard to get out of that place. I'm not going back.”

Q: Tell me a little bit about your parents.

Kadidal: Sure. Well, they are first generation in two senses, I guess. One, they are the generation that immigrated to this country. But also, they were among the first of the Indians to come here. The immigration laws changed away from purely favoring people who had family in the United States—meaning the people who came over would be from the same ethnic groups that had always immigrated—to favoring people with professional degrees.

They were, or at least my dad was, very desperate to get out of India. He didn't see any future there, which was prescient, I think, at least in terms of the economy. An awful lot of his siblings and various cousins down the line put a ton of energy into getting out. The second year that they offered visas, he got one. He came to Chicago to do a residency, and then moved to Brooklyn to do another one and then my mom and my older sister joined him, and then I was born here two years later.

So in the mid-1960s when people were just starting to get this very bizarre idea of Indian culture from the Beatles and the Maharishi and all of that, and at the same time, the average person on the street would look at you like you arrived from the moon if you were wearing a sari on the street. It went from that to nowadays, where people don't even really acknowledge you if you're a fellow Indian who walks down the street, because there are so many here now.

It's just random coincidence, actually, that I live near this block of twenty-nine Indian restaurants within a two block radius. A roommate from law school happened to live in the East Village when I finished working for a judge in 1999, and so I moved in when his roommate moved out. It's rent-stabilized, so it's nonprofit friendly. I think we pay a little more than half what the people upstairs from us pay by the month. But it's also, I guess, kind of a random chance that CCR is in this neighborhood, since they bought the office over on Broadway—666 Broadway—in 1982 or 1983, when even all the way over on Broadway it was a little bit of a crime den. The old, gritty East Village extended that far over. This building was probably put up when that line was moving well over into Alphabet Land.

I had a typical, standard second generation Indian immigrant upbringing. I went off to college. I was a pre-med. Actually, I wanted to do it really badly. I never got in, despite doing pretty well in school. To the shock and consternation of all, and after about two years of flailing around and flirting with the idea of going to grad school in everything from the natural sciences to comparative literature, I ended up where most people like that end up, in law school. Which is like a second undergrad thing in the United States, right? In most foreign countries, it's an undergraduate subject. Here they look at your GPA [grade point average] and your test scores, and actually, they are less interested in who you are than they are when you are applying to college. It's a perfect drain hole for all sorts of disaffected people from other fields. I arrived not having any idea what lawyers did. Period. I had no idea what law school was like, other than watching a couple minutes of *The Paper Chase*. That was it. I had very few friends who went, either; just one or two other castoffs from the pre-med route.

I ended up going to Yale. People used to joke there that “You’re the only person who is here because you got rejected from someplace else,” but that is actually very far from the truth. There were a lot of people there who had been in all sorts of graduate programs, and some gnawing doubt convinced them that they weren’t good enough. People used to say, “This is the most competitive grad program on earth!” That is also nonsense, but we had a guy who actually was from the most competitive grad program on earth—the Princeton physics Ph.D. program. There are maybe forty people total, I think, in that whole group. He, at some point, decided a year or two in that too many other people had learned calculus when they were seven years old around him, and he was just a regular American from California. He was never going to be one of the top ten physicists in the world, as he put it. So, as a failure, he decided he would go to law school.

It was full of freaking weirdoes. Really interesting people. I had never been any place like it. I suppose work now comes the closest. It was definitely an interesting group, and a lot more fun. I wouldn’t say it was nurturing in any way, but it was a more interesting experience than I would have ever expected out of it. I was sad to leave, but I suppose when I left I had a load of good friends and a lot of really interesting intellectual experiences, but not really that much more of an idea of what I wanted to do. People from business school go to work for consulting firms. They are going to learn some panorama of what management practice is about, work on stuff that twenty-five-year-olds shouldn’t really be working on, get paid well, have the prestige, and then go on and make up their minds a year later or two years later on what they want to really do with their lives. The post-law school equivalent of that is working for a judge, so I did that for a year and then moved here.

Q: Don't move yet. Just maybe tell me a story. You said Yale was such an interesting and— weird? Did you say weird?

Kadidal: Yes, definitely a quirky place.

Q: Could you maybe tell me a quirky story, or a story that kind of epitomizes the experience of yours?

Kadidal: I'm sure I'll come up with one. The place was just full of oddballs. My roommate now was a guy who had desperately wanted to be a screenwriter, dropped out of law school for two years to do it, had worked for Roger [W.] Corman for two years before school. He lasted about two and a half years in the law. We get AARP [American Association of Retired Persons] magazine here now, because he retired, officially, so he would not have to keep up his continuing education credits.

I guess it's funny to look back on it because I think people, by and large, haven't done such terribly interesting things compared to maybe what we would have expected when we were there. My best friend from law school, my roommate through all of it, was this guy who is a complete, hardened public interest lawyer. About half the people who came in the doors said that they wanted to do the pure form of public interest, meaning poverty law or something else where you are actually making huge personal sacrifices that aren't compensated for, in the sense that it's interesting work, or it's rewarding, or you feel like you're doing a good thing for the world.

These are just jobs that will leave you old and bitter, but it's good that somebody is doing them. He worked in the Deep South, in rural Mississippi and rural Florida, doing all sorts of stuff that was considered mildly dangerous even for law students to be doing. Now he is a venture capital partner at a huge, rather rapacious law firm that was on the other side of three lawsuits from us in their litigation department, and travels to China all the time. He has no background for that, just working with start-ups.

It was just full of people who ended up very far from where anybody would have thought that they had fallen. I suppose it's that kind of place. One of the weird things about it is that it carries an almost comical amount of prestige with it, to the point where you can go outside of the law. Lots of people went into banking or academia or whatever very quickly, just because it had that sort of weird glow about it. That gave people a lot of freedom sometimes to do very conventional things that they weren't necessarily the obvious choice for doing "the conventional thing."

But I'll try to come up with some oddball story for you. There are many. Most of them are pretty trivial, though. There's a lot of pressure in the sense that if you have a class where somebody is doing that cold calling paper chase thing, and you're surrounded by people who you are intellectually a little bit made nervous by anyway, and a very competitive by nature group that's willing to kind of pounce down anybody's throat who says something stupid in class—well, then, that creates a certain environment for that. But by and large, they didn't do that very much. You had a situation where the whole semester would go by, and then you would have a final exam, and that was it. We don't write long papers. We didn't have a ton of reading to do, in terms of volume. It gives people a whole lot of freedom. They encouraged us to buy into that. They said,

“You know, now you have three years to find out what you really love. You’re off the treadmill.” But most of that time, I think for most people, was spent wandering around New Haven, looking for something interesting to do. Wondering where all the other students were. They all had requirements, they were all working hard.

Q: What was there to do in New Haven?

Kadidal: Not that much, really. Like a lot of other places with miserable weather, it has good video stores and lot of alcohol. There were a fair amount of other interesting students, but it was a very serious kind of climate there, and the city itself was not the safest place, so it didn’t exactly encourage people to spend a lot of time outside. That plus the weather.

It was hard, actually, to encounter folks from the other schools, which is too bad, because law now is just so interdisciplinary in nature anyway. We in these cases have worked with tons of—maybe medieval is the wrong term—historians of the founding, digging up ancient habeas cases and all that. It’s been an integral part of litigating these cases at the appeals level.

Q: So tell me about working for the judge. And I guess tell me in terms of a particular day.

Kadidal: Yes. It’s definitely a job for the indecisive, I suppose, but everybody does it, and it is really great training. I’m always trying to convince our students, actually, that they should go and clerk. They view it as working for the government.

Obviously, a lot of it depends on who you work with. You're trapped with four other clerks and one judge, and if the person is a jerk, then it's going to be a miserable year. But this guy was the nicest guy in the world. He was a Yale class of 1967 guy. That was the year before they got rid of grades and turned it into what a lot of people regard as like an alternative or hippie style law school. He had always said he wasn't going to take any clerks from Yale after that, because he thought it would probably destroy the school. But he had one who was very good when he was on the Maine Supreme Court, and then he got elevated in 1998, and he hired me and a couple other people for the next year. He was a real family guy. The First Circuit, which Maine is part of, was not the busiest court. He spent an awful lot of time encouraging us to go home and visit relatives, or leave the office at six, that kind of thing. So it was a very, very nice year.

But this is federal court, so half of what you see is civil rights cases. I was not a public interest person when I was in law school. All my friends were, and I absorbed a certain amount of it through that, but I was desperate to get my life on track post-med school debacle. People who had science backgrounds went into intellectual property. It was a much less competitive field, because there were so few people with that science background. That's what I kind of thought I would do.

Then as law school went on, I started to get my feet under me, and enjoyed writing about the law. I enjoyed the law itself a lot more than I thought I would. At the end of the day, I had this impression in my head that it was going to be all about these abstract rules. Whatever commentator once said, "No better reason for them to exist than that that was the way in the time of Henry IV." Instead, it was completely practical. It was this area where all these different types

of behavioral science came in to try to figure out what rules you would impose to create a favored type of behavior in the public, so it was super interesting stuff.

One of the booming areas, I guess, in academia was intellectual property, patent, copyright, trademark—an area of growing importance now that most of the economy isn't about manufacturing anything tangible. I thought, "Well, maybe I'll be able to write articles and eventually make a run at the teaching market." Teaching was the dream job of everybody when I was in law school.

Thirty years ago, they all wanted to be judges, because they all had this idea that the law was somewhat apolitical and a great middle ground-y place to be. Very prestigious, employed for life, and people call you "Judge," right? So I've always heard that people thirty to forty years ago all graduated law school wanting to be judges. My judge was like that. He was a second generation judge, third generation immigrant. His dad was a judge in Pennsylvania. He had always wanted to be a judge and he had lived a clean enough, uncontroversial enough life that he could get confirmed, even in the 1990s.

Q: What is his name?

Kadidal: Kermit Lipez, yes. I recall preparing a list of famous Kermits that I knew before the interview, and sure enough, it came up. I only knew two. There are a bunch of Kermit Roosevelts in FDR [Franklin D. Roosevelt]'s family, including one who is a professor at the University of Pennsylvania now. Kermit Washington in the NBA [National Basketball

Association] was known for being involved in one horrendous fight, actually, with a current coach, Rudy Tomjanovich. Career-ending fight.

Kermit was the classic judge, somebody who just thought there were right answers, and almost everything in front of him was apolitical. The first case that came up that year was the Boston Latin School desegregation case. They had an affirmative action program. This is a hugely controversial thing. People thought it was going to go to the Supreme Court after we were done with it, and this was going to be the big showdown, post-*Bakke* [*Regents of the University of California v. Bakke*, 1978], over affirmative action. That it would be what the Michigan affirmative action cases ended up being, except that this was actually a little bit too early in the time for that particular issue to be resolved in a way that folks like us would be happy with.

