

Transcript of 5/3/11 Conference Call on WikiLeaks

Shane Kadidal:

1. WikiLeaks documents and how we've chosen to characterize them as a whole and essentially spin them;
2. Brief discussion about the issue of habeas counsel being gagged. How attorneys can't use these documents because they are classified, and how we have spun that issue; and
3. The recent stories that coercive interrogation may have either led to or provided the first link in a long chain that eventually led to the killing of bin Laden.

My initial feeling after seeing the New York Times coverage was panic, followed by general feeling of relief and of opportunity after seeing the Guardian's coverage. That's generally an interesting way to talk about spinning this:

The Times focused on very spectacular allegations around 'high-value' detainees, almost all of whom had been in the CIA program and who aren't representative of the bulk of people at Guantánamo. For comparison (between the Guardian and NYT), Glenn Greenwald's piece on Monday morning is terrific.

Our preferred stories on these documents is this: What is significant is that they give a very broad account of who was in Guantánamo. Whereas the Washington Post and NY Times, the leading domestic voices, have sensationalized these stories using the high-value detainees' risk assessments, when you look at the mass of disclosures as a whole, it supports the basic narrative that we've always pushed: that most of the detainees were held on the flimsiest, most unreliable sort of information--what Clive Stafford Smith calls "ignorant gossip" about his client.

Often the information came from a very small group of jailhouse informers. This is a detail that I think is new at least at the micro level: Eight informers provided a huge amount of information against other people. There were serial informers; some were diagnosed with mental illnesses; all were self-interested in some way. And the leading figure among them, Yasim Basardah, had implicated 124 other detainees. That is both new and, I think, reflective of the 'big picture' that we've always told about Guantánamo.

Second, the docs as a whole demonstrate that folks at Gtmo were often not interrogated about anything to do with national security against terrorist attacks. Instead, you have Sami al Hajj being interrogated about al Jazeera's inner workings, or people interrogated about the Bahraini royal family or Uzbek intelligence services, or Taliban conscripts being interrogated about Taliban conscription techniques. (Much of this is new in the sense we've heard it from al Hajj and his counsel but not from the government itself.)

Third, notwithstanding that this evidence was extremely flimsy, just about everyone at Guantánamo ended up with a risk evaluation that was either of high risk or of medium risk. That includes a lot of people who were sent to Europe. Their cases have been well documented, and

there are paradigm innocence cases as well as abuse cases. Murat Kurnaz, for example, in Germany was evaluated as a “high risk” individual who is not anything like that in reality.

A fourth point is that we can draw analogies between the way these risk profiles have been drawn up on very thin evidence that ordinarily wouldn't suffice in any sort of court proceeding, which are just not convincing at all, and the evidence that was used in these risk assessments to the evidence that seems to be relied on in these so-called “recidivism” discussions as well. That narrative that a huge number of one in seven, or whatever figure the Department of Defense is using right now, have “gone back” to nefarious activity, that is one of the biggest problems that we face right now in trying to close Gitmo: That we've lost public sympathy for our clients, and a large part of the reason why is this uncontested narrative from the holdovers from the Bush administration DOD and the Defense Intelligence Agency and so forth who have been streaming information to the NYTimes about how a huge number of people have “gone back” or have gotten involved in terrorism or other criminal activity after their release. Though they haven't attached names to it, the newspapers have been buying it. I think we can draw parallels between this and the flimsy evidence that was relied on to evaluate people as “high risk.”

Then finally, our press release on these WikiLeaks documents came with a call to action to the administration that the administration should release the 2009 task force determinations. When Obama came to office, various officials in his administration said the information in various agencies is a mess, people in intelligence agencies haven't shared information well, we need a better evaluation than what the Defense Department has been doing. And essentially what's been released is essentially the Defense Department's last word on this before the multi-agency task force got involved.

So, I think that is a really useful action item. To the extent that the administration's reaction has been to withhold information, what's been released doesn't show the latest evaluations. They haven't released the names of the 90 people who are cleared for release. That would be extraordinarily useful information from our perspective. It would also show who is in the “indefinite detention” box, and we have suspected that those people's detention is largely based on their behavior at Guantánamo. The people who yell and spit at guards are assessed as having future dangerousness, even if there is nothing in their past record, before they were brought to Guantánamo, that would stand in the way of their release.

So those are things that I think are useful to call for. On that last point, the administration's response is that relies on classified information and on deliberations within the government and that they have no intention of releasing it. They also say that it might stand in the way of diplomatic efforts. If counsel went out to European countries trying to sell their clients to foreign governments, holding in hand the ability to say publicly to those European countries that their client was cleared for release.

