



## The Activist Files Episode 42: Reflecting on 20 years of the war terror at home: federal prosecutions

Pardiss Kebriaei:

Welcome to the Activist Files The Center For Constitutional Rights Podcast. I'm Pardiss Kebriaei, I'm an attorney here. I'm here with three guests, Faisal Hashmi, Jeanne Theoharis, and Murtaza Hussain. They will introduce themselves in a moment, but just by way of introduction into what we're going to be talking about today, I wanted to say a bit about one of CCR's long-time clients. Um, he is Ahmed Abu Ali. He is a 40 year old man who is currently serving a sentence of life without parole in a federal prison and Communications Management unit in C, Indiana. Ahmed was convicted in 2005 of various terrorism related charges, the case against him, the prosecution's entire case against him rested on a forced confession that was obtained during a period when he was detained in Saudi Arabia, by the Saudi secret police the Mabathith, which is an agency that is notorious for brutal treatment and torture of people in its custody Ahmed also experienced torture under those conditions.

Pardiss Kebriaei:

He made a statement, made a confession that was then admitted into evidence at his trial and used to convict. There were other violations of his rights as a criminal defendant at his trial. And you can read more about his case on CCR's website, things like the government's main witnesses were the Saudi interrogators who obtained this, this forced confession. They were deposed remotely anonymously outside of his, of Ahmed presence. Um, completely undermining his right as a criminal defendant to confront the witnesses against him. The prosecutor said things to the jury in the presence of the jury and the judge allowed it. Things like this man will, can kill all of you if you don't convict. So due process in his case looked a bit like that. He was convicted despite the fact that there was, as the judge said, in his sentencing opinion, there was no victim, no actual plot, no actual violence, no leadership role by Ahmed only vague allegations of conspiracy.

Pardiss Kebriaei

He got 30 years, a 30 year sentence, um, which was under the government's recommendation under the sentencing guidelines. The government considered that too lenient, 30 years too lenient for a crime with no victim, appealed the sentence and Ahmed was ultimately re-sentenced to life without parole. So that

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is what he is facing, now in federal prison. He's been in custody, whether in Saudi custody or US custody since 2003, it's been 18-years of imprisonment and conditions like solitary confinement and for a long time special administrative measures, which are sort of enhanced solitary, which we'll talk more about. 18-years based on a forced confession under those kinds of conditions and a life without parole sentence for a crime with no victim. Ahmed is just one of hundreds of people who's been prosecuted and convicted of terrorism since 9-11. Many of whom are still in prison, some of whom have been released, but are living with the experience of their imprisonment, they and their families and their communities. And we're here to talk about these cases because while there's a certain growing understanding and has been for a long time of the unfairness and the injustice of the criminal justice system at large, broadly, at a certain skepticism and scrutiny questions we ask of other cases when it comes to this realm of prosecutions in cases, these national security terrorism cases, there has been over the past 20-years, far less examination and understanding of what actually happens in the context of due process, what due process looks like and what the impact of these cases is.

Pardiss Kebriyai:

And instead, a dominant narrative has found that the federal courts are in fact where we want to be, and that has been understandable that messaging, because we've been fighting things like Guantanamo, the military detention system there, and things like the military commission system, systems that are overtly, plainly unfair, or where people are being held without charge. So while it is true that we want to dismantle and end those systems and we don't want to be there. And maybe the federal courts are the appropriate place to deal with prosecution. Uh, and they are, the analysis and the discussion has sort of stopped there for many years. It really has not gone further to look underneath conviction, look at how arrests are brought what the nature of charges are, what happens at trial, what the conditions are under, which people are being held, what the impact of these cases is on the human beings who've been affected, on the communities that have been affected.

Pardiss Kebriyai

So that's what we're here to talk about. This realm of work and what actually has happened over the past 20-years. Uh, and the people here, um, with me today are activists in different ways. Who've been at the forefront of this work and telling the stories of people who've been prosecuted. Who've been advocating for those on the inside, and who've been working to expose and end government abuse in this realm. So I will stop there and turn to each of you, Faisal, Jeanne and Murtaza. And just ask you to start with talking a bit about your connection to this work and how you got into it.

Faisal Hashmi:

Sure. I'll begin. My introduction to this work was by circumstance. I have a brother, uh, my brother Fahad was a post 9-11 was an activist in New York city. You know, we're from New York city. And, uh, he went to Brooklyn college, uh, and he was an activist on behalf of the Muslim community and events related to the Muslim community. So with that said, he pursued a master's degree after graduating in, in London. And when he was pursuing his master's degree, about 2004, the acquaintance of his stayed in his apartment. And, uh, then left. Fast forward to 2006. After my brother got his master's degree, he was arrested in England ostensibly on charges that he allowed this acquaintance to stay with him. And in the acquaintance possession was ponchos and socks and his luggage, which he, this acquaintance went on to deliver to some unsavory characters. He, my brother was arrested on a charges from the United States under the Material Support Paradigm, and basically spent a year in England, contesting his extradition, and then was brought to America in 2007, uh, and had levied upon him four charges all

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under the Material Support Paradigm that amounted to 70 years in prison for, uh, allowing this person who stayed with him, went on to deliver socks and ponchos.

Faisal Hashmi:

That was the case against my brother. And it was a massive hit on our family. It was quite impactful. It was a massive hit on our community, right? So he was well-known in the community. And we had, we had roots in New York city in the outer boroughs. And with that said his case, the outlines of it, the, the details of it just seemed, it seemed ridiculous, right? That a person can be facing 70 years in jail for somebody else's actions. And it wasn't just that aspect of it. Uh, when he came here, he was immediately put into solitary confinement and our community and our family, we hired lawyers and his case ahead of a trial dragged on for three years where he was in solitary confinement in some of the worst conditions in a prison called MCC, which is being shut down for its conditions right now in 23 hours of solitary confinement, video monitored.

