

## Questions

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In June 2005, our client Mohamed Bashmilah was summoned from his cell at the Central Prison in Aden, Yemen. He was about to be interviewed again, but for the first time since late 2003, his interviewers would not be his captors. Instead it was Amnesty International delegates who awaited him. It is hard to know who was more surprised to see the other. Bashmilah had been abducted, tortured, and held *incommunicado* in secret CIA “black sites” between October 2003 and May 5, 2005. Denied all contact with the outside world, he had come to think that his experience would never be known. For their part, the Amnesty delegates expected to be interviewing detainees that the United States government had recently returned from Guantánamo Bay and while the United States *had* just returned Bashmilah, it was not from any recognized place of detention. Bashmilah would later reflect that he wished he had been held at Guantánamo because at least then he would have known where he was.

Three months later, on September 30, 2005, Amnesty delegates waited at the Political Security prison in al-Ghaydah (al Mahra) to interview our other client Mohammed al-Asad. Amnesty knew the United States had returned al-Asad to Yemen and that he had not been held at Guantánamo Bay but did not know anything else about him. The delegates were certainly not aware that they would find any connections with what Bashmilah had told them in June, yet they found the similarities striking and of staggering significance.

Al-Asad too was a ghost detainee, held off the record by the United States in multiple secret prisons, the last two of which strongly correlated with Bashmilah’s description of where he had been held. The final “black site” that al-Asad and Bashmilah depicted was unlike anything ever heard of before. Each separately described a modern, new or refurbished prison with constant camera surveillance, manned by black-clad, masked guards who communicated with hand signals, and marked by a sense of profound isolation and disorientation. This was the first glimpse into the sinister nature of the U.S. secret detention program, an impression that would grow increasingly disturbing as revelations emerged about the active roles played by psychiatrists and other medical personnel.

My colleague, Professor Margaret Satterthwaite, and I first met al-Asad and Bashmilah in January 2007. By this time, they had been out of Yemeni detention for less than a year. They had been released following an investigation by Yemen’s Special Penal Prosecutor and a trial in the Special Penal Court in mid-February 2006. The investigation had yielded charges related to the use of fraudulent documents not terrorism. Mohammed al-Asad acknowledged using false documents to live in Tanzania, his home for more than a decade, where he had a wife, children and a successful business. Mohamed Bashmilah admitted that he used a forged Indonesian identity

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card issued in his name to marry an Indonesian woman. Both were sentenced to time already spent in detention, including U.S. detention outside of Yemen, and the court ordered their release.

A world away in Greenwich Village, New York, Meg and I were anxiously following the trial and news of the men's impending freedom. By this time, we had decided to represent the men through the New York University School of Law International Human Rights Clinic, of which Meg is co-director. However, we were holding off from doing anything active on their behalf as we did not want to jeopardize their hopeful chances of being released. Amnesty's Anne FitzGerald, an incredible colleague, was in Sana'a, shuffling between the court, the Prosecutor's office, Political Security, and visits with the men and their families, and somehow still managing to fire off succinct emails about where things stood. In the early morning hours of March 15, 2006, Anne sent us the email that we had been waiting for, "Al-Assad released yesterday afternoon! Others are being returned to Aden to await guarantors, so hopefully the news will be all good soon." The others were Mohamed Bashmilah and Salah Naser Salem Ali Darwish, another individual who was sent back to Yemen with al-Asad and Bashmilah on May 5, 2005 for continued detention at the behest of the United States. Two weeks after Anne's email, at about midnight on the evening of March 27, 2006, Mohamed Bashmilah was also released.

Our clients were, and still are, in an extraordinarily unique position. They were the first people in the world known to have been extraordinarily rendered, held in multiple CIA "black sites" (including one likely in Eastern Europe), and then released from U.S. custody. Now, they had also been released from Yemeni custody and were in a position to meet their lawyers. We were in as good a position as we could be to meet them. I say that, because no matter how much work we did to prepare, there would be inevitable gaps. We were dealing with a covert prison network devised to keep detainees isolated from each other and the world; it was a universe of unknowns by design.

On top of that, our clients' experiences, so thoroughly documented by Amnesty, had changed what we did know about the CIA's secret prisons. From their stories it was clear that the CIA's secret detention program held more people, for longer, and in more locations than what human rights groups could possibly have imagined. Both men had been missing for a prolonged period of about a year and a half. The U.S. government had not announced their capture, unlike some of the other people it was secretly detaining. Indeed, no one had heard of their cases until Amnesty met the men in Yemen in 2005. Both had been shuffled blindfolded, hooded and shackled between multiple prisons that traversed the globe. Mohammed al-Asad's nightmare had begun on December 26, 2003 when Tanzanian personnel came and apprehended him during dinner with his family. By the time he was returned to his family, he had been in four secret U.S. prisons in East Africa or the Horn of Africa, Afghanistan and an unknown country. Between October 26, 2003 and his return to Yemen on May 5, 2005, Mohamed Bashmilah had seen the inside of two U.S. prisons in Afghanistan and an unknown country.

