
TRANSCRIPT OF PROCEEDINGS

REFUGEE REVIEW

FRIDAY 9 MARCH 2007

INTERVIEW CONDUCTED BY: MARIE JOYCE

INTERVIEWEE: REBECCA GILSENAN

1 MS JOYCE: My name is Marie Joyce. I'm about to interview
2 Rebecca Gilsenan. Today is 9 March 2007 and the interview
3 is being conducted in Melbourne, Australia. Are you ready
4 to start?

5 MS GILSENAN: Yep.

6 MS JOYCE: Rebecca, could you tell us your full name to begin
7 the interview, please?

8 MS GILSENAN: Sure. It's Rebecca Gilsenan, and do you want me
9 to spell that?

10 MS JOYCE: Yes, please.

11 MS GILSENAN: G-i-l-s-e-n-a-n.

12 MS JOYCE: And what's your date of birth?

13 MS GILSENAN: 3 August 1973.

14 MS JOYCE: And today - and your age is?

15 MS GILSENAN: Thirty-three.

16 MS JOYCE: And the city we're in?

17 MS GILSENAN: Melbourne.

18 MS JOYCE: Thanks. Well let's begin the interview perhaps by
19 you explaining how you came to be involved with detainees.

20 MS GILSENAN: Okay. In 2003 my firm was approached by a family
21 by the name of Badraie who had been in detention and the
22 child had become psychiatrically ill in detention. They'd
23 gone through various processes trying to get some redress
24 for what had happened unsuccessfully and then they
25 approached my firm to act for them in a compensation case
26 against the government and the detention centre operators
27 for their child's injuries. So they approached through
28 some lawyers in Melbourne who had been involved with
29 detainees and advocacy groups for detainees. They
30 approached us and one of my partners down here, because
31 the family were in Sydney by this time, one of my partners

1 down here approached me about working on their case and I
2 was interested in doing that and then went and met with
3 the family at their house in North Parramatta in Sydney.
4 So that's the first family that I was involved in -
5 involved with, and then the second family that I've had
6 some involvement in is by the name of Yousefi (?). They
7 also approached our firm to act for them in a similar
8 case, this time in relation to Parvis Yousefi who was the
9 father of the family who had also suffered some
10 psychiatric injuries during detention. And I should say
11 that although I've met the other members of Parvis
12 Yousefi's family, his wife and his son, I still haven't
13 met Parvis because each time I've been to their house to
14 see them he's been in bed and hasn't come out. So I know
15 he exists because I've heard his voice and I've seen
16 plenty of documents about him but I've only met his wife
17 and child so far.

18 MS JOYCE: Perhaps you can tell us more about that a little
19 later in the interview. Shall we go back to the Badraie
20 family and I would like you to tell us the story about
21 your experience with them.

22 MS GILSENAN: All right. Well as I said I first met them when
23 I had been approached about taking on their case, so I
24 went out and saw them in their flat in North Parramatta in
25 Sydney. I went with a woman called Jackie Everett who had
26 been assisting them with their immigration application and
27 she had met them while they were in detention. She had
28 been assisting with their immigration application. She
29 assisted them with a complaint to HREOC. I think they
30 were still in detention at that time. All of these
31 complaints by the way were all about Shayan. So Jackie

1 and I drove out to their flat in North Parramatta and
2 started talking to the parents about possibly taking a
3 compensation case against the government and the detention
4 centre operators for Shayan's injuries. So on one view
5 what we were talking about was just a straightforward
6 personal injuries case. On another view no one had sued
7 the government yet. I know that refugee advocates had
8 been particularly concentrating on the immigration law
9 aspect of what was happening in detention and trying to
10 make inroads into the system that way, but as far as I
11 knew this was a new way or it hadn't been done to date, so
12 we - I talked to them about potentially having, bringing
13 one of these claims for Shayan. They were reasonably
14 nervous about it. They were keen to do something to get
15 some redress and some justice for their child, but they
16 were pretty nervous about it because they told me that
17 they were worried that if they took legal action against
18 the government that there would be repercussions for them.
19 I think that given that they had come from a country where
20 they'd experienced some persecution they didn't entirely
21 trust the government and they were looking to me to give
22 them some sort of reassurance if I could that nothing
23 would happen to them if they brought this sort of case.
24 And then I suppose their real worry was that they were
25 only on a Temporary Protection Visa which was going to
26 last until August 2005 and if - their worry was that if
27 they brought a case for compensation that their temporary
28 protection visa would expire and when they then applied
29 for a permanent protection visa it wouldn't be granted, so
30 they were quite nervous about that and I hadn't worked in
31 the refugee immigration law area at all, so it was very

1 hard for me to give them any sort of reassurance that it
2 wouldn't affect that application and I told them that
3 theoretically in Australia the rule of law prevails and
4 those sorts of things shouldn't affect your application,
5 but I couldn't give them any guarantees about that. So we
6 talked about it some more and they came around to the view
7 that this is what they did want to do, notwithstanding
8 that risk, but they remained quite nervous about that. So
9 I went and interviewed them a few more times to get
10 detailed instructions about what had happened in
11 detention. I'd gotten hold of the report that HREOC had
12 produced about the complaint about Shayan so I'd been able
13 to do some background reading, but then had to go and take
14 detailed instructions from them about what had happened,
15 and I'd go and do that in their flat at North Parramatta.
16 When I went there I'd try and go during school time so
17 that Shayan wasn't home, so he wasn't - he was still a
18 fairly sick child so I didn't want to go there after
19 school when he would be around and listening to people he
20 didn't recognise coming to his house wearing a suit and
21 interviewing his parents about what had happened to him in
22 detention, so I tried to do it during the day. They also
23 had a toddler at the time, but she was too young really to
24 understand what we were talking about.