Faisal Hashmi:

On top of that, he had very limited access to his family visitation to his family. And this is all pre-trial ahead of any decision on his case. And it, it basically demonstrated to the larger Muslim community, the pitfalls of the judicial system, right? That it is an unfair judicial system. It is a harsh judicial system. It tortures by subjecting people to solitary confinement. It tortures by denying them access to their families. And we saw that happening in real time, him being impacted by these conditions on top of that, as Pardiss had mentioned, there were some special administrative measures. My brother was a, an academic. He had never been in trouble in his life. And the attorney general of the United States, three attorney generals in the United States, subsequently levied special administrative measures, which are extreme measures to limit the, of a person from their lawyer or from their lawyer communicating out to their firm, to their family.

Faisal Hashmi:

So it seemed like every school you was used to stack the system. So with that said there was, uh, his friends, his family supporters coalesced around his case to bring attention to the case, his conditions of confinement, what turned out to be the evidence being secret evidence that he wasn't even allowed to see his communication being limited, his lawyer's communication being limited. So there were so many aspects of his case that highlighted the inherent injustice of the judicial system, the federal judicial system, uh, and, you know, ahead of his trial, a full four years later, my brother took a plea to one count instead of facing 70 years, it amounted to about 15 years in prison. And subsequently he was moved to the super maximum security prison in Colorado, where he served his time there. And at the Communication Management Unit in Terra Haute. With that said, he spent another three years in the super maximum security prison, further solitary confinement altogether, about six years of solitary confinement, uh, 13 years altogether in prison, again, a devastating impact on the community, a devastating impact on my family, our extended family.

Faisal Hashmi:

And it just outside of this impact, it kind of, it was different in that there was a lot of, uh, organizing around his case. A lot of analysis of his case, a lot of visibility of his case where people started looking at the federal system and being subjected to these terrorism charges, uh, in a more grand view and in a more detailed view. And it became obvious to, uh, to people that something seriously wrong with this system and the way to handle things. And he was amongst many people, hundreds of people as Pardiss

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mentioned that were subjected to these types of cases.

Pardiss Kebriaei:

Thanks so much Faisal. Jeannene, you wanna jump in?

Jeanne Theoharis:

Yeah. So in some sense, I pick up the story that Faisal just laid out for us. I'm a professor at Brooklyn college, and I had Fahad as a student. He does his senior seminar with me. I then write him a letter to go to grad school and send him on his way. And then fast forward a couple years, as Faisal was just saying, and huge headlines across the city, homegrown terrorist has been arrested, uh, in, at Heathrow. So the case is like, you know, one of these cases that ends up on the front page, um, and at the time at Brooklyn college, we're told to, don't say anything, don't talk to the media, the case, the outlines of it, you know, Al-Qaeda Quartermaster, these kinds of languages. So I have to say, I put it out of my mind and don't really think about it for another year.

Jeanne Theoharis:

And then as Faisal saying, uh, Fahad loses his extra- he, he tries to prevent his extradition and he loses, and he comes to the United States and a colleague who'd also had, Fahad asks me about the case and asked me, what do I think is, you know, had I heard anything, uh, in part, because as Faisal was mentioning Fahad was, um, at this point, probably one of the most politically active, if not the most politically active, religiously conservative Muslim student I'd had. Uh, and again, we'll, we'll see a growing political community at Brooklyn college, but at this point, Fahad was very unusual in our student body. And I am a scholar of the black freedom struggle. And so as I started to kind of read about the case and think about the case, it's not sitting right with me because it seemed like maybe we could not divorce his much more outspoken, both religiosity and politics.

Jeanne Theoharis:

And so I do something I've never done before or since which is that I reach out to the lawyer to kind of get a sense of the case and what it is. And I have to say at this point, like most people, right, we are committed civil rights, civil liberties, people are spending their energy is in the system that's being created with the military commissions at Guantanamo. And this idea that the United States had created this whole shadow system to be able to treat people different, to be able to like limit their rights in court. And, and so as I start to look at Fahad's case, one of the things that I realized is that even though there's this shadow system, that's predicated on the fact that they have to do this because you, because the courts are so open and fair, in fact, what's happened at Guantanamo has a parallel to what's happened here in the United States.

Jeanne Theoharis:

And at this, I mean, I think the other, what we're seeing also is, even though there's no attention to these national security places, certainly, you know, by 2007, 2008, we are seeing people really starting to scrutinize the criminal justice system. Um, and the ways that the way we imagine the criminal justice system to work, isn't actually the way the criminal justice system works. Because I think in, particularly in these national security cases, part of the whole rationale, the way we were talking about Guantanamo was this idea that the judge would reign in the government that maybe the government was overstepping, particularly in the aftermath of 9-11, but the, the beauty of the federal system was that the court would then rein it in. Right. And I think one of the things as I start to look at Fahad's case,

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and then increasingly at other cases, is this is not actually true.

Jeanne Theoharis:

And so some of the things that we might think a judge would step in on like the use of prolonged solitary confinement before trial, in that the ways that compromises a person's ability to participate in their own defense, the ways that it compromises their mental health, the ways that it's predicated on conduct that has not been proven, right. Uh, things like the use of classified evidence, right? So in the 1980s to prosecute US intelligence officers who were spying for the Soviet Union, they introduced this law called the Classified Information Procedures Act, which allows the government to, because one of the things that people who were spies would often do is threaten to like reveal classified evidence in court. But after 9-11, this law gets used to classify, not people who actually have any knowledge of US intelligence, but in, in these sort of highly high stakes terrorism cases.