The main experience that lingers with me at that time is working with him, over and over and over again, on what ended up being a dissenting opinion in that case, and the majority upheld ruling overturning the affirmative action program for the Latin School. As it turned out, it would probably have gone up to the Supreme Court, but after a lot of negotiations, the plaintiffs essentially got bought off. They were convinced that this wasn't the right time, so they decided not to appeal their loss. The school committee, rather, decided not to appeal its loss.

He was a believer that there were right answers. Not just from my impression of him, but my impression of the other judges who we worked very intimately with—I walked away from that year with the impression that, by and large, courts don't decide things in such a politicized fashion but that judges tend to be temperamentally very conservative. They are scared of

screwing things up, of creating precedents that have unintended consequences. That produces a temperament of wanting to get rid of cases on every technical ground possible, especially on appeal, without delving into policy issues. That's generally been the case, I find, when we litigate. But obviously, we're in a very political branch of the law. I find myself slowly steering around to the attitude that I had when I was a law student, which is that when it comes down to our issues, an awful lot of the judicial decision is really fought out in the newspapers and the mass media.

But it was a great job. I remember leaving, thinking, "That's about as interesting a job as I'll ever have. I'll be really lucky to have a couple months that match up to that." The experience was being kind of a junior judge, with none of the responsibility—because at the end of the day, it's all his decision—at such a young age. I had learned, passively, an awful lot about the scope of civil rights law and federal jurisdiction issues that we end up dealing with just as a matter of course, which helped a lot when I showed up as a volunteer at CCR.

I moved to New York, and moved to this apartment. It's late 1999, dot-com bubble. People who just graduated college with English degrees and B averages are getting paid a hundred grand to work in business development in somebody's loopy startup idea, with a ton of other people's money. I started doing legal work on my own, trying to write one of those long academic pieces to make a run at the teaching market. It was fun. I was not terribly busy, and people thought it was a bargain to pay you \$200 an hour, as long as you didn't want some of their precious stock equity. It went on for a pretty long time, into 2001, even, when the bubble about halfway burst.

I went off to India a month in August with my girlfriend. We had flown around the country to go to bunch of different weddings. When we are in Madras, I saw this six-foot-four Indian guy in our little party, and I thought, "Oh, how funny. An Indian guy who is that tall." You never see that here in the old world. You see lots of families where the parents are short, and they come here, and eating McDonald's and all the rest, hormone-injected milk, and the kids grow over six foot. I walked up to talk to him, and it turned out he was an Indian American, and had gone to Columbia Law School and happened to work at this place called the Center for Constitutional Rights. We hung out a little bit at that wedding, and then we flew back here on September 9. I remember coming down the runway, and you could see the Trade Center, and these German tourists in front of us, getting really excited, "There they are, there they are."

Then two days later, obviously, in the morning, I was still jetlagged. I woke up at five that morning. Then my roommate knocks on my door really loud at nine and says, "Wake up, guys, wake up, the World Trade Center is blowing up."

My brother-in-law had been on the 69th floor, actually, in the 1993 bombing. I figured it was something like that. I had heard so much about that in detail, about how he was sore for four days walking down the stairs, and all the other stuff that was going on, the smoke and all that.

The second we came out, I think probably the second plane hit maybe right around the time that I had come out here to look at the TV. But I had been under the impression that there was a no-fly zone over Manhattan after that B-25 hit the Empire State Building in the war. Immediately it was

very clear something was wrong. On that day, as the *New York Times* put it in their headline, it was just things getting worse and worse and worse and worse.

My roommate had a small office. He had started a startup at that time. It was down on Duane Street, eight blocks or so from the Trade Center. He ran down there, because of his two programmers. One of them wasn't American. Neither one of them usually had any sense of what was going on in the world. They had their headphones with their music going, and they were hacking away all day, writing code. He ran down there to get them, and to get his little disk of the software that his company was creating, which turned out to be very smart, because everything that far south was closed for weeks afterwards. He was actually on the phone with me when the first tower collapsed, and all the phones went out that instant. I remember talking and talking, and the phone went dead, and looking up, and seeing what had happened. But my reaction was to lock that door and not want to go out on the street. I was assuming that at some level, somebody brown was going to be blamed for pulling all this off, which I guess was true enough.

I think around six o'clock, we ended up walking down to Beth Israel to try to donate blood. By that time, you walk down there and there were just the doctors and nurses waiting outside.

I sit on a medical board, an IRB [Institutional Review Board] that reviews the ethics of clinical trials, and I remember one of the guys who was on duty that day at Saint Vincent saying, "You know, that day really sucked. You know, just waiting for all the patients who never arrived."

But the next couple weeks, it was a combination of me realizing that there was not going to be any paying work in the economy at all, and then also just reading stories about some of the stuff that was happening. The lock-my-door things that were going on in the immigrant communities and thinking, “Boy. You've really got to do something about this.” I ended up looking up that person who I just met once, Jaykumar Menon. He’s a good friend now. It turned out that his office, which I didn’t know, was right down the street. I started showing up for a couple meetings at the beginning.

I think the first case that I actually came in to sit in on a meeting was that there was this young, newly married Sikh couple. A tenet of Sikhism is you grow your hair, but don’t display it publicly. You covered it with a turban. They had gotten hassled at airport security, and the man had been asked to take his turban off. It takes twenty minutes to get back on. The wand can detect a paper clip under there. It’s ridiculous to think that you could hide something in there and you couldn’t hide it in your underwear. They don’t ask people to drop their pants, right? Well, at least, until recently, I guess, at airline security.

But that actually did not end up turning into a lawsuit, thankfully, because there was one Democrat in Bush's cabinet, Norman Mineta, who had grown up in an internment camp in California, and he issued some guidance about Sikh travelers within about three weeks. That got aborted.

But a week later—this is, I guess, the first week in November, when we talked to those folks. By the second week, Bush issued this military tribunals order. At that point it became clear that they

were going to make some efforts tied into presidential war powers to route around the ordinary criminal process for dealing with people who were suspected of the crime of participating in the 9/11 conspiracy.

Thinking back to it, I always remember that there was some suspicion that Guantánamo might be a part of it. And I guess that gets back to law school a little bit. Because Michael Ratner, the president of the board of CCR, had been a clinical professor at Yale in the 1990s, when I was there. I was there 1991 to 1994.

In 1991, there was a coup in Haiti, and this flotilla of boat people trying to make their way to Florida were interdicted at sea and brought to Guantánamo. The idea was that they weren't going to be owed the full-on asylum rights that they would have if they had set foot in Florida. In particular, in the early days of the AIDS crisis, the three criteria for being at high risk were intravenous drug use, homosexual, Haitian. There was a population of HIV positive people who were interdicted at sea and brought to Gitmo. [William J.] Clinton had promised to clean the whole place out when he got elected, but changed his mind a week or so before he took office. They were the last ground to be fought over in terms of what the rights were of non-citizens who hadn't set foot in the U.S. who were brought to Gitmo by the U.S. against their will. What rights did they have? Did they have any right at all to get in the federal court?

It was an unresolved issue. The circuits split on it, the court of appeals—the middle tier in the federal system. Most of the policies got mooted by the time it got to the Supreme Court. Harold Koh was a middle-of-the-road Democrat, and he taught half my class civil procedures, and he

got really radicalized by that case. He eventually became the dean of the law school, but he and Michael litigated that with the help of an army of students. It was a small group of third years leading the chase, and then a huge number of people from my class, to the point where half the seats would be empty the second semester when the classes had changed around. Everyone who was Koh's student who cared about this issue was litigating those cases, including a big group of close friends of mine. "Team Haiti," I guess they called that whole group.

The issue never got resolved for most of the people who were down there. I think for most of the clients it ended up probably pretty happily after, in some cases, a long period of suffering, but it was something that really radicalized a big chunk of the class. I remember we elected a death penalty lawyer as a speaker at graduation, which was a pretty unusual kind of thing. Stephen Bright. Half the people came in saying they wanted to do public interest. That always happened, year after year after year. I think a pretty disproportionate number of our group actually ended up doing it. A lot of that is down to that kind of experience of Guantánamo Round One, but nobody expected at the time that any of that practical knowledge was going to be useful down the road. Because if you get forty Yale students—really aggressive, really sharp, very hard-working—working on this brand-new question of whether any federal law actually applies in the same way at Guantánamo as it does in the United States, they'll come up with stuff.

I remember by the end of the first year, everybody knew that there was a certain law about the placement of the slot machines at military bases in the U.S. that was considered to apply at Gitmo, to prohibit them, I think. Then there was this iguana, this endangered iguana down there. Does the ESA [Endangered Species Act] apply there? Even though I think it's only supposed to

apply inside the U.S., you know? Apparently so. I mean, it's treated as protected. All these weird, little quirky things that you never thought were ever going to come back in your life. All the random, obscure knowledge one picks up in law school—which was some stuff you would probably figure could safely be flushed down the drain.

The odd thing, I suppose, is that there were conservative law students who also heard all the scuttlebutt about this and also stored it away. You know, “This is a place that if these decisions come out against this little band of students, it's going to be outside of the reach of federal law, yet conveniently close to the U.S., under our complete control forever, under perpetual lease.”

John Yoo was a third year student when I was a first year student. I had a class with him. He had all the characteristics that one would expect would lead somebody very, very young to be able to accumulate a lot of power around him very quickly. He was a snide guy, but in an entertaining way. He was the kind of person who you could see, as was reported later, that lots of the other lawyers would hang around his office in the White House OLC [Office of Legal Counsel] office. He drew people in with what counts for charisma on the right, I guess, and ended up having a lot of influence outside of proportion to his experience.

Q: That would be an interesting story to hear. Not trivial. More about him.

Kadidal: That's about all I know about him. I'll give you one anecdote, though. There used to be this auction to support public interest fellowships. The students would gather and raise money in different ways—a percentage of your summer law firm jobs when you are a second year—in this

auction and some other fundraisers, to give \$3,000 or \$4,000 for the summer to pay for rent and that kind of thing for students who didn't want to work a moneymaking job and wanted to do public interest for free. These programs are a little more widespread. It was kind of a unique thing at Yale, student-funded fellowships.

They had an auction, and a lot of lefty people would donate things to this auction. One of the things that was donated was a George McGovern—I think I've got that right. For some reason I'm wondering now whether it was Eugene McCarthy. But it was one of the two, the equivalent kind of flaky late 1960s, early 1970s presidential candidate who donated lunch for four. A bunch of us thought it would be really cool to have lunch with him, gathered what little money we had, and went in with a bidding strategy.

