

Rabbis for Human Rights Conference 2008

Beyond Guantanamo: Ending US Sponsored Torture

In this presentation:

Tom Wilner and Gita Gutierrez represent detainees currently held in Guantanamo Bay, Cuba, and have worked tirelessly to enable their clients to have fair and open hearings. In discussing his work, Tom (who is Jewish), focused how the American belief in freedom, liberty, and the rule of law as the “religion” has guided his work. As he fights for the right of detainees to have the rules of *habeas corpus* apply to their cases, Tom has been shocked by how hard it has been for him to guarantee a fair trial. His challenge to the Jewish community is that we must stand up for those who are treated as less than human.

Gita Gutierrez, who works for the Center for Constitutional Rights, represents Mohammed Al Katani, whose torture in Guantanamo is well-documented. Gita challenges the notion that many of the men held in Guantanamo are hardened terrorists. She also reminds the audience that we are all complicit, through our silence, with the torture that occurred. However, it is also within all of our power to end it. Gita explains Al Katani’s case in detail and urges America to restore the Constitution and the integrity of the nation.

Questions:

What are our responsibilities as Americans and Jews surrounding Guantanamo and other issues of torture around the world? Do Jews have a special affinity?

Do we as Jews have a special responsibility to end torture?

Does it matter if those tortured are innocent (as some are) or are terrorists? Do terrorists deserve a fair trial?

What are we prepared to do to take steps forward to end this practice in Guantanamo and worldwide?

Transcript:

Rabbi Brian Walt

You know, I was actually thinking about this trip that we took to Israel. And I was thinking that if one took a similar trip to America, as the trip that we just took for RHR to Israel, one would go to New York and to Boston and to Philadelphia; and one would go to a high-security prison somewhere and see the torture that is exacted in American High Maximum Security prisons. One would go to some place where

workers, I guess a meat factory, where workers are treated the way workers were treated in Postville. And one would *definitely* go to Guantanamo Bay.

And so the two people we have today are Americans who have gone to Guantanamo Bay repeatedly, over a period of time when Guantanamo Bay, still is a far away forbidden territory, a universe that most of us don't know about. We read about, we don't experience; and where most of us would be really petrified and terrified to even set foot. And Tom and Gita are lawyers among several lawyers, many of whom are Jewish. When we did a program for RHR in New York, there was a woman by the name of Jen Cowen-I think--who came to a parlor meeting of RHR in New York and told me of going to Guantanamo Bay. She would know who were some of the Jewish lawyers on the plane by the fact that they had ordered a Kosher meal, like she had. So, if you imagine there are Jewish lawyers who go to Guantanamo Bay and go there. Tom is one of those lawyers--I did not check whether he ordered a Kosher meal or not, nor do I care but (*chuckle*), but what is most important to me is that he goes. He is our witness. So, I asked both Gita and Tom to come for the end of this conference because we are at a moment of transition in America. This is a moment where there is hope that we could change what has been our reality for the past eight years in some profound ways over the coming year and years.

And so, I sorta regarded them as giving us a charge. I asked them to sort of think of themselves as it were, as clergy at the end of the service for clergy who do that, who give a charge to people, to tell us what we need to know as Americans about what has been done in our name and what it will take to repair that which has been done in our name. So I really want you to welcome both Tom Wilner and Gita Gutierrez.

Tom is a lawyer here in Washington, DC and he is going to speak first.

Tom Wilner

Thank you very much. Well as I said at lunch, my family has been connected with this congregation for a long time, so it has special meaning for me to be here. I wanted to acknowledge, although he is not here, the rabbi who just retired, Rabbi Wohlberg--who married my brother and buried my mother and father and is a wonderful guy. I feel badly because I am not a member--I guess I have fallen from the way. He can handle it! There are many things--as you said the development committee can approach me so I can get the building re-named again--the Wilner building (*chuckle*).

As I approach this talk today, and I am going to try to be quick so we can have lots of questions, Gita and I have spoken many times both together and separately around the country. I often talk--usually talk--about myself as an American and what I believe passionately as an American. In a sense, today, and I have not spent as much time as I should thinking about it, but talking to you makes me think how much I need to study about what my being Jewish has meant to my commitment to this

cause. And I want to talk about some of those things at the end. And it is something that frankly I need to study more so I can understand better.

As I said before, I believe passionately in America and I think that is one of the things that has made me fight so hard in Guantanamo. And I told the story-it is probably more meaningful to non-Jews than to Jews-but at least it is said in our family, my great-grandfather was a rabbi of Vilna (that is my name) and it is said in the 1870s he read the Gettysburg Address and he said if there is such a country in the world I want to my children to grow up there. And my grandfather and his brothers, at a very young age, came to the United States--first to Baltimore and then Washington, D.C.. My grandfather, Joseph A. Wilner, who was the president of this congregation for twenty-five years, and moved it here, was an amazing guy. He spoke five languages when he came here at the age of thirteen. I once went to--I always tell people I am 6'4--and I went to get my driver's license and I wrote it down and then I came out and said "fool what is going to happen-people are going to say this isn't you and I will never be able to get in anywhere" so I had to change it.