Jeanne Theoharis:

And so again, that, um, the evidence and one of the things I want to mention is that Faisal didn't underline is that Fahad is a US citizen, right? And so what we imagined to be the rights of us citizens, uh, don't seem to be applying here. And so again, I, I sit with it and after a while, I write a piece for The Nation, um, basically outlining sort of for Fahad's case, but also the kind of larger kind of context of what's happening in the federal system, including Material Support, including the use of classified evidence, including the use of pre-trial solitary confinement. Um, and that begins a kind of both an expiration for me personally, as a scholar and an activist, but also begins, I think, a growing attention to kind of what's happening in the federal system and the kind of local activists' movement then kind of comes up again, both around the specifics of the Fahad's case, but also to kind of like to say, okay, we have to be focusing on closing Guantanamo.

Jeanne Theoharis:

And again, now we're in the Obama administration and Obama comes in saying we're going to close Guantanamo. And so part of what this kind of growing organizing is saying is that's not enough that we can't just look there. We have to look what's happening within the federal system. And we have to kind of challenge this idea of a kind of open and fair federal system. So that's really where I come into this. And again, both as an activist and a scholar.

Pardiss Kebriaei ([16:48](#)):

Thank you, Jane. We're going to talk more about the organizing and everything that was tried and done. Murtaza.

Murtaza Hussain:

Yeah. Murtaza Hussain, I'm a reporter for the Intercept, the National Security Reporter. And I came to the subject a bit differently. I came at it from a reporting perspective, but I did have a personal interest in, or something that peaked my interest in the subject because obviously everyone who grew up post 9-11, or who was quite young when 9-11 happened, there was a very big shift in American popular culture and political culture and the judicial system. And in the years after that, you know, there were many arrests of cases. Uh, they started becoming a steady drum beat of the arrest of cases. People may forget, have forgotten this period as being forgotten now, but, uh, you know, every week or so there were some more month or so there was some plot foiled in some part of the country, or some group of men or individual young men who were arrested on, uh, assessable terrorism charges.

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Murtaza Hussain:

It was very interesting at the time because there was the suggestion by law enforcement as a result was that the United States was full of terrorists. And there were all these plots are being foiled and there was political pressure and incentive on the part of the law enforcement agents and political figures to generate these cases or to generate as many as possible. And the couple of cases really stuck in my mind, including [inaudible] case, but there are many, many more. And I think, especially in the first couple of years after 9-11, there was just a flood of cases, which would even by the standards of today, which are by no means pristine, there were particularly egregious prosecutions and arrests and a sting sting operations and sensible plots world. So, you know, this year, the years had passed and then I got into journalism later, maybe a decade or so after 9-11, and I was doing foreign policy coverage.

Murtaza Hussain:

But then, you know, we started looking back at some of these cases from that period, including on Ashley's case. And there were many, you know, glaring irregularities. And then when the actual event of 9-11 and the intense changes it wrought on the United States start to disappear. We can look at these cases, somewhat soberly, and they'll just shocking. Many of them knew their cases. I'll take one illustrate. One to talk about a lot was the Fort Dix Five case, say a prosecution of a group of young men, including three Albanian brothers in Cherry Hill, New Jersey, which was led by Chris Christie, who was at that time, the, uh, uh, attorney general for New Jersey. And, you know, it was a case where these informants had basically infiltrated a community. They had no specific criminal plot. They were looking for, it was just a fishing expedition and they were paid a lot of money and they were given a lot of incentives, immigration wise, and legal, otherwise in criminal cases, you know, to generate a case in this hand, on this part.

Murtaza Hussain:

So, but 18 months, they investigated this case and, you know, they ended up charging the gentleman with the terrorism. Well, there was no plot. There was no connection to foreign terrorist groups. There was no, uh, the judge at the trial acknowledged that they can take know about any terrorism case, an informant who we later found and filmed or did a documentary with. He told us that, "I told the FBI agents, again, again, there was no case there. These guys are not guilty of anything. And they said, 'don't worry about it. Just keep, uh, just keep recording them.'" And at the trial, the judge actually said that, that there's not any direct evidence of your involvement. This plot did not bother the jury and does not bother me either for something that's life in prison. So, you know, I just bring up that example because it's just one of hundreds of hundreds of cases, which took place in the US and those are specifically cases that were charged with terrorism.

Murtaza Hussain:

There are other cases, people were basically accused of being terrorists, but charge other things and be those cases that even are more under the radar than the one that we're discussing right now. But, you know, it was, it was sort of like, there's two reasons to focus on this. And I think that there's still, it bears continued focus going forward. Number one, you know, it's kind of like, it's like a very easy pickings for, if you want to see how the justice system can be in its most egregious and most unjust form. Uh, you look at those cases in that first decade after 9-11 and even cases today, which are, there's been some improvement in my opinion, but it's still many, many bad cases that have take place. And then improvements come because of all the scrutiny and pressure, which has built in the years since there

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are always terrible cases which bear review when people are still in jail for, or if they're not still in jail, they, you know, the criminalized been ruined by the experience of that happening.

Murtaza Hussain:

So I think reporters everywhere their interest to look at these cases again. And secondly, you know, without, uh, going back over the history of this period, a very false history will be embedded of what actually took place in the US post 9-11. It will be that the FBI successfully stopped dozens, more attacks of mass-casualty tax or prospective 9-11 by arresting these hundreds of people. And that's just not what happened. That's not the story of what took place. And of course the 9-11 hijackers were not us citizens or residents, either. The people who wound up in these cases were often on very flimsy pretext. They were subjected to, by proxy, the nation's anger over 9-11 was taken out on them. And, you know, in many cases they had nothing to do with anything even remotely to do with terrorism or international politics, even, they were just very ordinary people living in United States who happened to have be the wrong skin, color name or religion after 9-11.