Yoo, like all the other third years there, was loaded with cash from their summer working for a law firm. He bid through the roof, so we lost out to him. I remember just seeing him chuckling up in the front row and being so ticked off, thinking, "I know you don't really want to go to lunch with McCarthy." But yes, that was pretty much my one direct encounter with John Choon Yoo.

He was, as it turned out, Korean-American. Back then, the tail end of a lot of academic affirmative action debates over the merits of having professors who look like you, there was a natural tendency that if there was an Indian professor and you were Indian, you'd try to trail around after him. John Yoo was Korean-American, and Harold Koh had been trapped in the U.S. when his dad, a Korean diplomat, was here during a coup, and so they stayed here. But Harold

and John Yoo were mentor and mentee, as it turns out. Harold was this international law scholar, one of the two or three more prominent ones in the law school, and John Yoo was this guy who wanted to argue that international law shouldn't bind U.S. courts in any way. He obviously was also taking notes on the Gitmo litigation at the time.

I think that those memos they wrote indicating that maybe you could keep people out of the reach of the courts in Gitmo within a couple weeks of 9/11 certainly probably wouldn't have happened without that Yale connection, and maybe without that little Korean-American connection there, too.

Q: Well, keep moving forward. 2000?

Kadidal: Sure. It's November 2001, and then that military order comes out, and then a whole bunch of people gathered in the conference room at CCR. About a third of them were academics, about a third of them capital defense people, and then a bunch of CCR folks. Michael was there, and a couple other people who I think had been part of Team Haiti, but I'm not one hundred percent sure. For instance, Cathy Powell, who was a professor at Fordham or Columbia, or maybe both. We gathered to strategize around it.

I remember that next week, pulling an all-nighter or two, running around the NYU [New York University] libraries, trying to dig up all this stuff about FDR's orders, and pulling together probably the first very quick memo on military jurisdiction cases in the U.S. courts. It was news to me that there were any, but there was enough to fill twenty or thirty pages. There were all

these cases that we have heard so much about but never knew existed such as *Quirin* [*ex parte Quirin*, 1942], the German saboteurs case, *Hirota* [*Hirota v. MacArthur*, 1949], and a bunch of others.

By January, I guess, they had started to move people into Guantánamo, and then the race for a plaintiff was on. I think we had a certain advantage in it because when CCR was founded in the 1960s, people probably knew us most for doing this kind of movement support work around activists in the Deep South, civil rights activists. We sued a lot of southern sheriffs to try to stop them from using the criminal process in the United States as a means of impeding people from going down and exercising their First Amendment rights. Sometimes it was futile to try to get federal courts to intervene in that process, but they did win some victories, and anyway it didn't really matter if you won or loss because the idea was, you're doing something that will bring media attention, because it's a court case, and it has events that are newsworthy that go along with it that will draw in media coverage for a long time down the road, after the initial arrests. It lets activists know that they have lawyers who have their back, and that there are people out there who support them, who are working with them to try to keep them safe. That probably characterizes most of what we did for the next twenty or so years.

Then in 1980, there was this case called *Filartiga* [*Filartiga v. Pena-Irala*, 1980] where somebody had unearthed, in doing dusty archives research, this one sentence statute from the First Congress in 1790 that said non-citizens can sue for injuries in tort for violations of international law, violations of the law of nations. It was one sentence. If it meant what it said, you could potentially be bringing international law claims for damages in U.S. courts. If you

could get around some other procedural thresholds, maybe regardless of where they happen in the world.

CCR pioneered the use of this. The first case, *Filartiga*, was on behalf of this family who had lost their son to torture in the Paraguayan military. They found that guy living in Brooklyn years later when he was in a cell awaiting deportation. People at CCR thought, “We’ve got to find some way to be able to sue him, on behalf of family, for damages.” This statute was the thing that they came up with.

Eventually, the court of appeals said, “Yes, it means exactly what it says.” Congress has not reversed it, and neither has the Supreme Court. It launched this whole industry of suing for money damages against people who have done the worst things that violated international law—arbitrary killing, torture, genocide—wherever it happened in the world.

That was wave one of those suits. Wave two, which is more what we work on now, is trying to hold multinational corporations accountable for their violations of international law overseas. Particularly the energy industries, the oil industry. When 9/11 happened, we had a lot of connections out there in the world as a result of that, with a lot of other international human rights lawyers overseas.

People were starting to get word that their loved ones were in Gitmo from a Red Cross postcard or something like that. There were some news stories about some of the white people who were there—John Walker Lindh and I think probably David Hicks's story was out there, too. He was

one of our first clients. We had two Australians who came to us through some human rights lawyers in Australia that Michael had contact with, and two English detainees as well. That was the case that became *Rasul* [*Rasul vs. Bush*, 2004]. I remember the first drafts going around of the habeas petitions. They're probably still on my computer. It was your classic CCR case, in the sense that nobody really expected to get anything positive out of the courts, but thought that maybe the media attention that the cases generated would be helpful in some ways. We lost badly in the district court. We lost a little bit worse in the court of appeals. Then to everyone's shock, in December 2003 the Supreme Court announced that it was going to review the case.

Who knows why. There certainly were a lot of people on the cast of that court who remembered the earlier litigation. I don't know that there was that much in the way of negative publicity around the place, although there were stories about young people and teenagers being detained there, and elderly people being released from detention. There was some vague sense that there might have been mistakes there. But by and large, the papers kept reporting it as six hundred suspected terrorists detained at Guantánamo. I think the military, at that point, decided that they wanted to make a good faith showing that they could resolve this issue over the course of time, in due course, left alone, and that they didn't need the intervention of the courts to kind of push things along.

They started releasing people. About 150 people went home. A lot of these were folks from European countries, which had the most diplomatic pull with the U.S. and therefore had the most leverage to be able to get people brought home. They started telling the stories that are so familiar now of abuses there—about the dogs and the hypothermia and the sleep deprivation and

the isolation, and worse stuff. The two English guys who were among our four named plaintiffs were some of the ones who were released before the case was argued in April 2004.

I was not really working on it at all at this point. I wrote part of the D.C. Circuit brief, and had been much more involved very early on, but had kind of been doing other things at the Center. At this point, within a couple months after November 2001, they had me on contract for a month here, a month there, for \$3,000 a month, working on different areas. There was a Cuba travel project and this case we had about around the domestic immigration disappearances, and so forth. By the end of 2002, I was a full-time staffer, having taken over the line that my friend Jaykumar ended up leaving. He had a ton of debt at the time because he had a son, Dante, and was flying around to visit him. I remember when he told me he was leaving. He said, "Look around this place. There's nobody who is both married and has children. You won't ever find both." In fact, you pretty much won't ever find children.

Getting back to the guys who were released, the one thing that sticks in my head is that one of the English guys said they had paraded prostitutes through the camp to smear menstrual blood on them, and leave them unclean and unable to pray, to traumatize the guys. I remember thinking that must be some PTSD [post-traumatic stress disorder], hysterical memory kind of thing. Having been a good student of Freud, having read half the standard edition, and having friends who have been hospitalized, I had a pretty decent background in psychology before I came to law school. I just thought there was no way that could be right.

The court had actually taken cert in the Guantánamo case and two other cases of U.S. citizens who were held as enemy combatants. Those cases got argued two weeks later on a Wednesday. I

remember Justice [Ruth Bader] Ginsberg had asked during that oral argument, “Can we just torture enemy combatants? Can we do whatever we want with them? Can we kill them?” The future solicitor general, actually, the guy who was arguing those cases, Paul Clement, said, “This administration doesn’t do that.”

Then that evening, *60 Minutes II* broke the Abu Ghraib photos. It became clear that all the stuff that was going on there was very precisely matched to things that the 150 or so guys who got out between cert and argument had been saying were happening at Guantánamo. Now we know there actually was a direct link. This one guy, General [Geoffrey D.] Miller, had moved from place A to place B, moved to Abu Ghraib, and had been moved there in order to “Gitmo-ize” the place.

But I think very clearly a lot of that stuff someone in Washington had calculated was exactly what you wanted to do in order to psychologically destroy a conservative Muslim man—use of nudity, the use of all sorts of other things that would keep people from being able to pray. Having seen, as everybody goes down to pray at the same time, how that was such a unifying force among the prisoners, and the source of strength, both mutual strength and inner strength. They wanted to stop that, and they wanted to do things precisely that they thought would be the most humiliating possible to conservative Muslim men.

The rest is history. Lawyers started going down there in the wake of the Supreme Court win that summer. I’m sure the Abu Ghraib pictures might have helped, but I remember leaving the oral argument and thinking that we probably had six votes, which is how it worked out. The district

courts then let people go down with security clearances and a bunch of other restrictive rules, but you could go down and visit people, and every lawyer came back with the same stories of pretty horrendous abuses those first couple of years.

I didn't really get further involved. At that point, I was deep into all the other stuff at CCR, such as a bunch of domestic cases and on our domestic wiretapping work through 2006. Then a bunch of the old school people at CCR had left—the more senior generation who were there when I first showed up as a volunteer. In particular one person, Barbara Olshansky, who had been the head of all the Guantánamo litigation, the guiding intellect of it all in the first couple of years, along with Michael. She left in December 2006, and our legal director asked me if I would apply to take it over, and so I did. Since then I have been the most senior person in our little project, which is now four lawyers and three paralegals coordinating the work of all the other lawyers out there—which is several hundred at this point—at law firms and other offices who work the individual cases. Then we have a few individual cases on one issue or another that are ours alone, where we don't have co-counsel.

Even at that, it took a good year before they were willing to give me a security clearance because that was kind of the nadir of the post-*Rasul* litigation. Congress had come in at the end of 2006 and passed the Military Commissions Act [MCA]. This is after Bush very cleverly moved fourteen so-called “high value” detainees out of the CIA [Central Intelligence Agency] detention program—including Khalid Sheikh Mohammed—moved them to Guantánamo, and told Congress, “Now they're at Guantánamo. You're going to have to figure out some way to deal with trying them.” Thus the military trial aspect of the MCA, and also deal with the fact that

they're detained there, and they have these habeas rights, thanks to the *Rasul* opinion. In response, Congress passed a statute—the Military Commissions Act—that purported to undo *Rasul* by stripping away habeas rights and all sorts of other rights to sue, to get into the federal courts.

We were fighting that out in a very conservative court of appeals when I came in. The government actually thought, even though we represented a ton of people and coordinated all this work, that we didn't need more than two lawyers with security clearance. Because, you know, what do you need lawyers for? Their position was, "There is nothing left in this litigation. There's so little that you can do in the wake of the Military Commissions Act that why do you need so many people to go down there and visit your two dozen clients?"