Anyway--so my father told the story how my grandfather would take them to Gettysburg and he would stand there in front of them and he would recite perfectly the Gettysburg Address and also the pre-amble to the Declaration of Independence with a slight Russian accent. And my father would say there would be tears in his eyes. And that was like a prayer--my father would say--it was like a prayer. And in a sense growing up, America in the beliefs in freedom and liberty, and the rule of law--was our religion. We felt it was the essence of what made us strong and what we wanted to defend. I didn't say this last time, but my father was one of four brothers--all four brothers fought in WW II, only 2 returned. The names of two of them--the oldest and the youngest are here as members who died in WWII. It is hard for me to imagine what that can mean--you know we see movies like *Private Ryan*--but what it means to a family to lose two sons. My grandfather remembers saying that it was a just cause for a great country. But I think it put a special obligation on us.

I brought a case in May 2002--Gita's organization brought a case a little bit earlier, they brought a case on behalf of 2 *Brits* and 1 Australian at the time and we brought it on behalf of 12 Kuwaitis. We asked really for one thing--that these people should be entitled to have a fair hearing to determine whether there was any basis for holding them. The essence of the rule of the law--the essence of what we call habeas corpus, which is you cannot throw somebody in prison without establishing that there is a valid basis for doing so before an independent tribunal. In June 2004, the Supreme Court ruled in our favor in the *Rasul Case*, saying that the people at Guantanamo had the right to habeas corpus. Make a long story short--Congress then revoked the statutory right to habeas corpus and we went back to the Supreme Court and just last June, this year, in the *Boomedian Case*, we won again. The court said that these people had a constitutional right to habeas corpus. The interesting thing in the Guantanamo cases--all they have ever been about is the right to a fair hearing--the right for a person incarcerated to have the chance to defend themselves--that is all they have ever been about.

Now Gita will talk much more articulately and passionately about meeting and dealing with detainees, which are just incredible stories. I am going to just reflect on a few observations I have of what has happened over the time. I was shocked when I took on this case that it would be so difficult, take so much time, and be so controversial. I just never imagined that in America that we would need to fight so hard for people to have a fair hearing. One of the things that we talk about now-and you have talked about-is torture. It is extraordinary to me that we have even debated in this country the issue of torture. This is something that when I grew up, as I have always said, that the bad guys did, the horrible guys in comic books did to other people, never something Americans did. Something that people did to John McCain- something we would never do. And yet there is no doubt-and Gita and I can confirm it talking with our clients that every one of them was tortured-and tortured by Americans. And as an American lawyer hearing this, I was sickened, just sickened by it.

The other thing -reflection-is this idea of no hearings. Somehow it does not strike people how bad that is. But I will tell you, the worse torture, and to the detainees down there, the worse torture isn't the physical abuse it is being stuck down there-being an innocent person-without a chance to defend yourself. There have now been a lot of studies. Seton Hall has put together a study about the accusations against the people at Guantanamo, a CIA report actually came out in August 2002, and was buried by the White House, saying that we got the wrong people down here. These people are terrorists or nothing-and yet they have been kept down there without a fair hearing. I tell a story about it which one time I was down there, and one of my clients-a very smart guy-said to me: "Tom, do you mind if I ask you--and he did it through a translator--what your religion is?" And I said: "No, I am Jewish . . . No I do not mind, I am Jewish." And he said, "you know what they told me", he said, "your lawyer is a Jew-how can you trust your lawyer, you know that Jews are always out to get Muslims." And I said, "well what did you tell them?" He said, "well, actually I told them, I don't care, there are good people and bad people in every religion" looking at the interrogator. I told that to the NY Times, that story. And there was a little squib-id of it in the paper. The next time I came down, about a month ago later, this guy Faiz Al Kandari said to me: "Tom," he said, "you told that to people, didn't you?" I said I did, and he said: "that's great!" I said: "how did you know?" He said: "the interrogator came back to me and she said to me, she threatened me," and he said, "I looked at her and I said to her what are you going to do to me? I have been beaten up, I have been hung by my wrists, I have been through electric shock," he said, "beat me up all you want, just give me a hearing." To them that is the most important thing. The worst torture, as I said.

Lets see-other reflections. I say this, it always amazes me, I call this, I have called it before, the relativity of truth. Gita and I see the files on all of these people. We know there is nothing there. Yet, the administration of course has classified it, and all we can say is there is nothing there. It is very hard to prove a negative anyway.

There is nothing there to keep these guys. The administration just says to the press, these are all bad guys-the worst of the worst.

We know that people have been tortured. The administration says we don't torture people, we are Americans, we are good people. What does the public believe? Where is the press in looking into the truth? It seems to me we used to have a better way to try to find out not just what one person says and the other person says, but what is accurate. And actually there have been some terrific reports written--I encourage everyone, if they haven't, to read Jane Mayer's book "*The Dark Side*," which is a well documented book on everything that happened here, and it should be required reading. But then those are ignored, we turn our backs on it.