Murtaza Hussain:

So I continue to report on these cases, you know, going here's the historical ones and then contemporary ones, because there was, there's been a lull now, I think, but then there was a pickup in cases similar to this with the ISIS era. So when the US had the conflict with ISIS, there were many, many cases arrests, several hundred, again, ISIS cases. I think those cases will be different in some sense, because it's just a very subtle difference because ISIS and Al-Qaeda were different. Al-Qaeda was the typical thing you accuse people of being associated with post 9-11, and now ISIS people. I find that, uh, the cases post 9-11, there was concerted attempt to attack very educated, or you could say like elite people of the Muslim community, United States. Charities, academics, business people who had a lot of money and were philanthropists, things like that.

Murtaza Hussain:

In ISIS cases, I find that they really target another group of people who were very vulnerable because there, and in many cases, you know, they have mental illness or they have drug problems, or they either have [inaudible] other ways. Um, so the, the other side of the spectrum of, you know, Muslim community and not all of them are immigrants. Many of them are white Americans or black Americans. And, you know, they are very susceptible to being encouraged to, you know, susceptible to the, the prompts of informants because they have no way of, uh, guarding against that. And they may be on the verge of being in the criminal justice anyways. And, you know, there are statistics of, you know, X number of ISIS cases, foiled post 9-11. And the thing that really frustrates me and frustrated me about previous generation cases and still, and why I think that it's important for substantive journalism to take place.

Murtaza Hussain:

And of course, also the efforts of activists and groups like CCR is that the vast majority of these cases, there's a criminal complaint and there's a press release that goes out about these cases. And it says that, you know, ISIS plot was foiled in Ohio and, uh, you know, the FBI successfully did this and that, and congratulations, we can move on. And what you find is that the vast majority reporting about these cases is actually just a rewrite of the press release. So reporters take a press release, they rewrite it with a little bit of context, or maybe not as much context, and that's the story goes out and there's not really any follow-up or digging into it. What I've found is actually, if you do two things, you should read the

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complaint that you read the itemization of what the government alleges happens.

Murtaza Hussain:

So often it doesn't live up to the press, their own press release. And it's actually very oftentimes very troubling. You know, informant was the one who initiated the plot or the gentleman, or the woman tried to back out of the plot with money. He was offered something that something like this never makes the news never makes the public consciousness of what the case was. Uh, that's that, and then you got to talk to the lawyers and that's the government side of the story still, but you can talk to the lawyers, you can talk to the people involved, you can do the bare minimum investigative work to understand what happened here. And it's very, very rare that it all mainly just falls apart, the entire premise and the entire political depiction of what took place completely falls apart. If you look at Fahad Hashmi's case, it's also a good example.

Murtaza Hussain:

Like, you know, it was reported as Jeannene said, Al-Qaeda, Quartermaster, or a facilitator in the United States sounds terrifying. It sounds like a very serious, serious accusation. And of course it scares people off too. It scares people off looking into too deeply because no one wants to be accused of sympathy with the an Al-Qaeda, Quartermaster, whatever that means. But you know, the, the packaging or the marketing of these cases just simply does not live up to what the reality of them is in the vast majority of cases. But unfortunately the way that things are happening in the United States, there's a lot of political incentive and career incentive for law enforcement agents and politicians to trumpet these cases and make them seem as big and as consequential as possible. I mentioned the Fort Dix Five case Chris Christie was involved in that case. You know, Chris Christie, of course later went on to be a governor, went on to pretty successful national political career.

Murtaza Hussain:

He's quite famous now as a politician. And he continues to trumpet his success in that case, foiling this ostensible terrorist plot as one of the crown achievements of his career. And, uh, you know, it's just, it's not reality. Like I think that the importance of paying attention, these cases is you want to discern reality from fantasy in very serious way, which impacts a lot of people's lives. Uh, you can take a look at these cases. It reminds me, I was thinking about this yesterday... It reminds me not say there's not been any successful terrorism, actual terrorism platform in the United States, there have been a few, but the vast majority of them, it reminds me from the Soviet union or in China during the great accord, there will be directives coming from the central government that we need to have X tons of steel or wheat, uh, produced per year.

Murtaza Hussain:

If you look at the FBI directors per year, there there've been years where they had directives to have X number of terrorism plots for that year. And if the supply of terrorism plots cannot meet the demand something has to give here and something has to, uh, you need to generate the cases to, uh, to meet the supply and the people who don't want to do that from a structural standpoint, inside the FBI who, you know, they want to actually combat crime and terrorism, which is legitimate, but, you know, they don't do it if they don't generate cases, they'll fall behind their career. And the people who are the ones who are willing to generate cases that are borderline or over the line in sense of not being legitimate, uh, those people will meet their metrics and they'll succeed and, you know, absent a great deal of scrutiny on the individual cases here, you know, they will just give it to happening again and again.

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Murtaza Hussain :

And unfortunately I've seen that in the media, there has continued to be the overwhelming majority of people in the media are not, they don't have no desire or the reticent to, or they believe that what what's being told to them by these press releases and other script released by the FBI, DOJ, they don't interpret the cases very closely and during ISIS era. There was a lot of fear and anger, understandably, in some sense, but you know, if you're a journalist or if you're a lawyer, or if you're a judge or you're an FBI agent, you have to, the whole job is to look at these things soberly. And, uh, without the, you know, the heat of emotion and understanding that unpacking this rationally, there's no it's just not done. So, you know, my interest in these cases is because I would like to see people who would not you'll the crimes or not go to jail.