This is one of many examples of overclassification. Which leads into my next subject, the gagging of attorneys. We all got an email, those of us who work on these cases, warning us that while these documents have been released, but they remain classified, and according to the terms of our security clearances, which we all had to get in order to work on these cases and to visit Guantánamo and to look at the documents that form our government's case against our clients,

our security clearances mandate that we not engage in unauthorized dissemination or receipt of classified information. I think there may be an obligation to turn back in information that we come upon. All these requirements seem ridiculous in the context that you're coming upon classified information when you are picking up the newspaper on your doorstep.

But this very narrow interpretation of classification rules, i.e., that documents stay classified forever until the government says they're not, even if everyone in the world can read them, that's basically the position that the government took as its approach in the Al Haramain case, where these lawyers had gotten inadvertently from a government release a document that showed purportedly that the NSA had been listening in to phone calls between an Islamic charity and its lawyers. Those lawyers destroyed all copies of the document they had except one and delivered it to the District Court. The government went in to the District Court and said, "This is still classified. The lawyers should have called us up and told us to come confiscate it. You, the judge, aren't even qualified to hold it because there is such a level of secrecy that you need to have a skiff to hold it, and we want the document back from you, the judge.

So that's the kind of narrowest interpretation of the classification rules that's out there.

The reality is that email we got is that we can use and prepare documents in the secure facility, which I think implies that we can print and bring them down there, and there is a lot of ambiguity down there on that, but I think ultimately that ambiguity helps us as the attorneys because it is in some sense more permissive than the approach the government took in the Al Haramain case.

So as a matter of legality I don't think that we want to see this issue resolved by and large. Some attorneys differ, especially the attorneys who are more cautious. They think that temporarily downloading a document to your computer would be a violation; those folks want some clarification from the court that they can use these documents in some practical way.

One thing I think everyone can agree on is that the entire story demonstrates the ridiculous of the classification system. Anyone who has a clearance and starts looking at these documents will tell you that the vast majority of documents are classified to prevent embarrassment to the government and not to prevent any harm to national security. They are designed to hide the workings of the bureaucracy rather than to serve any legitimate information security purpose. A more mixed bag with top security, but you still so evidence of that as evidenced by the release of the torture memos, which were classified as "top secret" and then were released with almost no redactions.

So I think that's a good theme for media efforts. I think for immediate efforts I think that the information shouldn't have been classified this high to begin with. It's intended to serve the bigger narrative about Guantánamo that I was talking about by hiding huge chunks of information, it keeps from the public the idea that the evidence was flimsy, that jailhouse informers were the source of it, etc.

So that's my take on the gagging. Let me finish up by giving my take on this Osama bin Laden story. The idea that this courier who somehow led the Americans to this house where bin Laden was killed, that that chain of intelligence gathering somehow originated with the disclosure of

the nickname in interrogations of detainees, as the government first put it on Sunday night. We have heard stories like this, and I think that it's a useful point in the early stages of a news cycle to note that observations from the interrogations of Abu Zubaydah produced the nickname "Mukhtar" for Khalid Sheikh Mohammed, and that ended up leading down a cascade of events that led to his capture and the capture of a lot of other high-value detainees, Ramsi bin al Shibh and so forth.

This has been effectively debunked in Jane Mayer's book and no less a source than the 9/11 Report, it turns out that in late August of 2001, U.S. intelligence found out that Mukhtar was Khalid Sheikh Mohammed's nickname. So that's one point to make about this. I'll make one other sort of general point to suggest for framing this issue. Right now a great deal of detective work is being done on the blogs, and the details coming out in newspaper stories are all sort of contradictory, so you know a lot of claims from Dick Cheney and others that waterboarding and other methods used at CIA "black sites" produced this information, but the administration is claiming that other detainees, not necessarily the HVDs, were the source of this information, that KSM has denied that this nickname was one that I knew, but that al Libi might have revealed it. There's a lot of contradictory information.

So, I think that getting tied up in the details is not necessarily a positive spin point for us at this stage. But there are some "trustworthy messengers" out there denying that there were sorts of torture that led to this. John Brennan, the president's National Security Advisor, has denied that waterboarding produced the evidence that they're talking about, and Donald Rumsfeld has rather forcefully said that it wasn't waterboarding, it wasn't coercive interrogation that produced the first links. Some say that the true name of the courier, which is probably the more vital information, came from agents on the ground and NSA surveillance.