The other point I make. Something happened where a tough guy John Wayne cowboy attitude became glorified. It became a strong thing to try to violate the law--to say I am not going to pay attention to the law. Anyone who stood up for principle or for the law was considered a wimp--this was amazing to me as I used to say. My training was that you stood for your principles. The strong guy is a person who stands for his principles even when it is difficult to do so--not the person who gives it up when they are under threat. Yet, we all did that here. Without leadership from anyone.

Those are my biggest reflections. The other one--I guess I learned how precarious is this system? When I grew up as a--you know--well to do--privileged kid--in Washington with his grandfather the head of the synagogue, I used to think that America was great and what happened around the world, in other places could never happen here. The Holocaust could never happen in the United States. I am really not so sure now and I want to tell a story. About a year and a half or two years after we first brought this case, I guess in 2004, I was in one of these fancy Washington dinners for some organization. And I was sitting near two professors, law professors, who were fairly young, both Jewish. Being a sort of obnoxious guy at these parties anyway--I mean I would go to cocktail parties and say what are you drinking for, don't you know we have a concentration camp down there, don't you care--I mean you laugh, but it would drive me crazy. And I looked at them, and I said what is going on, when I was in school we would not have put up with this and you are a law professor, how can you tolerate the derogation of the rule of law? What is going on? And finally, he looked at me, and said: "you know, you are right, I know you are right, but we are afraid, we're afraid." And later on, I had a dinner with a sociologist, really a psychologist, from the University of Chicago, and he said he hates to say it but all of the studies of Germany and the growth of Naziism were very much the same, there are a lot of good German people, he said, but they were scared, they were destroyed. The general comment would be, we know bad things are happening but we don't want to know about them. The ability to turn your back on justice is extraordinary even in this country and puts us under a special obligation. It made me think today, and I don't understand it, about the special responsibilities that we have as Jews. And I don't understand this and need to study it more. As I started out to say, in my family, in a sense, I used to think our religion

was a religion centered on the Declaration of Independence and the Gettysburg Address, what we believed in. But we had Friday night services every week at home. And I don't remember religious teachings or many of the prayers were short. But every Friday night, my father would read something from the Jewish philosophers. The themes were consistently for justice and passion and mercy. I didn't even-I don't know-I need to go back and see what it is. I have not studied the Bible, somebody reminded me that Abraham argued with the angels to seek mercy for Sodom and Gomorrah so there shouldn't be as many men. I don't know what it is in Judaism that makes us feel this way. Somebody told me this too-and it is interesting, and Gita would appreciate this-that there is no concept of Human Rights in the Old Testament. But, there is a concept of obligation, that we have obligations. And it is interesting to me because all of the rigor-moral and stupid arguments in Guantanamo center around the idea of who has rights. There is a boxed in feeling among American lawyers that all rights come from the Constitution and then there is a debate, well do foreigners have rights when they are outside of the country. And our argument was always look, we have an obligation not to imprison people without giving them a chance to defend themselves. Maybe that is a concept that I need to study more in the Bible.

I also have a question as Jew. My grandfather was also very prominent in the Anti-Defamation League. But I really think going back, whenever there were crisis of human rights in the United States, Jews were at the forefront of fighting for Human Rights. And I think this time, that we let ourselves and the country down a bit. I will tell you that my brother would not criticize George Bush because he said George Bush was the best person that Israel ever had. I think that happened in a lot of places and I think the denuding of Jews really helped support Bush. That is something I would not say in other crowds, but I feel a special responsibility of it here. And I need to study this more myself, because I have not had this sort of audience and it makes me reflect. And I do think that we have a special obligation-I have always said this-and I say this at Passover and I say it at Thanksgiving as well. Whenever any human being is treated as less than human, we as Jews are jeopardized. Whenever anyone is denied justice, we as Jews are jeopardized. And I don't think it is just a question of self interest. Somehow this is what we stand for as Jews and hopefully as Americans and something that we must continue fighting for. Thank you.

(Applause)

Rabbi Brian Walt

Thank you Tom, you were speaking to a group of people who could give you many, many, many ---too many citations-- to support what you just said, but they wouldn't - I speak for myself-could never say it as eloquently as you just did from your heart, so thank you.

(Applause)

So Gita is a lawyer with the Center for Constitutional Rights, which is an organization that is a sponsoring organization of this conference and that we honored in the first Raphael Levkind awards. And she is representing a Saudi Guantanamo detainee who has been held since January 2002, was subjected to the “first special interrogation plan regime of torture and human treatment” authorized by the Secretary of Defense.

Please welcome Gita Gutierrez.

(Applause)

Gita Gutierrez

Thank you. This is actually my first time speaking to a Jewish community specifically, or speaking in a synagogue. So thank you very much for the invitation. In looking through the program and the discussions that you have had during this conference, I am very honored and privileged to be here. I was humbled by the self reflection that you have organized for this weekend and the issues that you have been dealing with that really seem to go far beyond what we are dealing with in Guantanamo. So I have a tremendous amount of respect that I want to express to you for what you have been engaged in this weekend and also thank you as an outsider for letting me come and offer my support and gratitude for what you are doing.