Murtaza Hussain:

That's, you know, the interest of justice, but also it's just very interesting from a societal perspective, how does this happen? How do all these people go to jail, how was somebody who was in jail for decades, he's going to be in jail for decades, a quarter of his life having suffered great torture and all these other terrible things have occurred to him. And as he said, there's no victim here. There's no nothing happened. Like those people who committed heinous murders and rapes and other terrible crimes and who go to jail for less time than him. And the Fort Dix Five people and many, many others. So what is it about this accusation that allows a sort of exceptional cruelty and, uh, punitive behavior take place in cases? I think that by understanding them, you can understand a lot more about how life functions in the United States today for people in the margins.

Pardiss Kebriaei:

Thank you so much, Murtaza and all of you, um, there's so much to unpack. I, I want to, I guess, just picking up on things you all said, part of what we wanted to do here was sort of highlight specific cases, but also put this in context of sort of the broader arc of what's happened in the patterns across cases. And I think you all talked about that, but, you know, the Material Support vessel like the one that Fahad was charged with. That, and I'm going to refer to a database on the Intercept's website, Trial and Terror, which I think does a great job, but Trevor Aaronson does a great job of sort of compiling the data on these cases. And if you look at prosecution since 9-11, the majority over half, I think have had involved Material Support charges, which is just under a federal statute, a broad catch-all charge that sweeps in things like Material Support to a designated foreign terrorist organization can look like what happened at the Fahad's case, which is storing luggage in your apartment for two weeks.

Pardiss Kebriaei:

That was then allegedly delivered to a, to a member of Al-Qaeda. I mean, that has constituted Material Support another person Tarik Mahana. I mean, these legacy cases that we're talking about from the first decade after 9-11, these are people who are still many of whom are still serving time in prison, Tarik Mahana, you know, Material Support for translating a document that was then allegedly provided to Al Qaeda. So conduct that was very much on the border of protected first amendment activity or association. The stings Murtaza that you were talking about. That's also on the use of informants has also figured prominently in these cases. So like a third, I'm thinking of a stat looking to this database, again, the Trial and Terror database than a third of these cases have involved stings the use of informants who have in many ways manufactured or prodded people along to the point of, you know, um, unrest.

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Pardiss Kebriaei:

There are certain of these egregious cases that we can. We talked about some of them like the Fort Dix Five case, the Newburgh Four is another, another sort of outrageous case in later years. I mean, I feel like when I was looking at what happened when ISIS came into the picture in 2014, 15, those prosecutions were just run of the mill cases where just the use of informants, you would find someone online, who was looking up certain material relating to ISIS and would befriend, the person, and then eventually over time and building this relationship, get them to, for example, buy a plane ticket, to go to travel to the region Syria, or, or any country in the region. And that con- that then the arrest happened at the airport. I mean, that constituted Material Support, there were dozens of those cases of mostly young people, you know, people in their late teens, early twenties who were prodded along, pushed along by informants who found them online, I guess that's just to say, you know, we've talked about specific cases, but the sort of buckets of Material Support and the sting operations using informants have, have constituted the majority of these cases.

Pardiss Kebriaei:

Um, can we turn now to... Murtaza that you were saying there's still like among the media, you know, it's still hard to get people to really interrogate these cases and really examine them. And I guess I wanted to turn to the organizing and the work that was done to try to change the narrative expose what's happening both by reporters like you and Jeanne to the organizing you've been involved in and Faisal around Fahad's case. Can you talk about, um, yeah. What, what made it so hard and why does it continue to be hard? Um, why is there this strange disconnect between the way we understand the criminal justice system, the court system, when it comes to criminal cases and this totally different understanding or desire to look past conviction when it comes to national security or terrorism?

Murtaza Hussain:

It's a good question. I think it's the heavy politicization of the issue and the media not to blame it on the media, but, you know, there's like they've turned this issue into such a sensational, unbelievably, the most sensational issue in the United States that word terrorism or terrorist has a talismanic power now effectively when it's applied to somebody. And then it's like, nobody wants to touch them. I'll give an example, the Fort Dix Five case too, at the time when the allegations were made, not to name any specific organizations, but organizations that you will not expect, they sort of sided with the FBI in the initial wake of the, they assume that the, uh, accusations were true. And they were under a lot of political pressure at the time. And, you know, they were associated with the Muslim community in the United States, and now they're usually a bit different, but, uh, even at the time they just said that, you know, we're sorry this happened.

Murtaza Hussain:

Or, you know, we condemn this and so forth. And I think that speaks to, you know, people being on one hand, very afraid of these cases and the other hand, people who were pursuing them, it's sort of like exciting or something, or it's sort of a, it's a great career boon for a lot of people. It's great coverage for the media. They got a lot of mileage out of the case. The FBI likes to impress upon the public that there was no in many press, press releases that say this or many statements that DOJ says is that there was never any danger to the public. When they see this, when the announcement of these arrests, which it was never any danger to the public, what was the actual serious thing that was taking place? There, it's a bit of a curious statement. And, you know, unfortunately there's a lot of the short memory in the media

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too.

Murtaza Hussain:

I, I'm not say that things are not don't change or things are not learned in this accumulative process of knowledge that takes place. I think there's a lot of more appreciation now, at least as possible that many cases, terrorism or bogus, that's the thing that people accept to be the case. And I think that a lot of reporting and a few books like Trevor errands, Erickson's book, the Terror Factory, and many, many other individual pieces have been written that sort of help the public understand that these cases often have shortcomings in them, but there's like the normative response. When, you know, when something happened in the broader political context is very heightened or very, uh, very hostile and very excited. Uh, you can say in ISIS era, people were very upset about ISIS was foreign terrorist group carried off, a few terrorist attacks in the, around the world.