And I think that leads to my bigger spin point on this, which is that this raid took eight months from the first lead on this facility to the time when they felt confident enough to go forward. That I think is conclusive proof that the administration was relying on multifactor confirmation. That every bit of information they had was what it seemed to be. And that's typical for intelligence gathering. Any time any source tells you something, there is a chance that the source is a flake or a liar or is just telling you what you want to hear—any of those problems, which is why responsible intelligence gathering always relies on a variety of sources that all point in the same direction. That is the only way you know what is being said is true.

In the real world, nobody with a nickel's worth of intelligence goes off and, after torturing somebody, runs off and acts on that information. How else can you believe it unless it has a lot of confirmation from other sources? And I think that gives a lie to the notion that one massive, coercive interrogation could have produced some breakthrough that everything else relied on. And I think that's one of the more effective ways at this stage in the news cycle to spin this, because we don't know what information is going to come out of this, and stuff seems to be pointing in lots of different directions.

I suspect that the final word on this is going to be helpful, but I don't know that at this point, but I have some circumstantial evidence that would lead us to believe that it was in fact what is characterized as responsible intelligence gathering, relying on a whole bunch of sources, as

opposed to a situation where the last piece of critical information came from a coercive interrogation.

Andy Worthington:

I particularly wanted to point out that these files are full of very dubious testimony by high value detainees held and tortured at secret CIA prisons, like Abu Zubaydah, who turns up in so many of the documents, Ibn al Shaykh al Libi, the man who was tortured in Egypt and told the lie about Al Qaida and Saddam Hussain that was used to justify the invasion of Iraq, and of course informants within Guantánamo who have been known about by the lawyers for many years, have occasionally been exposed in media articles, but have mainly surfaced in the public eye to those who have been looking at the habeas corpus cases where judges have recognized that the government has been relying on statements made by men in Guantánamo about their fellow prisoners who were not reliable witnesses at all. And I think most of what we're seeing reveals what we've never had in so much depth before about the accumulated false statements of these witnesses.

That is very important, and I think there is still a lot of research to be done on the documents on the basis of untangling these stories and also of identifying other sources who were never in Guantánamo: Ghost prisoners who were held in other American facilities, secret CIA prisons, who have never been heard from again. That is a very important part of the story for which we never had anything even resembling accountability. The Obama administration has never addressed the number of people held in secret prisons and what happened to them. And I think it's a very important thing that we need to look at. There are quite a lot of these kinds of names in these documents that can be discovered.

I have to think about what's important in these documents and be able to write about them in the near future. Some of you know I have been, and still am, working with WikiLeaks media partners to help them know what's important to look for in these documents. There are a few hundred stories here that have never been made available by the U.S. government before. These are first few hundred prisoners who were released from Guantánamo. Some of the elements of these stories have come out in the past. Some of these people spoke out after their release and some have been interviewed by human rights groups and by reporters. But even with my very dedicated research, there are nearly a hundred that I've never heard anything about before.

I'm glad to say that some of these stories have been picked up by the mainstream media who have noted that these are the stories of the taxi drivers and the farmers and the unwilling Taliban conscripts: all of these innocent people or extremely peripheral people who were all sent home. And I think that one of the interesting things that comes out is that it's not just reinforcing what many of us have known about how shambolic and a mess the whole process was of rounding people up at Guantánamo. But what it reveals is the problem within these documents of the classifications.

From what I could hear very faintly, I do think that Shane was talking about this, so I'll try not to duplicate his comments too much. But these people were designated as "low-risk prisoners." So, according to the military, if you are innocent, you are a low-risk prisoner. What does that

mean for the classification of people who are still held, who are classified in these documents as “medium-risk” or as “high risk”? One of the big problems is that some people have been encouraged to look at this at face value, as though medium-risk and high-risk necessarily mean anything, when it’s clear from the over-classifications, it doesn’t necessarily mean anything at all. I mean we know that innocent people were held at Guantánamo as “high-risk.”

So, that’s an important aspect, and I have a story coming out today about one aspect of this, because in September of 2009, when the Swiss government was looking at taking in someone from Guantánamo, they sent a delegation to Guantánamo to find out more about the men that they had been asked to take by the State Department. And I was told by reporters that they came back, and they were very worried because they had been told that of the prisoners that they had been asked to take, one of them was low-risk, one of them was medium-risk, and one of them was high-risk. This means that they were shown the documents that WikiLeaks has released. This is what prospective countries were shown who were asked by the State Department to take in prisoners. And I think that is a shocking indictment of really the ineptitude of the Obama administration when it came to finding new homes for these prisoners, when the best that they could do was to show prospective host countries these documents which, as I’m sure we are all aware, are full of lies and distortions. To actually be using these to encourage host countries is shambolic, really very, very disappointing.

So those are my main points.