Eventually, around our one high value detainee case, they decided that they had to grant us one more top secret clearance. February 2008 was the first time that I went down.

Q: Take me through that.

Kadidal: Can I make another cup of tea?

Q: Yes. Feel free.

[INTERRUPTION]

Q: Actually, before you go on, talk a little bit more about the security clearance process.

Kadidal: Sure. Yes. It's both at once really annoying and raises in everyone's mind the question of, "How do they let people have access to sensitive information with so little genuine scrutiny?"

Somebody comes into your office and interviews you, and they ask you questions like, "Are you a loyal American? Do you have any problems following the law?" Before that, there's a long written inquiry process where they ask for a reference from every place you've lived, every place you've gone to school, every place you've worked, and then they'll ask those references for second order references, for other people that knew you, so you can't really control who they're talking to. It's all calculated to make sure that everybody involved is very earnest with them.

They'll ask about psychiatric problems, and drug use, by and large, the same kind of investigation which is done for the close to a million people who have some level of security clearance. Almost everybody who works in defense contracting at any serious level, for instance, has probably got a secret level clearance, and then everybody who works for DOJ [Department of Justice], plus everybody in the FBI [Federal Bureau of Investigation], and so forth.

For a lot of those investigations, you can get through them even if you have used recreational drugs in recent memory. At some point along the line, I think they decided that they wanted to be real sticklers about that here. The general idea behind all this stuff is that they want to make sure that you don't have a problem to the point where you are running around getting drunk or high,

and start babbling away in coffee table conversation about the various secret things that you've learned in the course of getting access to documents from the government in these cases.

I guess in the classic model of someone who knows some defense secrets, which typically are commercially valuable, they also want to know that you're not going to be in a position where you need to sell them. If you have personal debts, a lot of money on your credit card or something like that, or if you have a gambling problem, or live a lavish lifestyle, things that would lead to that, then they're going to worry.

When they asked that standard question of my executive director, I think he told them something like, "I know that he bought like a whole bunch of packages of underwear on eBay because they were cheaper," which is true! But that is the kind of thing that they will interrogate your friends around, which seems kind of random and not necessarily calculated to get at anything that would really be troubling. On the other hand, I don't know that I would want them trying to psychoanalyze me. That would probably seem a lot more intrusive.

But yes. It's both simultaneously a little intrusive and a little superficial, and sometimes time-consuming. The things that they seem to latch onto, and cause them to actually investigate for much longer, seem very random. My investigation from beginning to end lasted a grand total of four weeks over the holidays. That is probably close to record time.

For younger people, who they really genuinely know very little about because there's little that can be known, they tend to zoom through very quickly because they only investigate back to age

eighteen. God forbid you were born outside of the country. I have known perfectly squeaky clean people who have taken nine months, thirteen months to get through the process. In theory, they could take their time and go investigate every single foreign contact that you have. I have an uncle who is the secretary of state for India basically, the foreign minister for the country. They never bothered to call anybody over there, despite the fact that there are a smattering of my relatives who were in politics in the old country.

So who knows. It seems pretty random, but they do know every last bit about you, in theory. I remember having to look up my selective service registration number, and for some reason, that triggered this little twinge of paranoia that somehow I would have a speeding ticket or something like that that was unaccounted for, and I would have to explain why I didn't get clearance to my boss. I know that there are plenty of people who, either on the drug rap or something else, had to have that uncomfortable conversation with some partner at their law firm. Which, who knows, maybe that's why they decided they wanted to be strict about that.

I think the technical description of the classification level is top secret. The definition is that it will cause grave harm to the national security, that it could cause great harm to the national security if made public, and then there is some lower level for confidential documents. Most people assume that everything should be racked one notch down from the level that it is actually classified at, which means that the overwhelming impression you get from looking at what they classify "secret" is just massive reflexive over-classification that is just some bureaucrat doing what bureaucrats do—which is being cautious for a living, and stamping secret all over everything.

By the same token, it is clear at this point that things that they have designated top secret are often these enhanced interrogation techniques, and who applied them, and where that application took place. All that is treated as top secret in some of these cases. That falls into the broader category of the kind of things that the government would find intensely embarrassing to be let out. They will argue that sometimes embarrassment in the diplomatic context can mean a risk to national security, but it smells like it's stuff that's been classified to keep somebody from being stigmatized for having approved of all this.

The biggest hassle is just working with the material. Obviously, it's a pain to go down to Guantánamo, but that would be the same pain even if they didn't say that everything your client said to you was presumptively classified. Which is what they do say. You take your notes while you're down there, and you hand them over to a review team. They go off to Washington, and some DOJ intelligence service guys who are walled off from the litigation sit there and go through them and decide if it's unclassified. If they are unclassified, they send them to you in your office.

If they are classified, they go to where all the other documents that the government generates go—their side of the case, their account of why your guy should be detained, the factual return or discovery documents. They all sit in this secure facility in this faceless high rise in an industrial office park in Crystal City, Virginia, which is surrounded by other defense industry offices. You go there, which takes about four or five hours to get down there from New York, and you have to sit in this little room, which has windows, but the blinds are drawn on them permanently, and

write your briefs there, on a government computer, with Windows 2000 software, with no ability to do Internet research. It's like being thrown back into the era of carbon paper—where a lawyer's secretary did half of the work in putting together documents, except we don't have anybody to help us down there, except the occasional odd cleared paralegal.

I think I told you this anecdote before we started, but one of the things that stands out for me about the secure facility—which is actually probably my least favorite place to be. At the base, at least you're getting some time with clients, and it's warm outside, and has a certain weirdness to it that keeps you alert. But the facility is just this faceless computer room with no sunlight, where you kind of lose track of what day of the week it is and what time of day it is. Because the window shades are all drawn, and because it's in D.C., where it tends to get pretty hot outside, the air conditioning [AC] is tuned to one of the offices on the floor that does not have window shades drawn. It's always icebox cold in there for like eight months of the year. It's ridiculous. The first thing I do when I come in is tear off a sheaf of printer paper and lay it over the vents on the air conditioning unit on the wall. I've always got layers of clothing with me. I have to run outside a lot in the summertime, when the AC is really powerful, and warm up. When your fingers get cold when you're typing, it's a nasty place to be.

I suppose that if you're there for long enough—and we often, in 2008 and 2009, tended to schedule a week or two at a time to write really lengthy briefs down there—it does give you a sense of why so many of the Guantánamo guys actually complain about the cold pretty high up on their list of priorities. All this stuff about, “they took my blanket,” and things like that, from the early days. Even after the worst of the physical abuses was over, you'd hear about the cold,

over and over again. You would sense it when you are in the rooms with these guys, too, how frigid it is down there. It's one of those weird little times which kind of echoes in your head that someone has told you this over and over again. I think about the cold nonstop when I'm up here, about to get on the train to go down to that place.

Q: Tell me about the first time you went to Guantánamo.

Kadidal: Sure. I got my clearance in late January 2008. At the time, the two lawyers that had clearance there were super happy about it, because it meant that there was another person now who could help them work on stuff and cover the visits. At the time, I think we used to generally schedule two week visits every six weeks or so. Two weeks is a long time to be down there, but we had a lot of clients, and so we would rotate through seeing them. One person would go down and see one after another after another after another.

I went down with Wells Dixon, one of my colleagues, in February 2008. While we were on the plane, one of our clients got charged with a capital offense. That is one of the six people originally charged before military commission with the death penalty offense of being part of the 9/11 plots. We were down there with this brand new 120-page document. Guantánamo wasn't really set up at the time either to get great Internet access or to have printing capacity. We were trying to read through it and figure out what the hell we would say to this guy about what to think about these charges, which—who knows if he had even been notified of them. We weren't sure if we were going to walk into the cell and he would have heard or not heard.

I have never done criminal work here in the United States. I have done a fair number of visits to immigration prisons. They are significant in terms of clients who are facing indefinite detention. I've done habeas cases for them where they were either going to get out if we did a good job, or they were going to be stuck with no realistic option to get out in the medium term if we didn't. But I had never talked to somebody who had ever been facing the death penalty.

That was our first week there, or my first week there. I remember a lot of detail about that first time there with him, sitting in the room. I don't really think I'm at liberty to talk about it too much because of the fact that some aspects of that might end up coming out in the litigation down the road. But it was one of those experiences that kind of—you know. You don't forget anything about it, from the color of the paint on the walls, to the weird furnishing in the meeting room.

I'll tell you. They were in these plywood huts. Everybody assumes it's this high security facility, right? You know, in the United States, immigration facilities even, you hear the clanging of the doors. There's no expense spared, typically, in a prison in the U.S. They can be dirty and poorly maintained, but the voters generally vote to spend a lot of money on building them, and people like to show them off as a sign of how law and order-y political candidates are.

Down there, everything is jerry-rigged. It's exactly how we would imagine KBR [Kellogg, Brown, and Root] building stuff in a combat zone. It wasn't the chicken wire cages that were left behind a long, long time ago. Camp X-Ray. But it is, as it was in the *Harold and Kumar: Escape from Guantánamo Bay* movie, right on the water, the last place you would expect to put secure

prison camps. There is a little ridge at the base, walling off a little bay. It tends to have that geography. They hadn't really built too much on the other side of this ridge, I guess, when 9/11 came around.

In the movie, these guys run out of their cells, they hop over a fence, and they're in the water, swimming to Cuba. It really is right there on the water. You fly in on the plane and you can see it lit up at night. It's the brightest thing on the base when you're coming in towards the airport.

I remember the meeting rooms were these little ramshackle things that have been kind of thrown together. This looked like a little plywood hut that somebody painted with whatever leftover paint they had and moved some spare dorm room furniture into it. You're sitting on a couch like this, where you're sinking in, trying to have a serious conversation about these charges with your client, in a room that does not seem like it would hold the sound very well in terms of being secure, with some pimple-faced guard who looks like he's nineteen walking back and forth outside the window with his rifle on his back.

That's another thing that's actually very weird about it. In a typical U.S. immigration facility, just to use what I'm most familiar with, you have these guys who are from a different culture but typically they speak English just like the guards do. The guards regard them like they probably regard anybody else from a kind of lower tier socioeconomic class and from a different culture—with a certain amount of contempt. It's not the brutal stuff that you hear about post-9/11 detentions or at Gitmo in the early days, but they clearly disdain your clients. They're usually these huge, hulking, tattooed guys who look as tough as you would imagine convicts look.

But when you come in, as a lawyer, they're ridiculously respectful to you. It's like, "Counselor, how are you today? Let me show you to your meeting room." You're in something that's set up to actually have lawyers sit there. Even if it's just off the dorm area in an immigration facility, it's a silent room, and you know they're not trying to listen in on you, and you know you've got privacy.