Murtaza Hussain:

And at that time, the anger and excitement was so much that there was very limited appetite to question these cases at first, and it started to change a bit because some of them were just so over the line that people could see that something was not adding up here, but it's a constant battle because, you know, for every skeptical story, or story, which actually bothers to interrogate the facts, or at least make a few phone calls, understand what happened here. Even read the government's charging documents, which is amazingly reporters don't do, uh, the vast majority, you know, there are many cases of people won't do that. The vast majority of local news coverage or national coverage is simply restatement of the government's facts and then very, very little interrogation. And beyond that, and as a result, people still have. I think that if it happened again, if there was another, God forbid, another terrorist attack in United States, and there are more cases like this. It would be maybe as bad as post 9-11 exactly. But you know, many of the same, uh, same, uh, pathologies still exist there and would result in, I think a lot of innocent people were in jail for a long time, uh, simply because the system is set up to produce that and incentivize that.

Jeanne Theoharis:

Jeanne, can you talk about from an organizing perspective, what was hard, what the challenges were and continues to be? Yeah, I mean, I think so we're at this 20 year anniversary and, uh, when people are throwing around words like self-reflection and self-criticism, and, and I think what made it extremely hard at first, and I agree with Murtaza that part of it was just the media just unwillingness to like, again, one of the things I don't love about the media as a kind of both sides-ism that they sometimes engage in, but I mean, there was no, there, there was never even the notion that there might be like, you have to have a there's, there might be another side of this. So I think that's a problem, but I think one of the other key barriers was kind of the ways that civil libertarians, human rights groups, civil liberties groups had constructed this narrative around their advocacy around Guantanamo that rested on the kind of openness and fairness of the Federal system.

Jeanne Theoharis:

That was very much about like, you know, that in some sense, even as other parts of their work was being critical of the injustices of the criminal justice system, this incredible siloing. So nobody, almost nobody really doing work on, you know, taking the criminal justice stuff into the national security context. And so part of what made it really difficult at first was the ways that it was so hard to get both media coverage, but also kind of civil rights and civil liberties groups to, to see this aspect of the

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problem. And I think this goes back a little bit to about Murtaza was saying like, nobody wanted to be, and there've been by this point managed to be a carve out in terms of like, you could be advocating for Guantanamo. That didn't mean you what you want to be supporting terrorists. But it was interesting in the federal system, there was still this, like, because of this idea that there was like a judge that was going to be an arbiter, you know, that the notion that there might need to be advocacy in these cases, that there might need to be political campaign to sort of bring scrutiny on.

Jeanne Theoharis:

This just was really difficult. And so in many ways, the movement started through kind of grassroots people coming out of coming out of the peace community, coming out of certainly a civil rights community who similar to, again, my politicisation around this sort of, we're all of a sudden surprised, I think that this was happening right here under our noses. Uh, and I think, but it's this very grassroots movement. And again, it's getting like, um, like no real attention or coverage for years. Right. And so, so it's a very, it's a, it's a lonely, uh, thing for awhile. Right. And, and it starts to pick up steam, but still like, I have this crazy moment, right. A few years ago when Jeffrey Epstein kills himself at MCC. And then this like flood of reporters. I mean, they're calling, they're writing. They're like, you know, because I'd done all this work on MCC.

Jeanne Theoharis:

And I was like, we stood outside of MCC for years trying to shine a light on this. And we reached out, I sat with the New York times, so many times trying to be like, this is a torture site under your nose and with so many different reporters there. And, and then when Jeffrey Epstein kills himself, it's just like, it was crazy. And so again, I think it's, I think there was this mythology that we bought in, we bought into, I think there was the siloing. Right. And so I think that also got in the way, uh, and I think there was fear about being associated with terrorists and yeah. So I think those are some of the barriers.

Pardiss Kebriaei:

Faisal, I don't know if there's anything you want to add as from like a community perspective.

Faisal Hashmi:

Yeah. I was thinking about that. We have a few Muslim-oriented, civil liberties, civil rights organizations, very high profile in our communities. And for the most part, these organizations are abject failures towards the community, right. They've basically done a disservice to the community because they're supposed to be organizations that protect civil liberties, civil rights, they're supposed to be organizations that would want to stand up for things like, you know, don't torture people. That's not what happened. What we saw was an embrace of like a patriotism from these organizations, right. Uh, they wrapped themselves in our, in a flag and these are, you know, somewhat mainstream, uh, organizations and, uh, you know, at a personal level, I just, I've been utterly disappointed by them. One organization, uh, gave Eric Holder about 11 years ago, their man of the year, as he's signing off and overseeing these prosecutions right in San Francisco, his organization's based out of it's a, you know, there's a lot of things that are failures within our own communities on their own, especially the Muslim and their perspective on these things.

Faisal Hashmi:

They're not, you know, a rational perspective. They're not a perspective based on justice and fair treatment. These organizations prop themselves up as ostensibly. We are the champions of it, but their

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actions didn't really support their rhetoric in any shape or form. I spoke to them at a personal level. I saw their actions. And for the most part, they continue to be, you know, failing-type organizations from the community. I don't have much respect for them. I have great deal of respect for CCR and, uh, you know, uh, ACLU National Security Division, because, you know, they put into practice, right? Uh, the, these, these lofty goals of upholding justice, getting human beings, fair treatment. I didn't see it within our own community. You know, when it becomes, okay, I saw some of these organizations jump on bandwagons, but they, they suck the money out of the community saying yeah we'll champion, you know, these causes we're going to protect, but they don't.

Faisal Hashmi:

They're, you know, they're failures. A legal fund that that is out there and starts organizing around these cases. I know their machinations and, you know, it doesn't even in their defense of people, for the most part, they become failures. They decide what the safe cases are. And I think there's a lot of that, that that has to be understood and analyzed. And again, I'm speaking as speaking from very personal perspective, at some point, there's going to be a, a toll or an analysis of, of, of these events and these organizations on this, in this era, a very dark era of our existence here.

