



The Activist Files Episode 13: Justice for Abu Ghraib with Katherine Gallagher and Baher Azmy

- Aliya: Hi everyone. I'm thrilled to have the focus of this episode be on CCR's efforts to bring accountability for torture, and specifically the Center for Constitutional Rights' case, *Al Shimari v. CACI*. The case was filed in 2008 and is still ongoing. I'm joined today by CCR Legal Director Baher Azmy and Senior Staff Attorney Katherine Gallagher. Welcome Baher and Katie.
- Katherine: Thank you for having us.
- Aliya: So as I mentioned, this case has been going on for over a decade and there's a lot that we're going to dig into, but let's start from the beginning. What happened at Abu Ghraib in 2003 and to our clients Suhail, Salah and Asa'ad specifically?
- Katherine: Well, you know when you say Abu Ghraib, people probably have the images that come into their head of those horrible photos of naked detainees, hooded stacked in pyramids, being sexually assaulted, pulled on leashes, and that infamous photo of the man standing on a box, hooded with electrical wires. So, it's a dark moment in U.S. History, but something that you don't see in those photos generally is the faces of the individuals. And you certainly don't see the men in those photos in their whole humanity. And what this case at its core is about, is allowing

three individuals who were detained at Abu Ghraib during that period of time back in 2003-2004 to tell their story to tell what happened to them in Abu Ghraib.

Katherine: So, our clients are Salah Al-Ejaili, Asa'ad Zuba'e, and Suhail Al Shimari. The three men were picked up in various circumstances in the Fall of 2003, and kept in that hard site at Abu Ghraib. That- those two tiers that you see in the photos, that's the hard site.

Katherine: And over a period of weeks and months they were subjected to acts of serious mistreatment, humiliation, degradation, denial of their humanity, acts that we believe rise to the level of torture. They were kept at various points, naked, tied up in stress positions, forced to masturbate, sexually assaulted.

Katherine: For one of our plaintiffs, Suhail Al Shimari, he was forcibly shaved, which is something that at first blush, may not sound like it's so bad when you're thinking back to those photos, but the three plaintiffs that we represent are all Muslim men, or all Iraqi civilians. And for Suhail, this act of shaving him was really an act that he found deeply shameful and humiliating as a Muslim man.

Katherine: Salah Al-Ejaili was a journalist for Al Jazeera. He was actually picked up while covering an IED, an explosion, a roadside explosion, and he was mocked and taunted Al Jazeera, while being shackled to the bars of his cell while naked with women coming up and touching him.

Katherine: Asa'ad was kept at one point in solitary confinement, he was exposed to extreme temperatures, denied food, and had family members threatened while he was detained. So those are, are some of the acts that the men were subjected to and acts that - here we are 15 years later - continued to haunt them.

Aliya: I think when people think of U.S. torture and specifically this U.S. military-run prison, they think of U.S. Government, but the government isn't a defendant in this case. Baher, how is it that we're suing CACI, which is a private contractor?

Baher: Yeah. I think the people understand, at least the CCR podcasting listening public understands the role of the U.S. Government torture at Guantanamo secret black sites and indeed at Abu Ghraib. But they know less about the story of private military contractors involvement in promoting, participating and directing a lot of that torture. And that's exactly the dynamic

that happened at Abu Ghraib. We learned very early on from military investigative reports undertaken to try and identify the sources of the atrocities in Abu Ghraib when it became a public embarrassment and military investigators very specifically identified a private military contractor named CACI Premier Technology as playing a central role in creating a culture of torture and specifically directing torture. CACI was hired by the U.S. Government to provide interrogation services. They held themselves out to be resident experts in interrogation, although hired largely inexperienced and arguably incompetent individuals to carry out that role.

Baher:

And what we saw is CACI, as the sort of sophisticated and well paid military intelligence operation, started ordering military police MPs or the guards, who were supposed to take care of prisoners, started ordering them to soften up detainees and to set the conditions for interrogations that CACI would later exploit for considerable profit from the United States government. Now, for the past 11 years of this litigation, CACI has tried to position itself just like the United States government. It tries to claim all of the immunities that the sovereign gets, clothing itself as if it were the United States government. But of course CACI is not a sovereign, it bears no sovereign responsibilities. It has no public accountability. It exists only for profit. And part of justice in this case is exposing the profit motive, this entity in war-making with the United States.

Aliya:

And you mentioned the 11 years of litigation. We at CCR are used to struggles being long, but it's actually pretty rare that a case has gone on this long in the courts. Why has it gone on so long? And I also want to uplift some of the legal victories along the way, which if you could talk about, that'd be great.