I am an attorney, as Brian said, with the Center of Constitutional Rights. I have been working on the Guantanamo legal issues since 2003 and started going to Guantanamo in 2004 to meet with men at the prison there. For those of you who are not very familiar with the center, we are a Human Rights and Civil Rights organization that were founded forty years ago and we actually have a very broad docket dealing with all kinds of Civil and Human Rights issues and when the prison in Guantanamo opened, we and Tom and some death penalty lawyers-capital defense lawyers-actually recognized that the legal issues in Guantanamo were so profound that we turned a great deal of attention to what was happening there and thus began the cases in Guantanamo that have been up and down to the Supreme Court three times and finally may reach some resolution for the individual men some time next year.

But just a few very quick facts about Guantanamo. I am sure you know a great deal about it. What you may not know, is that over the course of the time since the prison has been opened there have been men and boys from forty different countries that have been imprisoned. All of the Europeans were released pretty quickly between 2004 and 2005. The age range of the men and boys who have been imprisoned there range from 10 to well over 80. So the impression that people may have had and that some people still hold on to that it is full of harden terrorists who will gnaw threw hydraulic lines to kill Americans if they are put on an airplane is

hard for me to reconcile with the men who I have met there and certainly hard for me to reconcile with the idea that children and teenagers-and although teenagers may do a lot of things-I don't think they are as bad as we have been told.

The habeas lawyers who go down and meet with the men in Guantanamo are the only ones to meet with them privately. The International Red Cross goes to meet with the men but they cannot report publicly on what they say. So they too sit with the men. But we are the only ones who can meet with them, talk to them, get a sense of what happened and then come back to a federal court or to a community and share some of our experiences. So it is a small group of people who have been able to go down since 2004 and actually witness what is happening.

One last sort of background note on Guantanamo, we often think of torture as the extreme violence that has occurred either in Guantanamo or in some of the CIA secret detention facilities. But as Tom said, and emphasized so strongly, the psychological stress of indefinite detention and the uncertainty of not knowing one's fate has been identified by the Red Cross as a form of psychological torture in and of itself. And that is something that as perhaps less physical violence has occurred in Guantanamo, at least for me and many of the lawyers that are meeting with the men down there, we have seen the complete psychological deterioration of a human being that comes with indefinite detention. So I just want to echo Tom's emphasis on the importance of a hearing.

This was not -Tom and I did not plan this-but the perspective that I want to share with you today, complements I think quite well his call to you. And today we have a tendency particularly right now in this nation's history to want to blame the Bush administration for our country's engagement in torture and to blame the Bush administration for our country's practices of kidnapping and disappearing men, women, and children. And we also many of us--myself included--shed tears on November 4th and well into November 5th when we elected a new leader that provides us with the hope that he may take our country out of this period and restore the rule of law and our nation's integrity.

But I ask you to consider this; that our nation did not torture because of the Bush Administration. Our nation tortured because of the American people, we allowed it to happen, I allowed it to happen, you allowed it to happen. It did not occur because of a single individual in this country. And there are many, I am sure, sociologists, psychologists, and political scientists who for years will look at this period in our time and ask themselves and study and try to answer the question how did this happen. But today I just offer you the simple observation of one person who has gone and lived. We all knew what was going on in Guantanamo. We do not need a Truth Commission--although we need to clarify a few details--we knew it was happening. We saw photos. Certainly by 2004 when the photographs from Abu Ghraib came out and the stories of men particularly some of the British citizens who were released and told what happened to them were out there-we knew. And I still went grocery shopping, saw movies, and watched TV and got hooked on the Lost

series. And went about my life shopping and did engage in my professional life in some of this practice but when we look at this from an International perspective and what we could have done, we didn't. We are very comfortable in this country and we didn't. We did not do enough eight years ago, we did not do enough six years ago, or four years ago, or even two years ago and the men are still imprisoned there. But, today we do have an opportunity to do enough to stop the torture, the psychological torture and the damage from the physical torture that has been going on. I have struggled with these same questions as a lawyer going down to Guantanamo. Since my first meeting sitting across the table from two young men from Britain who spoke--I grew up in Kentucky--and they spoke much better English than I did and they had been held in isolation for 18 months and sitting across from them really brought home to me what am I doing as a lawyer filing nice legal papers to help get them out of prison when I am witnessing what has happened to them--and that was only after about two or so years of imprisonment. And I am still engaging in my practice of law as a lawyer while my clients have now been imprisoned for seven years.