You go down there [Guantánamo Bay], and it's nineteen- and twenty-year-old-looking kids, who are just typically like most military recruits. They give off this aura. If they'll talk to you, it often turns out that they're from rural America and disproportionate number from the Deep South. It's very clear that they have been told that these are the terrorists and that we are the terrorist lawyers. There's that gulf of mistrust. As if you're going to do anything hostile down there! Then on top of that, they've got the huge gun, instead of whatever the COs [correctional officers] are carrying. I don't even think COs in most facilities, when they're walking around, are armed, at least with anything other than kind of nonlethal force like a nightstick, or mace, or something like that.

It's definitely a different feel. That everyone is really suspicious of what you're up to. There are times when you know that they've been listening very closely to what you're talking about.

I remember we were going to try to meet with the military appointed lawyer for one of our clients. Typical sort of thing. We're his civilian habeas lawyers, he's the client's military commission lawyer, and we want to get together while we are down there and touch base. Maybe we're going to try to hook up a joint meeting with a certain client later that week.

We were going to meet him at the supermarket where they usually drive us at the end of the day of meetings at the base, where we buy our dinner and then they ship us off on a ferry to this isolated side of the island where the airport is, where we live in a little dorm. The idea is that they don't want you running into anybody who is actually a guard or something while they're off duty and speaking candidly. They don't want you anywhere near where they keep the journalists, on the busy side of the base, the eastern side. They want to isolate you.

There's nothing over there. There is like a little quickie mart that's not even open twenty-four hours, and a horrendous military galley. You want to be able to cook your own food. I remember that morning we had mentioned to our guard that we want to get out on time. We don't want to sit around in the parking lot after we're done with our visit with our client for this day, because we've got to have a fifteen minute get-together with the military commission lawyer for the guy we want to meet with in two days.

We got out of the prison—me, my colleague Wells, and our translator. We have a two sentence note from the staff judge advocate who runs detainee operations, as far as lawyer visits go down there. It says something like, "You're not authorized to visit with third parties on the base, and your escorts have been instructed to take you directly back to the ferry."

We're driving along. We're just laughing about this. It's so ridiculous, but it's a big wrench in our plans for the whole week. We whiz by the supermarket in this little van that we're in. Our translator says, "Guys, guys, they're not stopping at the supermarket! They're not stopping at the

supermarket!” I told him, “Well, you know, Felice, they’ve decided to put us to bed without our dinner.” They ended up backtracking on it, but it was just a sign that any little thing that you say will get reported, scrutinized, analyzed, broken down, and used against you in some way.

That’s the environment. It’s very, very different than domestic prisons. Realize that my experience, from 2008 onwards, is very, very different from that of my colleagues who were down there in the probably much worse days of late 2004, 2005, 2006, when the Justice Department was in there and saying on behalf of military that they wanted to be able to listen in simultaneously on our conversations. A whole host of things really pointed out that they viewed the presence of lawyers as an opportunity to try to use lawyers as part of the interrogation plan. They had these mock tribunals after military tribunals called CSRTs [Combatant Status Review Tribunals], after the *Rasul* decision in mid-2004. They would appoint what was called a personal representative, a military officer who was supposed to look and smell like a lawyer to the detainee, but anything that the detainee told that personal representative that was exculpatory or incriminating they had to report in full detail to the tribunal. It was using the presence of a pseudo-lawyer as an extension of the interrogation process.

That, I think, is exactly how they regarded our presence down there in the early days. By 2008, they probably didn’t care so much, although I guess the Supreme Court had re-heard this case in *Boumediene* [*Boumediene v. Bush*, 2008] that December, and was getting ready to hand us what turned out to be another somewhat empty victory that summer.

Q: You said you were going to talk about the plane.

Kadidal: Yes, the plane. There are jets that fly down there, obviously. It's a military base with an 8,000 foot runway that can handle anything in the world, including those gargantuan C-5As. But we fly down there on fifteen seat propeller planes from Fort Lauderdale that are run by these two charter companies, Lynx, which I think is now out of business, and Air Sunshine, which I think is responsible for chartering the plane that the pop singer Aaliyah died on because it was loaded with too much luggage. That always struck me as them trying to blame the victim—"Oh, she had too many shoes with her. Typical pop diva."

They also had a plane that "landed six miles short of the runway," as it was explained to me at Guantánamo. One of the ten passengers drowned. I remember the pilot said, BS-ing with people at the terminal in Fort Lauderdale, "She couldn't even swim." Being a child of extremely protective Indian parents who grew up landlocked on high altitude farms in the Deccan Plateau, I can't swim either despite having grown up a nautical town on the coast of Long Island.

It's a little nerve-racking, always, to be on those planes. They're tiny. They bounce around a lot. They're very slow. Everyone knows Miami is ninety miles from Havana, but Havana is kind of the western north shore of the island, and Guantánamo is way over on the east. You've got to loop around to the bottom, because the Cubans will not let you fly directly over their airspace. In a 250 mile per hour max propeller airplane, it takes three and a half hours. If you're not up to thirty seats, you don't need to have three things—a door between the cockpit and the passengers, so when you are landing, you can see the minefields and the guard towers coming at you, and hear the low altitude and speed alarms go off in the front, which is not actually that fun to listen

to in these planes. There's no bathroom, so it's three hours up there kind of having to hold it. One of my colleagues says he's seen people use a Snapple bottle. He takes Xanax, I think, to deal with these flights. There's no flight attendant. They briefly had a thirty seat plane on one of the airlines, and they give you a can of soda up there in the air. It was only two hours and forty minutes, because the big one was a little faster.

But it's a real mess. It ends up taking a whole day to get down there, because you can't miss that charter flight. They're typically pretty packed. If you miss it, your whole trip will be screwed up, because the time at the base is also precious and overbooked. Your translator is getting down there, and you've got to pay like \$1,200-plus a day for them, which is a lot for a nonprofit to handle. Not only for the days they are working, but also for their travel time. It would be a real disaster to miss. Usually we budget in about three hours of transit time in the terminal, which means with a three-hour flight from New York down to Fort Lauderdale. You're talking about a whole day there, a whole day back.

It's only relatively recently that we have been allowed to do phone calls. Again, I guess this points up the fact that so much of the stuff is just irrationally, ridiculously classified. But they have unclassified phone calls that we can do down there now.

[INTERRUPTION]

What were we talking about? I guess the airplane. Well, that's about the long and short of the airplane. It's a pain. There are military charters people can take from Andrews Air Force Base,

but they leave sometime between six and ten AM, so you pretty much have to get there the night before, and then figure out how to get a taxi that will take you into Andrews Air Force Base.

Q: So there are a lot of things that you can't talk about that you remember in detail down there. Are there some other things that you can—or interactions? Particular days, scenes, moments?

Kadidal: Yes. I guess what stands out about it—with a typical client in the United States—I've never really had that much of a problem with folks in immigration detention, with finding something in common with them. Maybe that just is down to background, and maybe it's even down to just assumptions about background, because they can see your skin color, and they'll assume, rightly, that you've experienced at some level some of the same things that they have, being a foreigner in this country, living in exile in some respect, and that sort of thing.

Down there, I find that very, very hard. I know different people will always emphasize that the hardest thing to do is to get your client to trust you at some level in any legal endeavor. But I just always find it very, very difficult down there to feel like it's happening. We've got a fair number of clients now who have gotten out, and you'll meet them outside, and they'll be happy to see you, and you'll realize that there is some relationship there.

But the intermediation of the translator—and we have great translators. We have a guy that we use most of the time who is terrific, who speaks three useful languages for purposes of this litigation, and is a simultaneous translator. So you can talk, and he will listen while you are talking, and spit it out, and does a great job. He has a big personality, and so he does a fantastic

job of kind of conveying affect. You can just really tell. You can tell, watching Univision, even if you didn't know Spanish, what the emotional register of what is being spoken about is. But even so it's a bit of a barrier. It's funny to watch it, going in with people who speak Arabic.

We have a paralegal now who speaks Arabic. You can see how happy the clients are, to just see it—it communicates so much. The second he opens his mouth, they say, “Oh, you are from—” because the accent conveys something. “And what kind of town did you grow up in? Are you from the countryside like me, or from one of these big, narrow-alleyed-street cities like I am?” There's just so much that's communicated outside of whatever is being said. I think ultimately the way around that is just to be able to spend an awful lot of time down there. I think that's really what most people focused on, early on, was just trying to go down as much as possible. But when the litigation has been busy, paradoxically, I think that has been somewhat difficult.

After *Boumediene* especially, there was so much pressure. The district courts suddenly said, “We held off because Congress passed the MCA, and because courts of appeals were trying to sort out whether or not we had jurisdiction over these cases, and now we're going to go forward full blast, because that's what habeas is about, right?” They didn't move as fast as we probably would have wanted them to. But there were things going on, and deadlines, and all that. That made it harder to do that with our clients. At least with the ones who I dealt with the most.

The other thing I think that stands out is just with the guys that I dealt with in domestic detention—the one case I spent the most time and emotional energy on, it ended up working out badly. In the end, he got out after twenty-three months of what looked like indefinite detention,

and then died three months later of a heart attack, after they had done all these things like losing his blood pressure prescriptions and stuff over and over again in detention. I thought he was going to have a happy and productive and long life when he got out.

You find yourself distracted by it down there—at least for me—thinking for a lot of these guys that there is not any way that it's going to work out well for them. We have a disproportionate number of clients who are essentially refugees now and they were in the past, too. The classic question that everybody got asked—the Europeans, the English detainees—when they went home was, “What were you doing in Afghanistan?” For a lot of guys, the answer was that it was a cheap place where if you were Muslim you could get in, a right-of-return kind of place, and you could live, if you were a refugee from some tyrannical Arab country like Libya, or Syria, or wherever else, or economic refugees from Yemen. It was a place to go and get by. We have plenty of pretty well-educated clients who had fled from places where politically it was a worse place for them to be—as an educated person and someone who was opposed to their home government—than being homeless.

There are a lot of those folks who you realize that they're going to get out of prison at some point. They've spent the better part of a decade there. We had plenty of clients who had kind of pre-existing mental illness issues that had driven them out of their home countries. They're going to end up someplace where the government kind of dumps them in order to disappear them to some non-U.S. country that has agreed to resettle them. A lot of these places are really under-resourced for the task. They're going to be in a country where they don't speak the language and

they have no family connection, which is typically the case for somebody who is a political refugee. And then what?