Pardiss Kebriaei:

That's the, when you said this, the safe cases sort of brought me to what I want to ask you guys next. And I think we're, we've been talking for awhile. So, um, maybe we can end with, with this question, but you know, in a lot of these cases, we're not talking about innocence, you know, factual innocence where the problems are. I mean, in a lot of cases we are, but in other cases, we're talking about the disproportionate punishment, this the prison time people are getting for the actual conduct they're being charged with. We're talking about conditions in which they're being held at totally undermine their right to a defense and post-conviction constitute torture. So, you know, these are harder cases, right? In some ways, because it's not, they're not the sort of low hanging fruit or whatever people call those things. Can you guys talk about why it matters? I mean, for, in terms of the broader movement and conversation around decarceration and even abolition, why do these cases matter? I mean, they obviously matter because of the people inside their families or communities, the human impact and the importance of exposing abuse, wherever it occurs, but the broader, bigger picture, I guess, for work being done to rethink and transform the prison industrial complex and the criminal justice system, how do these cases fit in and why is it important to be doing this work and talking about these cases and doing this advocacy?

Murtaza Hussain:

I think the post 9-11 era, the US law enforcement response domestically, it created a template for how future political crises maybe emanated from different communities could be dealt with. And this has been a legal infrastructure and a national security infrastructure surveillance and legal precedents to set in these very extreme precedents set in these, uh, in these years that, you know, it could be turning as other people in the future. And, you know, oftentimes I've made this point that historically, when a country becomes authoritarian, the authoritarian start authoritarianism begins not by targeting the majority community targets, some unpopular, you know, small minority, and then, but then the precedent begins there. And then the skills and practices are developed on those back community. So, you know, there's all these cases. And there's as mentioned these cases of people who were completely innocent, people who were the more difficult cases you could say, which there were some sort of gray zone or ambiguity, but the thing is in the United States, you know, we have a justice system where, you know, we don't say that someone commits a murder.

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Murtaza Hussain:

Then fortunately, sometimes the people who are very, very punitive with the principles that such that there are people who are cast out of humanity, but committing some certain crime or so forth. And there's no reason why the terrorism, uh, allegation should necessarily be different than that. People, if they committed a crime, which is a serious crime, they should punish according to the very well articulated means we have for responding to crime. Historically, we create a category of exception where even if someone does not commit the crime or there's some ambiguity about it, or they may be this type of person, then all the legal rule books go out the window. And, you know, you go, you have prison camps, extra-judicial prison camps, and so forth, people in jail. For many, many years, I charge preemptive prosecutions, uh, you know, the use of these things and so forth, generate cases out of nowhere, getting people who are considered undesirables, quote unquote, just off the streets, it's very totalitarian and authoritarian behavior in miniature.

Murtaza Hussain:

And there's no reason now that it hasn't happened in miniature, that could happen in more broadly. And, uh, you know, we could see that going forward, politics, all shifts, you know, Muslims post 9-11 and Muslim Americans were very much on the dock and they suffered a lot for that reason from the justice system. But, you know, in the future, it'll be somebody else and it passed. It was somebody else too. You know, I say that, I tell people that it's important for the moral aspect because you know, everyone, every individual person deserves a fair shot. They deserve justice and they deserve their fate to be weighed according to their actual actions. And, uh, what took place, whether, you know, whether it's completely innocence or partial innocence or something like that, that does not, uh, they're not the people just cast out of humanity for, because they're using something.

Murtaza Hussain:

But secondly, it's, people's, self-interest, people's self interested defense thing that belongs to all of us, which is, you know, the rule of law in the United States intended to protect every single person in this country, regardless of where their life takes them, where they are. And the degradation of that, you know, it's maybe suffered by certain people. And so people's families too at one time point in time, but when it's degraded, others will suffer in the future. So I think it's a, it's a reasonable case for self-interest that people should pay attention to these cases and to continue to scrutinize them and not allow, you know, the extremely punitive and the unfair practices to be an entrenched with our challenge.

Jeanne Theoharis:

Um, I guess I wanted to say two things. One is not an answer to your question, but it kind of goes back to the previous question, which is, I think part of what we need to be scrutinizing here. Um, and one of the things we've seen in the past few weeks around the war in Afghanistan is finally some numbers about how much we spent on that. And I think there is no way to understand where these cases come from from the political economy of kind of what happens after 9-11 to kind of particularly domestic law enforcement. And it's just a, like, you know, it's an explosion of domestic law enforcement and an explosion of money. And I think we, we haven't yet seen the kind of research in journalism because it's so hard to get these numbers of just how much money it was is, but in order to justify that kind of budget, and even from what we know, like, so the FBI, most of its budget, you know, in the years after 9-11 is going to go towards national, you know, domestic national security stuff, but to justify that right, part of where these cases become so crucial is to sort of say, look, we're preventing things.

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Jeanne Theoharis:

We're, we're doing a job where, and so to see the role, like I think people have done some really important work in terms of conceptualizing what a prison industrial complex is and how many people are invested then in and jobs in that. And so then you have to be producing like results. And so again, I think we need much more scrutiny of that. I guess the answer to your question is kind of picking up your, you know, I think sometimes we tend to think about like the way forward is the low-hanging fruit, the most sympathetic right in it. And I think particularly around things like solitary confinement, right? And it, it makes sense in some ways, right? So, you know, waging the campaign against solitary confinement for people under 18 or, but that it base, if you believe that prolonged solitary confinement is torture, then it, you actually have to start with what we might call the high hanging fruit, right.