I want to talk specifically about Mohammed alKatani, who is the Saudi young man that I work with. He was picked up in the Afghanistan / Pakistan border and brought to Guantanamo and was the subject of what was called the First Special Interrogation Plan. If you have followed Guantanamo or followed any of the Congressional inquiries into "enhanced interrogation techniques" or learned much about the new torture methods or interrogation methods that are used--you may have come across his name. He became someone of interest, intense interest, in Guantanamo. In a large part his detention triggered some of the more egregious torture practices --I do not use that word lightly. There have been--like I have said--numerous congressional inquiries and agency inquiries into what happened to him. The FBI has investigated what happened to him, the Department of Defense, the Senate Arms Forces Committee, there was a former general council of the navy who came forward and has spoken very adamantly about what happened to Mohammed alKatani. His treatment was the subject of *Torture and Democracy*, a series on PBS that you may have seen.

And I usually preface any discussion or detail I give about Mohammed with a moment with the audience where I tell them that we are past an opportunity to listen voyeuristically to descriptions of torture. So I tell people that I am going to talk to you about Mohammed with the expectation that you will take some kind of action, that you will donate \$5 to an anti-torture organization, that you will call a senator or representative, that you will write a letter to the editor. And then I invite them without any pressure, but just simply with an understanding, that they have an opportunity to leave or they can stay. And then I actually will pause for a full minute until everyone gets uncomfortable enough to realize that what I was asking was not rhetorical but I was actually inviting them if they were not ready to take that step, to leave because Mohammed is still in Guantanamo. We are not talking about someone who has survived and is home with his family and is OK. We are talking about someone who is suffering this very moment, this very day. Today I am very

humbled to not have to do that because you are already engaged in that work. I want to express both for myself and for Mohammed and for his family our thanks for being willing to take those steps and take actions.

The Center came to represent Mohammed through his father--because everyone has parents. His father traveled to Bahrain from Riyadh Saudi Arabia to meet with Human Rights lawyers from an organization in the UK and from the Senate for Constitutional Rights when we had meetings in the Middle East asking people to come forward in 2003 and 2004 if they had relatives detained in Guantanamo. So we would put flyers in local newspapers and let local human rights organizations know that the American Lawyers are coming to town and they will be at such and such hotel on such and such day and they'll be able to take your authorization to help your son, uncle, father, cousin, brother. So Mohammed alKatani's father came to Bahrain and gave us an authorization. And we brought it back to the United States. And at that time we were having lawyers coming forward and volunteering to take the individual cases. And we had a lawyer who was prepared to take Mohammed's case. This was in the summer of 2005 and before they had filed the case, an article had come out in Time magazine talking about the interrogation log of Mohammed alKatani that was leaked that detailed really his torture. But the magazine also said that the reason that these enhanced interrogation tactics were used against him was because he was alleged to have been the 20th hijacker during 9/11. And the lawyer in that law firm stepped away from the representation and declined to represent him. And in all of my experiences with all of the dynamics and discussions I have had with lawyers from all different aspects of the practice--to me that has been one of the most egregious things that has ever happened as a lawyer who is supposed to serve your clients and serve the community, to step away in such a time of need I thought was pretty bad. And it became very very difficult then at that point to find private lawyers who were willing to represent Mohammed and we at the Center decided that the issues of torture were so profound and also were so well documented that we would take on the case ourselves. And so we took the case and about a few months later I went down to meet with Mohammed the first time at Guantanamo. The first meeting really drove home for me, the psychological damage that happens when someone is tortured. Mohammed was subjected to isolation for a number of months at Guantanamo and was threatened with military working dogs. And all this information comes from government records, not from his self reporting. The special interrogation plan started where he was subjected to sleep deprivation for 48 days and 20 hour long interrogations every day. He had loud noise played, he had a female interrogator, male interrogators pin him to the ground and a female interrogator straddle him. He was held in physical stress positions, he was dehydrated, he was forcibly given an enema in front of many many mps. His entire interrogation was medically supervised, so there is a whole aspect within the medical profession going on around his case in terms of the complicity of medics and doctors with what happened to him. So all of these things happened to Mohammed and then he was placed in a maximum security facility in Guantanamo and so that is the person who I came to meet.

And so when I go to Guantanamo and meet him I do not wear a veil but I do cover myself; I wear a long black skirt, long black sleeves, primarily because he is a very conservative young Saudi man who primarily grew up in Saudi Arabia where there is a very distinct separation between the genders. And he also had his culture and religion severely exploited by female interrogators. So during our first meetings he actually was crouched up, usually had his hands covering his face for the first full week we met. And the interpreter had to keep asking him to move his hands away from his face so he could hear him. And I actually sat with my back to Mohammed. So my interpreter would face him and we would almost sit as if we were in a love seat and I would speak to the interpreter and he would speak to Mohammed because Mohammed's discomfort was so severe. And over the course of a year my chair gradually turned. And it has taken three years for us to be able now to sit at the table and talk and share a meal together and to begin to talk about what happened to him. It has truly hit home for me what it is like working with someone in that situation. I cannot, though, fully convey what his experience has been and what justice will need to be done in order to restore him as a whole human being. Many lawyers will talk to you and say that they want to tell the stories of those that cannot speak for themselves. Mohammed alKatani can speak for himself. All of the men in Guantanamo can share their stories and articulate what happened to them but we have not given them an opportunity to do so. The men who have been released, some of them have spoken out and spoken directly about their experience and I would encourage you go to those books and those interviews that they have done to learn what kind of impact this has. And even beyond that the impact that this has had on his father, on his sisters, he is unmarried but certainly for my other clients, their wives and children all have their own stories and we should struggle hear their voices themselves.