As a lawyer, sometimes when you're working on cases that have kind of broader implications, it's almost comforting to put yourself into a classic lawyer role of, "All I have to worry about is what's in the best interest of this client. I don't have to think about systematic change. If pleading guilty in a military commission will get them out in a year, that's what we'll do." The big picture political questions are not your first concern. They're your concern as a citizen and all that, but it often is comforting to have that narrow role of being a zealous advocate for the one person who's in front of you. But then there are times when you feel like you almost have to put it out of mind, the ultimate end game. Because in the short term, the guy has so many different problems, and the one thing that's right in front of you is just the beginning of it. You know, you just have to put whatever you have into working on that, and try to do the best you can on the other stuff when you've gotten past that first hurdle.

Ibrahim [Qatabi] and I are working on something right now, actually, with a guy who is in kind of exactly this situation. He's resettled in a country that's in the less developed part of what is nominally still Europe. He has nobody around him who can speak his same language, except a few other folks from Guantánamo. He basically lives in his apartment. After having bailed out from the army in his home country because of psychological problems, fleeing from his home country, he spent his whole adult life trying to kind of get by whatever way he could and coping with his symptoms ever since then. He has never, in his whole life—including eight years under the care of the U.S. military at Guantánamo—ever had access to medication or anything like that.

It's taken us probably the better part of a year to try to get to the point where some medical doctor can go talk to him, and for the first time in twenty years since the symptoms started manifesting, to get four days to try to deal with this, the biggest problem in this guy's life, which was probably not being detained Guantánamo. At the end of the day, it was this other stuff.

So yes. And then obviously for the people who are still there, there's just a tremendous amount of frustration at what has happened politically in the last year and a half. We have the weakest leader one could imagine possible, as a president, to be the focus of all the frustration that was manifested by millions of voters with what the Bush administration did for eight years—[Barack H.] Obama, who absolutely has no idea what to do with power. The antithesis of a JFK [John F. Kennedy]. When you think about what Lyndon Johnson or Franklin Roosevelt did when they got into power, they had a hundred different things on their agenda and they knew that the opposition wouldn't be able to demagogue them on more than two or three. This guy came in with exactly the opposite view and ended up getting outmaneuvered. If he ever wanted to arrive at someplace that was far from the middle of the political road on healthcare, on the war in Afghanistan and in Iraq, and on every other issue, he has ceded the ground. Compared to his silence, our voices mean nothing in this political debate, and that's extraordinarily frustrating.

By the end of the day, people had this presumption of incompetence with anything the Bush administration did that led them to believe what the more postmodern people in the habeas counsel group refer to as “the innocence narrative”—the idea that we did go around Afghanistan and western Pakistan, sweeping up—in many cases for bounties—anybody who looked foreign. You ended up getting a lot of people who are just caught up in the chaos, the fog of war, people

whose petty local rivalries or whose competing warlords decided to sell them to the Americans, who had no business being in Guantánamo. I think people are willing to believe that story, which can happen under any sort of administration, to the most competent of presidents, just because of ordinary bureaucratic pressures. But they're willing to believe it when it's someone who is so self-evidently incompetent in things like dealing with hurricanes and ill-advised war. But they're not willing to believe it when it is somebody who is articulate, and trained at Harvard Law School, and is my color instead of someone else's color.

So that's where we are. In terms of the litigation, we are completely back in public advocacy mode. One thing that would have been very helpful—and it's commented on a lot because of a case the court denied cert in this week—is if we had anybody from Gitmo who was resettled in the United States. For a long time, some of these Chinese national Uighurs from the Muslim region in western China were the prime candidates. If we had anybody here, I think people would understand that everybody there was not the worst of the worst and that there were a lot of people who were innocent, completely innocent, who were swept up in that big reaction to 9/11 in the first weeks of the invasion. But it's harder, I think, for Americans who don't see that here in person. In all the European countries, where the media has always been much better since the early days, it's not just that those are more human rights-y, effete Europeans. It's that they had citizens held at Guantánamo who went back home and they could see exactly who they were.

We did not have that. We still don't. And in some respects, it's unfortunate that we have a lot of, understandably, a lot of oral history resources dedicated to chronicling the lawyers, and the guards, and all the other participants at that level, but the detainee voices are still waiting to be

cataloged. I think a lot of it is that these guys endured a lot and many of them are very reluctant to speak about it. Many of them are from cultures that our media dubs “shame cultures,” and where the idea that the Freudian talking cure is somehow good for you to talk about this stuff, is just not part of their understanding. There are a lot higher cultural barriers to overcome to get them willing to talk. That’s the real untold story, I guess.

Q: Can you talk a little bit about particular detainees who, if they were here, we would have a certain impression of?

Kadidal: A bunch of the English ones I got to know a little bit when we went over there for a conference at Oxford that our UK equivalent, Reprieve, had organized in the early part of 2007. I think some of the things that were really striking I mentioned already. Anytime you have get-togethers and people haven’t seen each other, usually the shutterbug has got his camera going off. It very quickly became apparent that nobody wanted their picture taken, and in fact were a little nervous to hear cameras going off pointed in other directions.

But understandably so. A lot of these guys are putting their lives back together. One of our former clients had graduated from, it’s safe to say, a top five university in the UK, but wants to live a normal life. He’s really happy to speak to fledgling habeas lawyers, to tell them what to expect when they go down there, to speak to other detainees who are trying to adjust to life on the outside. He dedicated a huge amount of energy to that undertaking, but doesn’t want to be part of the kind of public face of the detainee who is released, and has gone on to live a normal

life, because it will get in the way of his having that normal life in a place with a big tabloid press.

There are plenty of others whose voices are well-represented in the media such as Moazzam Begg, who is a great, interesting figure. The one thing I remember about him was that early on, he was tagged as one of the people who are going to be tried by military commission. Presumably, he was one of the most “high interest” of the hundreds of detainees who were there. They described him as, I think, a martial arts expert, and trainer of Al-Qaeda in martial arts, or something like that. If you read his bio, or talk to him, it’s great, because he’s actually this tiny little sub-continental kid living in a rough, northern city, industrial city, in England. I think it’s either Liverpool or Manchester, but I might be wrong. Like a whole bunch of other kids, foreign LL.M. [Master of Laws] students I went to school with at Yale, he said he would get beaten up every day coming home from school if he didn’t know how to defend himself. Like lots of other short little tiny kids, he learned martial arts as a youngster and keeps himself in good shape. He is this tiny, relatively muscular guy, who presumably knows a little in the way of karate or kung-fu, just like so many other suburban American kids, and this got translated into martial arts master for Al-Qaeda.

Our resettled client who we’re trying to get some psychological help to—one of the meetings preparing for litigating his case was one of the worst experiences I remember down at Gitmo. I wasn’t even alone with the translator with him. We had another lawyer in there as well, who had spent a decent amount of time with him. He had certain physical characteristics, physical mannerisms, that would trigger when he was having auditory hallucinations. He would start

tapping his head. It was a very common kind of thing. Doing this with his fingers on the side of his head. [Gestures]

You could see that when we started getting to talking about some of the stuff, I remember telling him, “Look. I’m going to come down in a couple of weeks to sit with you for a couple days, and in order to be able to respond to the government’s account of why you should be held here, we’re going to need to go over some of the same things that they talked to you about when you were interrogated here in the first couple of years of Gitmo. I know that’s going to be really hard, but we have to figure out the best way strategically to deal with it if we’re going to put forward the strongest case for you.”

That would be a stressful conversation for anyone, because it is saturated with this idea of “you’re going to have to do something, and that something is going to have some role in whether or not you stay here forever, or you get out.” And this person sitting in front of you thinks that you have a chance of getting out, so the stakes are that much higher.

But when the person is starting to tap away in their head, you realize that they’re hearing some inner voice that has been gnawing away at them since they were eighteen years old, and that experience is probably convincing them not to come out and meet with you the next time you’re down, which is exactly what happened with this client. In a domestic facility, you’d probably get psych help and you would get outside medical experts in to help you deal with that. You’d get some generous amount of time from the courts to deal with it. You wouldn’t have to fly, take a nine hour trip with all these folks in tow, and you would have the ability, usually, to speak to the

person in the language that you both understood, directly, and be able to gauge their moods through the nuances of their use of language and all that. And all that is lost.

Just to explain, the courts typically haven't let outside medical experts in except under extraordinary circumstances. The government will come in and argue that to grant one more person a security clearance increases the risk of some breach of this all-important information confidentiality around these cases, and it takes resources on their end, and it's more people down at the base, and it's a military base, and blah blah blah.

That was one of those meetings where I remembered walking out and thinking, "If it's this hard to deal with this now when he's here in the U.S., how difficult is it going to be for him when he's out? What is going to happen to this person once the limited part that we are experts on doing is over?" Believe me, talking to clients about capital charges was just as bad, but in different ways. Maybe in an oral history project in ten years from now we will be able to talk about that.

Q: So how would people express their frustration?

Kadidal: You mean the clients? Honestly, this is a kind of commonplace for capital litigation in the U.S. There are two things prisoners can control. One is eating and the other is firing their lawyers. And you see both of that on display. There are guys down there who were on hunger strike for six hundred-plus days, which is astonishing. They were being force-fed though their nose the whole time.

A lot of the firing, or boycotting, or disdaining the lawyers happens. It's something everyone is trained, before they go down, to not take personally. The people who have done capital work understand this from their past experience. It's important, in a lot of ways, to convey a sense of control over the litigation, even though like any clients they are not lawyers and will not understand the details oftentimes. But it's often very time-consuming to explain to people, "Here are your options, and this is the one we think is the best for you. Do you think that sounds good to go forward?"

Some of them will be very deferential in this way that is characteristic of the kind of interactions you would have in India with people just in the course of doing your business. You're some educated, Western, developed country person. In their own country, people in that profession would carry a huge amount of social prestige and you would never talk back to them and tell them, "Do this or do that, or take route A instead of route B." It's just, "You do what's best. You do what's best." Then there are other people for whom what's always playing out in those discussions is not anything to do with the wisdom of the strategy, but it's about the fact that they have no control over anything else. This whole dynamic of refusing attorney visits, or not coming out at all, plays out an awful lot. Sometimes with clients who are perfectly happy for a long time to meet with you, and then refuse to come out, over and over again.

There's this little ritual for it, actually, which I will mention, because one of our lawyers once suggested that this would make a fantastic book. You go down there, you fly down, and you schedule a visit. But the way the mail works, you would be lucky to get a letter down informing the client that you're about to come down for a visit. Typically, you're just showing up. What

they do down there is they tell them, typically, “You’ve got a reservation,” to the detainee. A military guy goes up with a translator and says, “You’ve a reservation.” The word they use, is roughly like an appointment, meaning they use the same phrase for either an attorney visit or an interrogation. There are not that many interrogations going on these days, it seems, at least for our clients. But they do happen. They hear about it when somebody else is interrogated.