Jeanne Theoharis:

Because as long as you have the high hanging fruit solitary confinement exists, if you dismantle the idea that for terrorists, for, uh, people who commit, you know, the, the incest incest, right? The people who are, who we imagine as that, that is still torture to them and that we don't torture, like we're not going to defeat solitary confinement. I don't believe until we take on the hardest cases, because at some level, if we don't, then we're sort of tacitly saying, okay, some people don't deserve this, but this is necessary. It's useful. It's, you know, we have we still have to have it because of these super bad guys. And so in some sense, all the research, right, that shows how it's torture then gets kind of shunted aside. So I guess in terms of building campaigns against, you know, some of these very inhumane practices, I think we have to kind of reconceptualize kind of the importance of going after the harder, the harder cases.

Faisal Hashmi:

Yeah. Just, you know, the past 20 years, our community has been ravaged by surveillance, by informants. I don't want to meet new friends, or I don't want to make new friends. You know, our mosques have been spied upon Matt Apuzzo, and Adam Goldman wrote a book called Enemies Within the details that Trevor Aronson's work of the intercept, where thousands work, you know, highlights all these types of things. And, you know, we bought the brunt end of it for the past 20 years. And that's not a future I want for my kids. We don't have safe spaces to grow, explore, think, have conversations. And that's tragic, right? And that's by design as well by the powers that be their policies, their structure, their law enforcement initiatives, right. They were designed to it. Recently in the New York times, a guy named Terry Albury, a former FBI agent basically speaks to this in detail, invite everybody to go read that book and think I'm not booked that, that article in New York times from last week, I Destroy Lives.

Faisal Hashm:

You know, he talks about it in detail. He was stationed in Minneapolis in many of these ISIS cases. And basically he talks about, uh, law enforcement outreach being a facade, a hoax as employed to, you know, undermine communities who wants that? After they're done with my community, they're gonna move on to another community. They have moved on to other community who wants to normalize this type of interaction? Shouldn't we be allowed. shouldn't my children be allowed to have a fair opportunity to grow up without the threat of being spied upon without the threat of, uh, having informants placed in their midst and putting them at risk. And we have to decide now who has the right thoughts about these things who's working on these things and how to, which groups are working on these things and how to get, go about addressing it to the larger public for all our wellbeing.

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Pardiss Kebriaei:

Thank you Faisal. We could keep talking. I mean, I guess I would just want to end really, end now with any, in terms of people who need, who are in now, you Murtaza earlier, you were saying lots of cases and names we know, and that we talked about today, but others that are way under the radar, many, but are there any particular cases or people who need attention right now that you can think of or want to share before we end?

Murtaza Hussain:

Uh, you know, it's interesting, every time I write about this subject, even I wrote a piece, a retrospective about it for a, you know, the 20 year anniversary of 9-11. Inevitably, I get people reaching out to me, family members of people in prison, uh, cases, which are under scrutinized people from prison directly contacting me and the core. So by phone and so forth. But there's just so so many I could pick many and the, you know, the one I just will keep belaboring because I, uh, it's like my Moby Dick is the Fort Dix one because they're still in jail for life in prison. For that case. Then if you study that case and the facts of the case, you will see it's an emblematic of all the wrong things that happen after 9-11 and the unaddressed wrongs too. They're still taking place there.

Murtaza Hussain:

The father of the three brothers arrested actually died a few years ago or two years ago. And I knew him very well. And his last, the only thing he wanted was to see his sons one last time. He used to say that if I could just see my sons one more time outside of prison and I could just die happy. And that's all I want. And he never got to see that because just the cruelty and the inertia and the people want to covering, covering, you know, their flaws or their failures in the past stubbornness, uh, all these things, racism, obviously, of course too. So all these things conspired to put key people like them in jail and put them in jail beyond the point that, uh, anybody would ever think this is rational or normal. And one thing I would say, though, regarding looking back over cases, if you look at the cases the first decade after 9-11, you will find people who are convicted according to this, uh, academic theory referred to as predisposition.

Murtaza Hussain:

So predisposition was the idea that, you know, there was all these radicalization frameworks posted on level two, created the NYP framework, and many, many others are very pseudo-academic and pseudo scientific, but they basically were used to establish certain people because of their beliefs as attributed to them by the prosecution and the experts were predisposed to violence. They could not be dissuaded from violence, regardless of whether they actually did the actual thing they're being accused of or not. So it was like a trump card bringing prosecutions and effectively, it meant that anyone who was Muslim essentially to get sent to jail on terrorism charges, regardless of the context, because all you do the expert witnesses to say that this person's beliefs, you know, they're Muslim, Muslim, and then, you know, they're inherently violent. So don't worry too much about the actual organizations look at that. So, you know, you cannot ask that this academic consensus on the subject is evolved and it's completely rejects that now.

Murtaza Hussain:

And there was never any logic or substantiation behind it by any empirical measure at all the experts like Evan Coleman and others who were very much involved in courts in that era. You know, they cannot really use them anymore because it's just so obvious spurious, but you look at the predisposition

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convictions, look at all those cases, people still in jail, oftentimes for decades or life. And you'll see that, uh, you'll see that many, many people are still in jail unjustly. And you know, it's a good way of unpacking the legacy that era and reckoning with it, and also defending things that are happening in the future.

Pardiss Kebriaei:

Yeah. And I'm going to plug your, your recent article on the Intercept about the Fort Dix Five, which talks about, um, Coleman and sort of debunked theories of radicalization and the cases you're talking about. So thank you all, so very much a huge amount of respect for each of you, all of the resources and articles. And I don't know, things that the cases that we talked about, we will name, mention, or link to in the description that goes out with the podcast. And thank you all for being here and everyone for listening.