Just then, a few reflections on what the experience of working with Mohammed has been for me, not just as a lawyer but more profoundly as a human being. It has altered my understanding of what justice means. Our work as lawyers in Guantanamo was destined to fail our clients. The law is not going to restore the loss that has occurred for the individual men. What we have successfully done is we have restored the Constitution of the United States, unquestionably. We have restored the integrity of this country-unquestionably we are on that road. But as a lawyer I cannot replace the years that have been lost for my clients or for their families or for their children. Going down into Guantanamo knowing the kind of stories of that Tom told you of what is being told to your client before you arrive the limited limited amount of time that we have during the day even to sit with our client is not enough. And the military controls all of the meetings down there, they tell us when we can go into a meeting. I have had an afternoon with a different client who thought he would die in Guantanamo and was reading me his will. And because of the interpretation and some of cultural differences it took me a minute to realize that the message to my family that he was telling me was actually his will that he was dictating. And by the time that I caught on then I became concerned, was he concerned he would die because he would hurt himself or was he concerned because he would die because he would never get out of Guantanamo. The meeting

was going to end at 4:30 and this was about 4:20. I am trying to respect what he is saying and write down everything he is saying while still asking him and trying to get some understanding of what his fear of death is based in. And at 4:30 on the dot the mp comes walking into the room and tells me the meeting is done and stays there. And so there is an awkward ending. And because it takes months to schedule a meeting in Guantanamo, I can't go back down again for several months. And so those kind of situations, as lawyers, we are set up to fail. And it is extraordinary when we are able to work well with clients, achieve some success in the courts, because the system is not designed to let us to do that.

It has also made me look at my profession and other service professions and ask myself what are we doing, what are lawyers doing? We cannot restore the life that has been lost. And in fact many lawyers have been-like many doctors and medics-have been part of the injustice in Guantanamo. Lawyers who have artfully redefined torture so that things that we recognized as torture when they happened to US soldiers during the Korean War have now simply become enhanced interrogation techniques that do not trigger those prohibitions that have been honored by this country and every other country for more than fifty years. So lawyers have been as much a part of the problem as part of the solution. In some ways, now, I wonder if the slowness of the courts addressing these questions will actually be able to provide any help to the clients and to their families. Being released from Guantanamo is certainly a profound and important development but it does not make someone whole. Many of the men that have been released from Guantanamo continue to struggle for years by what happened to them.

It has also changed my understanding of hope. And for me now, it is particularly important to speak to faith communities, because my hope rests with you. I have found that people who recognize that justice is not something that shows up on a piece of paper or is simply enshrined in our constitution, but is something that we live and breath and protect and act to accomplish are what give me hope that we may change our country together. So I leave you with my commitment to you and hopefully your commitment to our work. We as resisters of torture practices and enhanced interrogation and kidnapping and what we have seen in Guantanamo and elsewhere are finding each other these days. Our nation has gone through a very very dark night of the soul where we have lost one another and struggled each in our little pockets to try to get something done and now we are finding each other and joining together. I think the National Religious Coalition Against Torture is one of the most powerful voices in the anti-torture movement now. I invite us to step together into this darkness and to let us open our eyes widely to what we see and to witness this darkness together with unflinching strength of spirit. Let us reach out and grab a hand in this darkness and pull our country together through this night. And in the darkness we may touch the hand of a Muslim who is detained in Guantanamo and in this darkness we may touch one another's hands. We may also touch the hands of a torturer who is reaching out with a tormented soul. But we will touch the hand of God together in doing this work. So I thank you and I wish you the strength of spirit and the best of luck as you engage in your work this afternoon.

(Applause)

Question: My question is directed to Mr. Wilner. I am Rabbi Israel. S. Reisner Rabbi Emeritus of Temple Beth Tikvah in Wayne NJ. I once had a US Supreme Court case in my name, *Reisner Ed Al v. Tallahassee*, it was a freedom rider case going all the way back to 1961. I heard oral arguments in the court here in Washington, etc. My question is do you think that our new president, President Obama, will come through on his pledges during the campaign? Do you think President Obama will come through on his pledges to make sure we don't have torture and all of the things that you have been involved in so forth, never ever happen again in America? One coda to finish this, I want to thank you Mr. Wilner for getting me over my last prejudice. I am 79 years old, it is hard to get over prejudices. My father was a Galician immigrant to America and he used to tell dozens of Litvak jokes, always putting Litvaks down. I want you to know that after hearing you, I am completely absolutely clear of my prejudices against Litvaks.