Baher:

It's gone on so long because, you know, we have an incredibly well- resourced and ideological defendant who wants to fight every step of the way and has the capacity to do so. We have been to the court of appeals four times in this case. CACI has filed motions to dismiss the case around 17 times. I would say in our big stop-and-frisk case you could count maybe three motions to dismiss. That gives you the scale and the intensity of the litigation. Despite that, we have had some pretty significant legal victories. The Fourth Circuit established that the Alien Tort Statute, which is the law in which were suing, applies in this case because the case is so bound up with U.S. Conduct. That's despite a problematic supreme court ruling that narrowed the scope of this human rights concept. We obtained incredibly important ruling from the Fourth Circuit Court of Appeals that

despite the deliberate ambiguity that people like Cheney and you and CACI itself tried to interject to the question of torture and the military authority to torture, that torture is not a political question. It is a legal question that courts can review. And in the words of one of the judges on the Fourth Circuit panel, not even the president of the United States can order or authorize torture. And from the District Court, we got a number of really favorable rulings including finding that the evidence in this case, the allegations in this case, when viewed holistically, demonstrate that these individuals suffering amounted to torture or cruel and inhuman degrading treatment and war crimes and that they can be pursued against a private entity.

Katherine:

I would just add on to that, over the last five years, as Baher mentioned, we've seen the Alien Tort Statute scaled back, both its - quote - extra-territorial jurisdiction, meaning how this human rights law applies for actions outside the United States. And we've also seen a concerted effort by defendants in these human rights cases like CACI, other corporate defendants who've really, really tried to knock the legs out from under this law and just create some kind of immunity for corporations who are at large for human rights violations. So some of the decisions we've had in this case, in the wake of those Supreme Court decisions that have narrowed the Alien Tort Statute, I think have been quite important for keeping this law alive. Findings that a U.S. Corporation could be held liable for human rights violations, including for human rights violations outside the United States because if a U.S. Company can't be sued in the United States, where can it be sued? So I think that those precedents are quite important.

Aliya:

It's clear that you all and our co-counsel have been doing amazing work in the courtroom to fight for accountability and also against the defendant and also have done a good job of centering the experiences and voices of our clients where possible. There's a great quote from one of our clients, Salah Al-Ejaili, "We will have our day in court and the story of Abu Ghraib will be told by me and other men who lived and survived it. Katie, what does justice look like for our clients in this case?"

Katherine:

You know, it's always hard to answer that question for clients because even in a case where we have now three plaintiffs for each of them, I think it probably carries something a little bit different. You know, at the end of the day, this is a Tort action. So it is an action for damages, meaning money. And I don't think that that's unimportant to our plaintiffs, all of whom have suffered in the wake of being detained and, and certainly could use money to help rebuild lives and get some support for their

wellbeing. But I don't think that that's the first thing any of the three would say. I think overall it's that opportunity to tell their story. And something that has struck me again and again in representing the plaintiffs in this case and Iraqi civilian side represented and other cases against contractors, is that they have come to a U.S. Court, trusted a U.S. American lawyer, trusted American judges to be able to provide them some kind of justice and remedy.

Katherine:

There is still a deep belief that they can find justice here, which I find somewhat incredible in light of what they experience, not only in Abu Ghraib, but under the U.S. occupation and the long war in Iraq. But I think that chance to share who they are and what happened to them, to a U.S. jury is very important. To put a name and a face to the story, instead of just the hooded naked detainees. You know, Salah, as you said here in the quote that you read, he has also said, it's not only about me. You know, I think that there is a feeling that if they can hold this company accountable, it may be a dent in the wall of impunity, that it may make a company think twice about doing torture again. That there's a cost, a real cost, both reputationally and financially. So this is for preventative measures, too, so that there won't be more torture survivors. I think those are some of the key reasons why they're bringing this case forward and continuing to bring it forward after 11 years.

Aliya:

So now that we've, why this case matters to our clients for her. In your opinion, why does this case matter to everybody else in 2019 so long after the atrocities of Abu Ghraib and are there connections to other struggles for justice here in the U.S. that you see?

Baheer:

Yeah, I think it's a really important international human rights case that's a really important corporate accountability case. One level, it's when human rights norms are under attack all over the world. It's an opportunity in a courtroom where the truth matters to talk about international law values that the United States professes to follow and to vindicate those values in the courtroom and beyond. And it's an opportunity to hold very powerful corporate defendants liable when their power and resources and indefatigable litigation appetite would normally keep them out of court and out of accountability. And there are also broader political struggles connected to this case. This case has, I think, deep connections to a history of Islamophobia and broader militarism that are at the heart of the interconnectedness between Abu Ghraib and the U.S. invasion of Iraq in the first place.

Baher: The notion that these individuals are somehow subhuman, are not entitled to basic dignity. That we're both, you know, make the United States think that they could bomb this country relentlessly and not be concerned about the victims of that massive act of violence. And that inside prison cells, they could torment these prisoners relentlessly. So it's an opportunity to reclaim their dignity in a similar way that we sought to reclaim the dignity of prisoners in solitary confinement in Pelican Bay or black and brown citizens of New York who were consistently being stopped and frisked by the NYPD because of who they are and their perceived absence of power vis a vis the powerful.