So they developed this culture where, from the early days, if they said that you had an appointment, that you wouldn’t go because you wanted to demonstrate to everybody else around you that you were showing some resistance to the idea of going off and talking and cooperating with the government. There’s just this culture of not leaving. There are guys we had who are college-educated and very sophisticated in terms of their understanding of the litigation, who every single time we went down there—and I don’t think they were being interrogated in between—but every single time they went down, they wouldn’t come out when they heard, “You have a reservation.”

Then what happens is they come out and they tell you at nine o'clock in the morning and you’re at the McDonald’s down there, getting food for the detainee and your little snack for yourself, and coffee or whatever, and they tell you, “Your guy has refused to come out.” That’s all you hear. You don’t hear anything about why, or what he looked like, typically, or anything.

You get to write a note. They give you a form called a habeas refusal form, or something like that, and you write your note in English, and you hand it to you translator. Your translator translates it. Meanwhile, they’re standing there, waiting, waiting, waiting. They go off, and they

bring in this translated note. Then there's a little box at the bottom that says yes or no, but the military folks fill that out, whether or not they responded. Time passes, they hand this to the guy. I guess actually what they do now is they say, "You've got a note. Do you want the note? Do you want us to read the note? Do you want us to leave the note?" If they don't get up, which they may not do if they are particularly aggravated with the SJA [Staff Judge Advocate] who's saying all this, then they come back and they say, "Your guy refused to take the note."

But in better circumstances, they'll actually take it, read it, and realize. Usually the first line of these things is, "Hi! We are your lawyers. We're here to see you. Remember us?" Just to let them know that it's not an interrogation request. But sometimes there are guys who are just having a bad day, or they're ticked at you, or whatever, and they don't come out, for whatever reason. They don't want to talk about the details of their case, like the client I just mentioned.

One of the lawyers in our group said that would make a fantastic book, because they run the gamut from pleading, to bullying, to sweet-talking, to "We brought baklava!" "We have news from your parents!" That kind of thing. The whole range of human emotion on display in that very time-sensitive context. Because, among other things, it eats into the five hours, the grand total that you have during a "day," since they make you take an hour and a half or two hours off for lunch and there's a lot of time involved in moving people around. If the base is crowded, they'll run out of facilities to move people, and you'll often miss half a day with someone.

But I think I mentioned that our translator knows a couple of languages that are useful. He has English, of course, lives in the United States, but he grew up around the Mediterranean a bit, and

speaks fluent Arabic, French, and Italian. We had a Somali client, who's now out and living a very successful post-release life. He knew a little Italian, as well as Arabic. We wrote out the note before the first meeting when he didn't come out. This is actually a guy who never came out, because they were always telling him "reservation, reservation." We didn't know what language he might speak, so we tried the Arabic, of course, and the French, and then the translator said, "You want me to do the Italian?" The Italians had some Horn of Africa presence, so we said, "Fine." On the back of the form, he puts the Italian.

The SJA told us later, when he came out, he said, "We held the note up and he read it, and he was like, 'No,' and we flipped it over, and he saw the Italian, and he gave a big thumbs up sign." It had been so long since he had seen anything in Italian. Nowadays, you have a few French books and things like that that lawyers have brought down for the detainee library whose size the military is always bragging about. But I imagine it had been since his college days that he had seen Italian. So that was the little foot in the door.

Q: Talk a little more about food.

Kadidal: Yes. I think my colleague Gita Gutierrez is the one who deserves credit with the amazing insight that this might actually play out. This is another way in which domestic prisons are very much in contrast with Gitmo. In domestic prisons, no one ever gives you a hard time about bringing in papers. You could bring in a library full of stuff, a little lawyer's rolling bag full of documents, and they would just assume that it was normal stuff to bring in such as law books with opinions, and a computer, and whatever else you needed to write. You can't bring in

a speck of food, typically. It's just one of the many things that is verboten. You go in but they let you work, which is great, from a lawyer's perspective. But all the little goodies, not at all.

But I believe the story is that Gita was down there and they have this McDonald's there. In a lot of ways, it looks like America, except dialed back to the 1960s. Everything is old, and the military pricing is all subsidized, so the price tags seem like they are from a different age. There's a little supermarket and a little McDonald's and they use the McDonald's as a liaison station in the morning. You come off that ferry from the isolated side of the island where they store you overnight, you get in this little minivan and you drive up to the McDonald's. That's where they tell people about refusals, that they have refusals.

I guess she was there on one of the very first civilian habeas counsel visits, and just asked, "Can I bring French fries or something like that from McDonald's into the prison?" And they say, "I don't know, why not?"

It's amazing. I mean, if you have a staple in your papers, they'll make you tear it out. If you have a paperclip, you'll get yelled at for trying to bring something. I guess, in theory, it can be used to pick a handcuff or something like that, but guys go in with whole coolers now. There's a guy down there, the night before, a lawyer from a big chichi law firm who is cutting up mangoes and slicing scallions, and stuff like that to stick in an icebox, to bring in the icebox that is the size of a small TV and that's fine. But they'll still flip through his notepads to see if they're held together with glue or staples at the binding.

People talk about this when they go back to parts of rural India. I don't speak our native language. I can understand it well. But I remember, when I was younger, going on visits where with certain relatives, the only medium of social exchange was food. You would go from house to house and eat like six meals a day when you were in the countryside, because typically there was not a lot of ability to kind of understand each other in direct conversation.

I think in some ways it's a little bit like that. In some ways, it's a little aspect of local culture that when people go on these diplomatic missions to places like Yemen, and talk to local human rights groups or government officials, the cultures you go and you have tea, you have a snack, you BS for hours and hours and hours, and then after a certain long period of time has passed, only then is business discussed. It's not quite like that, but I think there's a little aspect of that to it. I suppose, in that respect, we are fortunate about that odd difference between domestic prisons and Gitmo.

But yes, you can get very demanding clients down there sometimes. I remember a guy who ate every last bit of what we brought to him in two hours, including a Tupperware bin that was about five by five by five square inches full of baklava, which is essentially drinking a vat of honey that is that deep. All in two hours. I remember him saying, "You brought me all this sweet stuff. But where is the salty snack to set it off?"

It becomes a bit of an arms race in some respect. When none of the lawyers can accomplish anything, as was probably the case roughly from 2004, from the first visits on, through to about early 2009, when nobody is seeing any results, and it becomes about, "Why should I meet with

you when they took away my blanket? You can't do anything for me. But if I fire you, I can have my blanket back." Well, it's just an extension of that kind of line of thinking. You know, "the other lawyer brings this. Why don't you bring that?" "The other lawyer visits more often," is also a big difficulty. All the law firms in particular have been paying this out of their own pocket. Some of them are international firms for whom it would not be a big deal if the lawyers were paying out of pocket, because they make so much. But some of them are small practitioners or smaller firms that have a small pro bono budget where they're competing against domestic asylum cases or other things that need much smaller infusions of money, and so it's difficult to visit as much as others do. And it turns it into a bit of a contest, which can be difficult.

There's some aspect of that, too, in dealing with the rules. There's always been a vast gray area in terms of, for instance, news about the outside world. Now the detainees get TV and newspapers, but they didn't always. For a long time, the willingness of the lawyer to push close to the line of what the military will allow—to be willing to antagonize them—that was a bit of the coin of the realm, in terms of detainee-lawyer relations.

There were hierarchies within the place, too. For most of this litigation, I wasn't really around early enough to visit. But in the early days, religion was common currency among the detainees, and I think the Saudis—Saudi Arabia generally has managed to place itself culturally at the center of what they would regard as orthodox Islam. I think you saw that reflected a little in the base, too, where there was a lot of hostility. We hear it even now from guys who have been resettled, and have not been around a Saudi detainee in years, that they had a higher status, or higher perceived status, within the camp, and let everybody else know it. A lot of them managed

to get out much earlier. I think at some point around 2005, the priorities of the officials in the military there became maintaining order inside the prison camps rather than trying to extract information anymore. One big thing they felt they could do to accomplish that was to ship out all the Saudis back to Saudi Arabia.

You see guys who had allegations that, in some respects, seem a little bit more troublesome than the folks who are still left nine and a half years later, but they're at home with their families, which is not lost on the folks there. Ninety people left from Yemen, two thirds of them cleared for release, with nobody going anywhere because of the underwear bomber. It's frustrating to them to watch people from more tyrannical countries, like Syria or Libya, be shipped out and released to Europe because they have political fears of being repatriated, and yet they can't be sent home. They won't be resettled, either, because their country is viewed as a place that wants them back, and where they would be accepted if they went back.

Q: How much more time do you have? Ten minutes, fifteen?

Kadidal: Yes, ten is fine, fifteen is fine, yes.

Q: There may be more that you would like to say or it occurs to you to say about Guantánamo, or visits to Guantánamo.

Kadidal: Yes, I mean, I think those are the high points. It's a very artificial environment, and there's a lot of time pressure when you're down there with anything in particular to accomplish.

When you're not, it feels funny, too, because you know that the guys have endured a lot just to sit with you.

On the one hand, there is that kind of pressure, a lot of times, to visit frequently. On the other hand, they'll move them at, for example, four in the morning to these little hut-like things where they have a lot of meetings now, in what is called Camp Echo. They'll sit there in this little solitary cage, having been woken up in the middle of the night. It's very uncomfortable, probably, compared to the regular place that they are staying. Then they sit with you for four or five hours, and you tell them frustrating news about their case.

A lot of people in that circumstance who are happy to see you otherwise in terms of just the social interaction have told us, "Look. Write me a letter next time. Unless it's really important, don't come down and see me because of this, this, and this." It's like the blanket thing times twenty. It's just a very weird place, and you never really know how anything is going to play. The translation works into that as well.

Q: Maybe in the time that we have left, you could talk a little bit about a couple of other cases, about NSA [National Security Agency], or—?

Kadidal: Sure. I guess of the habeas cases, the domestic one is the one that I always think of as being the most affecting case that I worked on. I tend to be somebody who can usually put up a pretty good wall between myself and work. I have colleagues who have a very difficult time when they come back. They talk about having to decompress, or when they're there, they're

losing weight, or they're not eating dinner. I have one colleague who goes for a swim every evening, even though the sun is setting when you get back around 6:30 PM in the tropics. He just needs to blow off steam, even when it's ninety-something degrees out there and disgusting.