Tom: Thank you. Not only I but my grandfather would be happy to hear that. Let me tell you a story about Obama and one of the reasons that I, and I think a lot of the other habeas lawyers first supported him. We won the case in June 2004 saying that detainees down there had the right to habeas corpus, had the right to a hearing in court. It wasn't clear, but it was basically based on the habeas corpus statute which was the first statute enacted by the first United States Congress in 1789, fleshing out the Constitution. Congress then, Republican Congress, revoked the right of habeas corpus for detainees at Guantanamo. It was extraordinary. They did it in the middle of the night. The bill was first proposed when I was down in Guantanamo. We flew back, we worked over the weekend. It was actually Lindsey Graham who did it. I will tell you a story. We thought John McCain would oppose it-but he didn't. He made a deal. Because John McCain proposed an anti-torture amendment, but then they revoked habeas corpus and he said -he sorta made a trade off as did a lot of the human rights organizations. They said, we want to prevent torture, we will give up habeas corpus. We said, how could you do that, if you can't go to court how can you enforce anything, which is really what happened. But anyway, there were two Senators, Democratic Senators, who thought they could strip out from the bill this revocation of habeas corpus: Jeff Bingaman of New Mexico and Carl Levin of Michigan. And they had it ready to go and before they put it to the floor Hillary Clinton and I understand John Kerry (although I haven't confirmed that) came up to them and said look we can't support it, because it will make us look weak on terrorism. Unbelievable. So that lack of commitment to these principles by those people-selling out at the time--really screwed us, to put it that way. Obama wasn't elected then. We went to Obama first off and he came into the room with this and he wasn't running for president. And he said: "I don't know which way this shakes out politically, but it is wrong. I am on your side, I will do anything you want." We used Obama's rooms-his Senate room and his staff to lobby the Senate. He was so committed to this. Throughout the campaign, Obama said I want to restore habeas corpus, I want to close Guantanamo, I believe in American values-they make us

strong. There was none of that fear -running away from issues--that you saw with others, including-you know, I am not a great fan of the Clintons-although I think there were good things about them. I think he is willing to do it. Now, honestly, we are working now with the transition team. One of the problems is -and I've got a paper here that I've got to give them--people are creating all of these problems in closing Guantanamo, in doing it. I don't think there are those real problems. And I think one of the things is giving--a lot of people in our community, since I am really not in the community, I am just a lawyer--but they have high falluting ideas and principles and what these guys and women and the administration really need now are practical advice-how do you do it, we agree with you, how do we do it? And I think it is our obligation to get that to them now and not to be stuck up on a lot of little things. How do you get this done? But I think he is committed to it. That is a long answer, I am sorry, for a Litvak.

Question: Gita, I really appreciated your pointing out that we shouldn't just blame Bush. It was easy when you have the situation especially to some extent we were bystanders for a long time, to pin it on one person who is the boogie man-so to speak. But, I also think there are also other easy things that come up in this conversation, including just focusing on Guantanamo. What we know is that there is a rendition going on all over the world. I am wondering if you can shed some light on the apparatus of the US government that is involved more widely around the world, not just Guantanamo. Because, I think, just as it is easy --and you warned us not to focus on Bush--it would be easy for us to focus on Guantanamo. Let's say that Obama asked for it to be closed down and then we say we won on the issue, but we know that is not to be true. So, I think you are warning us about how deeply this go into our system-and it is something I would like to know more about and how we can address it a bit more holistically.

Gita: We have taken a couple of different approaches at the Center. And I think you are exactly right that most of the time when we are talking about Guantanamo we are talking about a physical prison and a certain population that is on a little military base down in Cuba. But it is also symbolic of a much larger detention, kidnapping, and frankly torture practice that Guantanamo is just the tip of the iceberg and also the most visible aspect of it. I think a couple of things are important to know, especially if you are actually doing education for your political representatives about the US torture practices. There have been multiple agencies involved in how we treat people in US custody. So Guantanamo is really indicative of what the military has been doing for the most part-we have Guantanamo, the facilities in Afghanistan, and the facilities in Iraq--so Abu Ghraib is kinda the most notorious. But we still have a number of legal cases and a number of issues that spread across those three regions. The military also is moving into the horn of Africa and central Africa. Just the same as the Pakistan / Afghanistan borders were becoming a bit of a hot zone, there has been a great deal of attention looking at the development of a new military command structure in those regions in Africa. So there will be, most likely, military detention facilities and military detention occurring in those areas as well. When it comes to what dictates what the military

can and cannot do-the reigning in of interrogation practices that we have seen through Congress in the last year or so have applied to the US military. So, there has been a lot of discussion about the Army Field Manual, which applies to all of the service branches and sets forth what is permissible and really the bottom line in the field manual is the Golden Rule--Do not do to someone in your custody that you would not want to have done to a US personal in the custody of an enemy. And the manual actually advises US service members that if you are about to do something to someone in your custody that you think would be torture or inhumane treatment if it happened to US personal--don't do it. And so the military in terms of torture practices has been reigned in. And there is still, I think with the military, is the big question--are we engaged in a global war on terror and does that give the military the right to pick up anyone they want and put them in military detention, even if they have never been a combatant. And you will probably hear a lot in the next year about the definition of an enemy combatant, which historically and legally has been tied to someone who actually was running around with a weapon and now we are seeing much broader definitions that you can simply support an armed forces but still be called a combatant even though you have never fought. So the kind of reach of the military is a question. But torture might not be as much of an issue with the military.