Katherine: [1](#) And just to add onto that, you know, I think in this moment of 2019 where we have Donald Trump as president of the United States, a man who said he'll bring back waterboarding and a hell of a lot worse and then put in place as his director of the Central Intelligence Agency, Gina Haspel, a woman who ran a CIA black site where torture occurred back during the Bush administration. Already the victories that we've had in the court setting out as Baher laid out that clear line that torture is wrong. It's not only wrong as a matter of policy, but it's wrong as a matter of law and those who commit torture will be held accountable. I think that is a important message for this administration to hear.

Aliya: And while this court case is about CACI's role providing interrogation services abroad, CACI still has countless contracts with the U.S. Government. Do you see connections with this case and the proliferation of private contractors and other areas?

Katherine: Again, going back to the current administration, Donald Trump and his whole administration is really about corporate capture. They will privatize anything and everything that they can and turn government functions into an opportunity for profit. And in this moment where we're seeing so many historically governmental functions privatized, I think there are questions around accountability and what laws apply when people doing what many citizens and people in the country would think our public functions. And instead they're doing it for a profit motive. Who are they accountable to? Are they accountable to the citizenry or are they accountable to the shareholder? So in this moment where there's a lot of ambiguity, I think having clarity on legal responsibilities and liabilities is very important.

**** News Update ****

Aliya: Hi Listener. It's Aliyah, again. We have an update. When we recorded our podcast episode, we were gearing up for trial on the case to begin on April 23rd. The day after recording a judge postponed our trial date so that both parties can brief an appeal that was filed by CACI. Katie is back and joining me and Ian here right now. Katie, what happened last week and where are we right now with the case?

Katherine: Thanks Leah and Ian for having me back. So as you said, we were all set to go to trial with a range of experts and other witnesses and most importantly our plaintiffs having there long awaited day in court and unfortunately that wait will continue. Essentially what happened was in late February, CACI sought to have the court determine that it shouldn't be held responsible for anything - that essentially as a government contractor, it had the benefit of the immunity of the United States, meaning that it couldn't be sued.

Katherine: In late March, Judge Brinkema issued an order in which she found that because of the seriousness of the claims in this case, torture, war crimes, cruel and inhuman degrading treatment, that no party could be immune. So there was no immunity for the United States, she found and therefore, no immunity for CACI as a government contractor. From a human rights perspective, this was a critical ruling, a 58-page decision that I would recommend our listeners take a look at. CACI appealed this 58-page ruling to the Fourth Circuit Court of Appeals. We tried to have that appeal struck saying it was too late and that the issues in it were clear, that CACI can be held accountable when it participates in torture and war crimes, criminal activities that it was not contracted to do. But the Fourth Circuit issued a briefing schedule and Judge Brinkema denied our effort to have this appeal struck.

Katherine: So instead of going to trial on April 23rd, CACI will be filing its opening appellate brief to the Fourth Circuit in Richmond, Virginia. And three weeks later, the plaintiffs will themselves be filing in appeal brief. And we will be having that appeal heard probably over the summer and hopefully - we hope getting back to the district court and back on the path to trial in the fall.

Aliya: When I spoke with you and Baher and you know the way we've been talking about trial was really our clients having the opportunity to have their day in court, which we also talked about was so rare in these cases. How are we going to continue

making sure that our client's experiences and their voice are still a part of the briefing in the next few months when it is on such sort of technical and legal aspects?

Katherine:

That's an important question and two different answers to that. First and foremost, it's to remember that our clients are torture survivors, and this has been a long road to get to trial. And for them, what happened last week was confusing and not easy. You know, they were gearing up to tell their story in court and so that rollercoaster to then say it's on pause is hard. So we do want to ensure that their voices are heard and whether that's looking through the media in outreach with some of the partners who are listening to this to ensure that what happened to them is shared, understood. And that it's prevented from happening again. We have the 15th anniversary of the photos from Abu Ghraib on April 28th. It's been 15 years since the American public and the world at large was shocked by those photos and it's 11, soon to be 12 years, that our clients are fighting for a measure of justice.

Katherine:

So we hope that through public support and the media and activists and educators, their stories can be heard still and that they will have an opportunity to more directly, maybe speak to the American public, if not a U.S. Jury in the short term. Right.

Aliya:

And here at the Center for Constitutional Rights, we talk about how litigation is just one piece of a broader movement for justice and accountability. So for all you listeners who are interested in this case and wanting to support our clients, please stay tuned for updates. We'll, in the episode notes, include some links to resources where you can learn about it, and hopefully we will be going to trial in the fall, and we'll have an opportunity to give our clients their chance to tell their story and have a jury listen. Thanks, Katie.

Katherine:

Thank you.