I've never been that way. I come back sometimes and I have weird dreams two weeks later or a month later. But when it's happening, usually I'm okay. But the one thing that always used to bother me the most about our cases was dealing with people who had been separated from family members. We have a lot of guys at Guantánamo, and I haven't personally ever had to tell anybody that their father died, or their mother died, or in one case, a couple of children of one of the guys who was in died in an accident while he was in detention.

This one client that we had was in for twenty-three months in immigration detention. The government brought him in. He was a stateless Palestinian. Before the Israelis came in 1967, they didn't have a registry of who was living in the West Bank and Gaza. Anybody who left before then really can't get back. They won't get travel documents from the Israelis, and they won't get them from the Palestinian Authority, because they rely on the Israeli registry. This guy was among the 400,000 or so who actually fled what became the OT [Occupied Territories] before the war and the Israeli occupation. He was the purest of stateless people. Some people who were born in the West Bank had Jordanian citizenship for a while, but then Jordan renounced its territorial claims to the West Bank, and then they all lost it retrospectively. This is considered something Jordan did with the idea that this was going to be a foundation stone for the creation, eventually, of a Palestinian state there.

But this guy left on a scholarship when he was sixteen in 1964, and snuck into the United States a couple of times, and lived here for forty years ever since. They tried to deport him a couple of times. They figured out during those efforts that he was a stateless Palestinian. But post-9/11, he was organizing interview candidates, and putting them on the radio, and occasionally doing the translations on WBAI talking about the current intifada. This was probably in 2002, maybe 2003, I'm not sure. I think 2002. About a month after, one of these post-9/11 task forces, the joint federal-state Absconder Task Force, picked him up early in the morning. He had a young son who had a lot of life difficulties and was really super dependent on his dad. He's a little past college age now.

There was a big organizing community that grew up around him and focused on him, because he was an activist who would show up at every protest on every issue. Everybody knew him, and so they all came out to protest at the immigration office at 26 Federal Plaza. We took his case on about seventeen or eighteen months into his detention. Just before 9/11, there was a court case about people in this situation. They're stateless or for some other reason they cannot be deported, but they have no legal status in the United States. The question is, can the government legally detain them forever? On the one hand, it seems pointless because it's not detention in anticipation of them being deported. You can't say, "I'm detaining them because I want to keep them from running away." On the other hand, it's like giving someone who doesn't have documentation a free pass into the United States.

The Supreme Court, thank God, months before 9/11, heard this case, and 5 to 4 voted to say that you can't indefinitely detain somebody like that. For the sake of uniformity, they were going to

say, "After six months you can come into court and argue that it's not foreseeable that you're going to be deported."

We came in. We got this case very late. Of course the government did exactly what it did in Gitmo cases. It first tried to delay, delay, delay. They moved him from New Jersey to Pennsylvania so that his case would get shifted to another court. His files got put where they dump these immigration cases, which usually contain a large number of relatively trivial appeals that don't have much of a chance to win. It took months and months to get in front of the judge. Then they started pouring in all this evidence that they claimed showed this guy was a terrorist, including we found later on, because they accidentally leaked some to a journalist, that some clown, some other detainee, had said, "Oh, this guy, I think, knows about nuclear weapons in suitcases in the U.S." This is the thing that they were coming into court and trying to convince the judge made some sense.

The one thing I remember standing out about this was that they came in and they said, "The reason we can't deport him is not in the hearing. The reason is not that he's a stateless Palestinian. We really actually don't know anything about his identity or birth. He hasn't given us early documents. He hasn't confirmed his identity, and he used twenty-seven different aliases since he has been in the United States." Of course, we had their papers, and it turned out that twenty-five of the twenty-seven were actually just different misspellings, while he was in immigration custody, of his name, Farouk Abdel-Muhti. It was just too hard for people to deal with.

He got out nine days after we had that hearing. Scathing opinion. They lost him, meanwhile, because they had moved him to Harrisburg, where he had been detained when we took over the case, and he had been moved to New Jersey, to some other facility. He had been in nine different immigration prisons, because that's what they do. They shuffle them around. A lot of people are held down Louisiana, where it's cheaper per day. They lost track of him when they were moving him back from the hearing. They ended up putting him on a plane, a commercial flight, in Atlanta, and flying him to LaGuardia. They just said, "Here's twenty bucks, a pair of jeans, and a sweatshirt," or whatever they gave him. "Find your way home."

It was a scathing opinion, but the ultimate punch line was that they had also lost his prescriptions because they had them entered under different misspellings of his name. As he had gotten moved from facility to facility, and these places that are competing to warehouse immigration detainees for the cheapest rate per day, they weren't giving him his blood pressure meds on a regular basis, and he had to keep going through the rigmarole of getting the prescription.

He dropped dead of a heart attack three months afterwards when he got out, and left that kid, who was as dependent as anybody on his father, for a variety of reasons, out there in the cold. It's been rough for him since then.

I think most of our guys at Gitmo are the sons and daughters, rather than the parents, but there are lots of people who have an infant kid who has never seen them. That client who I mentioned to you who had the psychological problems had a child back in Afghanistan who he was very likely to never see again. They probably plug into so much else about being separated from

family and grandparents, the chain of generations—that's something that sticks into me pretty deeply.

But we had a lot of domestic cases of people who were disappeared and treated really brutally as kind of per se suspects in the terrorism investigation around 9/11, just because they were Muslim males with no immigration status who were from a South Asian or an Arab country. Everybody they brought in in the weeks afterwards got tagged as being "of special interest" to the terrorism investigation, just like anybody who was foreign in Afghanistan had a \$5,000 bounty on their heads. Somebody in our group of habeas counsel said being Arab in Afghanistan after 9/11 was like driving while black. The same stuff was going on here. In a lot of ways, it's symptomatic of a bureaucratic disease. The idea that when the intelligence or law enforcement agencies get caught off guard by events that surprise them, take them off guard, like 9/11, or like the insurgency in Iraq, or you name it, the reaction is to sweep in a huge number of people. It lets you appear that you've done something. It seems like you're doing something very coercive, and tough, and presidential, and all that good stuff. Then you rely on the interrogation process to sort out the wheat from the chaff, which puts a lot of pressure on interrogators, as you see at Gitmo or Abu Ghraib. You get lots of false positives, and then you try to cover up the fact that you made all these mistakes by dropping a big veil of secrecy over the whole thing, which usually means just one thing—keeping the courts out of the process, because they are the information source for so much else.

We're at a low point in terms of everyone's vision or impression of what the courts will do for us. Historically we think of the courts in the classic law school education mode in the United

States as being there to protect minorities' rights against the tyranny of democratic majorities.

That's what the founders wanted out of the court system, I think, at some level. But that's not something that's going to happen now. It looks like all three branches are out of the business of dealing with Guantánamo.

It's easy to look back on it and just say that this was a classic activist lawyer mode litigation, where it was all about just raising a stink in the media and linking it to the interrogation abuses, and linking it to Abu Ghraib, and all that. But winning was very important. It let that first batch of 150 people get released before the argument. It let all the lawyers go down there to meet with these people and tell the stories as their proxies. It's really responsible for the broader sympathy that the public had for a while for our clients, and I think for whatever combination of reasons is lost right now.

Q: I guess maybe the last question is—you're working part time now?

Kadidal: It's just because I had thirteen weeks of vacation time rolled over from the Bush administration, and at some point they started carrying it as an accounting liability. Now that the Center actually has a tiny little amount of money put away, it started to look kind of bad to have that much on there. Probably at some point in the summer, I'll kick back to the full time schedule again. But it's been nice, although really, it hasn't been two days a week. It's been more like three and a half thanks to the little BlackBerry and all the other contraptions that let you stay in touch. Our jobs tend to be very reactionary in one sense. Things happen in the media, and we try

to figure out ways to respond to them, and it has to happen within an hour or two, usually. That's part of the job. You're either all in or all out. You can't get away from it.

Then there's a stream of things to keep up with. We have this coordination role, so every opinion is kind of important, in some sense, to keep track of, as is every random story. That eats up a lot of time, on top of the traveling down to visit clients and traveling to that stupid secure facility to write the briefs and freeze.

Q: How has this work affected you personally?

Kadidal: People talk about how this work is inherently radicalizing. For me, most left-inclined people growing up, in high school, college in the 1980s, will have a certain optimism about the role of government, and believe that government ought to be doing more in society. I think it has left me with tremendous skepticism about the capabilities of government across the board, which maybe reflects in some of the way that I described Obama's nonfeasance in office on a whole variety of issues, from financial reform, to the wars, to healthcare.

Yes. It's left me a lot more skeptical about that, and I suppose just a lot more pessimistic about the possibilities for politics to accomplish ambitious change in the sense that most people who have those kinds of aspirations imagine a large role for government. That, I suppose, is one big change.

This is kind of a lousy story in that we saw it go from one set of administration officials—who I think everyone would have admitted were probably people of relative bad faith, the most cynical motives attributed to them seem plausible to people that those were their actual, subjective motivations—to these folks who included a lot of the best and the brightest and seem like the kind of people, by and large, you would be okay with babysitting your kids.

We used to say throughout, because it was a way of depoliticizing it, and because we viewed it as accurate, that a lot of these abuses that we have litigated over could have happened with a Democrat in the White House as well as a Republican. It didn't need to be these people for whom there has been so much kind of personal antipathy—the [Richard B.] Cheneys and [David S.] Addingtons and John Yoos. I guess it's just disturbing to realize that it's true, that it can happen anywhere, regardless of who happens to have the luck to be in office on the next 9/11.

[END OF INTERVIEW]

Abdel-Muhti, Farouk	63
Addington, David S.	68
Begg, Moazzam	48
Bright, Stephen B.	17
Bush, George W.	15, 27, 45, 46, 66
Powell, Catherine	20
Cheney, Richard B.	68
Clement, Paul D.	25
Clinton, William J.	16
Corman, Roger W.	6
Dixon, J. Wells	34, 38
Ginsberg, Ruth Bader	25
Gutierrez, Gitanjali	55, 56
Hicks, David M.	23
Johnson, Lyndon B.	46
Kennedy, John F.	46
Koh, Harold H.	16, 17, 19, 20
Lindh, John Walker	23
Lipez, Kermit V.	10
McCarthy, Eugene J.	19
McGovern, George S.	19
Menon, Jaykumar	13, 14, 24

Miller, Geoffrey D.	25
Mineta, Norman Y.	15
Mohammed, Khalid Sheikh	27
Mourinho, José	1
Obama, Barack H.	1, 46, 67
Olshansky, Barbara	26
Qatabi, Ibrahim	45
Ratner, Michael	16, 20, 23, 26
Roosevelt, Franklin D.	10, 20, 46
Tomjanovich, Rudolph, Jr.	10
Washington, Kermit A.	10
Yoo, John C.	18, 19, 20, 68