The other US agency that is engaged in detention and interrogation practices is the Central Intelligence Agency and the Intelligence Agencies more broadly. They are still just free-wheeling out there. Common Article 3 of the Geneva Conventions is a provision that provides basic protections for anyone in the custody of a country. So the CIA and other intelligence agencies have to abide by that very fundamental protection. But right now it is very unenforceable and there is a tremendous amount of secrecy surrounding what they do. The American public have difficulty finding out what they are doing. And there are not the same kind of regulations restricting them, that there are in the military. So as you go and talk to representatives and you are asking for an affirmation of the anti-torture principles of the United States, it should apply across the board--definitely. And not just simply to one--not just in a military context. And when we talk about renditions--which is really a very polite way of saying kidnapping someone off the streets of another country, disappearing them the way we saw disappearances in Central and South America and keeping them hidden from the Red Cross and from their families and other countries while you can do whatever you want to them--that is a rendition. That is something that is done by the intelligence agencies often with the assistance of special forces from the military. So those are often combined efforts that are often kept very secretive. The European Union right now is engaged in a lot of Parliamentary investigations to try to get information about this. But these practices--it is a great question, it certainly spreads across agencies on an international level.

And I will say one note about some of the domestic work that needs to be done around this as well. And I am sure many of you are involved in prison condition work, or prison services, prisoner services really. The same kind of conditions that

people find so disturbing that men in Guantanamo are living in-the isolation, maximum security facilities, the lack of intellectual stimulation, the uncertainty about their fate, the constant strip-searches or humiliation. These things happen to people in US state and federal prisons and there is a certain amount of desensitization to the psychological and physical damage and harm that is done to people who are incarcerated-period-for whatever reason.

For us at the center, we have been looking both internationally beyond Guantanamo to other detention practices, we have been looking beyond the military. But we also are turning some attention back inwards into this country, and how we treat prisoners and why does someone in a prison uniform suddenly lose basic human rights that we otherwise find intolerable in Guantanamo but are OK in the state prison thirty miles down the road.

That again was a long answer to your question.

Follow up question-could not be heard.

School of the Americas where we train people from other countries that engage in torture. There has been an effort to shut it down.

Response from Gita: There has been a very very strong effort among Catholic day workers to shut down that facility and there is a great deal -I think also because of the litigation around Guantanamo where American personal learned that if US personal holds someone in custody, these lawyers can run in and file a case. So what we are seeing now is that proxy detention-where we will go and train the interrogators, we'll feed them questions, we will build the facility for a foreign government. And then we just trod in a few foreign guards to actually maintain custody while our personal maintains full access. We are definitely exporting in a variety of ways.

Tom: I just want to give one tiny note on that--it is an interesting thing. There is of course in the US government tremendous debate about this-people in the military and CIA are very opposed to this. Just an interesting footnote. You know the fellow who was Barack Obama's Chief Foreign Policy Advisor--a guy named Tony Lake, who was also Bill Clinton's foreign policy advisor during his election, first national security advisor--who is a man of extraordinary integrity. Who I will tell you just as a footnote for this group, is a guy who has grown up as one of the great WASPS, I think his great-grandfather was the Episcopal Bishop of Canada. Tony about three years ago became Jewish. Very much some of the issues were about the feeling of justice and mercy in that. So that is a very interesting thing. That was Obama's advisor.

Brian: So, I want to thank both Gita and Tom for coming here to end our conference. For the time that we have spent together. Many of you have looked at beautiful billboards advertising a commercial, a brand called Rabbis for Human Rights: To do What is Just and Right, Israel, North America. This is for you Tom-

when God created the special relationship with the Jewish people, God decided to tell Avraham-Abraham- about the fact that the sins of the city of Sodom and Gomorrah, which are understood in our tradition in many different ways-but one way in which they are understood is total insensitivity to the poor of the city, and economic exploitation of the poor. God then decided, there was then some change in the godhead itself-in God him / her self, where God said am I going to hide from Avraham what I am about to do-because I want to establish a relationship with Avraham and with his descendants that they should do what is just and right. That is where that phrase on our billboard comes from-to do what is just and right. Because in some ways that is the mission of the Jewish people, I would say it is probably the mission of all people, but it is our cultural way of expressing the mission of our people to do what is just and right. And those two words--*laasot tzedakah omishpat* are very important words. *Mishpat* is what you and Gita uphold all the time and the Jews in North America really believe as you said, is what Judaism is fundamentally about-the rule of law. Because we understand that it is the rule of law that is most important for our own security. We are in trouble as a minority if there is no rule of law. And more importantly, it is what we should be doing. And we also understand that the rule of law-*mishpat* -is not enough, because sometimes you can have laws that don't make justice, so you need both. So God tells this people you need to do both--you need to uphold the rules of law you and need to make sure they are just-that is the mission of the Jewish people.