Our questions were endless. Where are these prisons? On what basis are individuals being detained? Why are particular detainees sent to particular locations? Is there anything significant about the dates on which detainees are transferred? Who else is the U.S. secretly detaining? Are there others who have been released? What deals have foreign governments made in exchange for

handing detainees to the U.S. government, allowing it to use their airports and territories, and accepting prisoners emptied from the “black sites”?

Two and a half years later we are still waiting for the full answers to a number of these questions. A slew of official acknowledgements made by the United States about its rendition, secret detention and coercive interrogation programs have helped to fill in some of the gaps. But for our clients, the significance of these acknowledgements is mixed. On the one hand, it gives them (and us) hope that one day the U.S. government will reveal the full extent of what has been happening for the last seven years. On the other hand, it is difficult to explain or grasp the government’s selective approach to disclosure.

Why, for example, will the government acknowledge the names of some of the individuals it held in CIA custody and not those of others, like al-Asad and Bashmilah, who it has released? If the government believes, as it claims, that its program is legal, why does it attempt to shield scrutiny of its activities in the nation’s courts? Why does the government ask for a privacy waiver alongside our clients’ Freedom of Information Act requests when the very reason we have to file these requests is because it violated our clients’ privacy without permission? Why is it that when we sit down with Mohammed al-Asad and trace on a world map where he was held for eighteen months of his life, that our fingers still cannot draw a definite line of where his plane went when it left Afghanistan?

Alongside these questions that we continue to ask of the U.S. government, we also ask a lot of our clients. There are the dizzying factual questions, that span hundreds of hours and attempt to uncover every minute detail from flight lengths, to the air temperature on tarmacs; from their cells’ color, sizes, and layout, to the types of bread and rice they were served; from interpreters’ accents, to the shape of drinking bottles; from prison protocols, to toilet types, cell camera positioning, directions walked from cells to interrogation rooms, and much more.

Beyond asking them to dig through these excruciating memories, we also require a lot in terms of the conditions under which our clients share these details. We ask our clients to trust us even though we cannot guarantee their safety. We ask them to communicate freely with us even as we explain that our phones are probably wiretapped and that the notice with which we preface all calls (“For the purpose of NSA wiretapping, this is a privileged communication between attorney and client”) is likely ineffectual. We ask them to relive painful experiences blow-by-blow after we have told them that redress is a long way off. Moreover, we ask for all of this in American (Meg and the Clinic students) and slightly American (me)-accented English through an Arabic interpreter. We are prolific note-takers, documenting questions asked and answers given. We have explained why we do this and have our clients’ consent, yet the lines that distinguish us from their former interrogators—particularly the female interrogators who, similar to our team in Yemen, are described as predominately white-skinned and young—often feel painfully thin.

Sometimes our questions are forced to track those of the American interrogators. I particularly regret that we have to ask al-Asad and Bashmilah about the subject of the Americans’ interrogations and what they told them. As a human rights lawyer, I operate from a core principle that rights are not contingent. However, the reality we work in is one of closed courts and a potentially hostile public and to realize our clients’ right to a remedy and access to justice, we have

had to ask questions that a strict observance of the prohibition of torture would not allow. As such, this experience has forced me to see again and again how efforts to realize human rights can often put fundamental beliefs in tension. There is also always the prospect of a tension between representing individual clients and broader advocacy and truth-telling objectives. Thus far, this tension is manageable because the Clinic's philosophy is to take a strictly client-led approach, and our clients' goals for justice go well beyond their own cases.

We can, and do, brace ourselves and our clients for the inevitable testing moments, while knowing that we can never fully guard against the ever-present risk of re-traumatizing them. For al-Asad and Bashmilah, the experiences associated with secret detention have turned the ordinary into the ominous. Airplane travel, something commonplace that each did before their experience in U.S. custody, now has a wildly different connotation. The lobby of the hotel in which we meet with our clients has security cameras that are meant to make guests feel safer, but which immediately remind Bashmilah of the cameras in his cell that monitored his every move. In these, and countless other ways, the impacts of their enforced disappearance are ongoing and will not be stemmed until the United States provides the answers to the questions to which our clients (and many others like them) are entitled.