25 MS JOYCE: So did you meet Shayan at all in that time?

26 MS GILSENAN: Yeah, he would come home from school and I met
27 him, but the parents were actually quite careful about
28 making sure that he wasn't sitting around during the
29 conversations and that he wasn't having to revisit the
30 things that had happened in detention that had made him -
31 you know, that had triggered his illness I suppose. So he

1 would come home from school and his parents would explain
2 that I was there and by then I guess they had explained to
3 him what I was doing in I guess child appropriate terms,
4 and then they sent him into his bedroom to do his homework
5 or something like that. So I met him - you know, whenever
6 I went to their house I would often - he'd come home from
7 school, because it would take a really long time to take
8 these instructions. For the parents it was quite
9 traumatic having to go through it yet again in the sort of
10 detail that the lawyer wants you to go through his story
11 in.

12 MS JOYCE: Yes.

13 MS GILSENAN: And his mother would often get headaches and, you
14 know, I could see her really struggling to tell me the
15 story of what happened and we've have an interpreter there
16 so it was a really slow process. I probably went to their
17 house four or five times and spent all day there to get
18 really detailed instructions from both of the parents.
19 But Shayan, I suppose my observations of Shayan at that
20 time - I'm trying to think how old he was then - he would
21 have been about 8 years old I think, 8 or 9 years old, and
22 he wasn't, you know, he wasn't the sort of - he wasn't
23 like other children. I suppose you could tell that he was
24 sad, that he was frightened and nervous and he wasn't sort
25 of spontaneous and bouncy and confident like other
26 children. In fact he wasn't - his little sister who was
27 quite a bit younger than him, she's five years younger
28 than him, but she is an incredibly outgoing child, and at
29 that time she would climb all over me. She wasn't nervous
30 because I was someone that she didn't recognise. She was
31 just a confident strong child and Shayan in contrast was

1 very withdrawn and sad and quiet and nervous. So from the
2 beginning of having contact with this family I could see
3 the difference I suppose and the effect that these
4 experiences had had on Shayan.

5 MS JOYCE: So what were the main features of the story that you
6 heard about Shayan's experience in detention?

7 MS GILSENAN: Gosh, this - so much of this story I'm trying to
8 think of how to reduce it to something that's going to fit
9 on this tape. The main - well as I said I'd read the
10 HREOC report on Shayan's circumstances before I went there
11 so I had some idea of the outline of what had happened.
12 But I also knew that the Commonwealth disputed a lot of
13 that story because they didn't accept some of HREOC's
14 findings and they didn't accept the ultimate
15 recommendations that were made by HREOC. So I had some
16 background, but when I went to see the parents I went
17 through in huge detail of each of these events that have
18 been mentioned in the HREOC report and in huge detail
19 about what they had experienced each day in the detention
20 centre from the day that they got there to the day that
21 they left a couple of years later. When they arrived in
22 Woomera, it was I think March 2000, it was incredibly hot.
23 They arrived, they told me that they arrived late at night
24 and they arrived to I guess an airport in Woomera where
25 someone from the detention centre came and spoke to them.
26 They were also showed a video apparently of crocodiles and
27 snakes and spiders and the type of frightening wildlife
28 that exists in Australia. But anyway - so they arrived at
29 the detention centre, it was summer. Woomera they
30 described as being really crowded and that there was
31 disturbances every day, whether or not that was - I mean

1 they described to me all sorts of disturbances, but fights
2 between detainees, fights between detainees and detention
3 officers, protests, this type of thing. They said that, I
4 think they arrived in March and within a few months there
5 was quite large scale disturbances in the detention
6 centre, protests and responses to those protests. By
7 August 2000 they said that there had been some quite
8 significant riots around the detention centre and they
9 described being in what they called a container. It took
10 me a while to understand what they meant by a container,
11 but this was their living quarters and as I say they
12 described it as a container. When I later saw pictures of
13 Woomera it made sense, it was a metal demountable
14 building, but they called it their container. They
15 described that in these riots that happened in August they
16 were sheltering in their container because there wasn't
17 anywhere else around that - you know, it was all an open
18 environment, they were trying to protect their children
19 from the events that were going on outside. It was noisy
20 and there was altercations and so on going on and people
21 chanting and, you know, shouting out slogans and things,
22 the detainees who were protesting. But one thing that
23 stuck in my mind is they said that there was a water
24 cannon being used on the protesters at night and that the
25 family's container was quite close to the fence where the
26 water cannon was being used, so the water cannon was
27 hitting their container and the children were terrified
28 because of the - the container's walls were really just
29 thin metal and they described the noise as being, you
30 know, incredibly loud and a really frightening experience
31 for the child - children. They said that that's the time

1 that Shayan's symptoms really started to become apparent.
2 He was wetting the bed, he was waking up in the night
3 going on and off his food in a way that they hadn't known
4 him to up until then. They were in Woomera I think they
5 described for about another - from August to - about
6 another eight months and they described more events that
7 seemed to have a particular - particularly strong and
8 lasting affect on Shayan. They described him seeing a man
9 holding a shard of glass to his chest threatening to slash
10 himself and kill himself with a crowd of people around
11 him, including Shayan, and I guess - I asked them about
12 why Shayan was seeing these sorts of events, why he wasn't
13 being kept away from these types of events, but they
14 explained to me that in the centre it was all open and
15 barren and there wasn't really anywhere to shelter from
16 things and things would happen spontaneously so you
17 couldn't necessarily pick the children up, run into
18 shelter when they were happening and sometimes if the
19 children were playing as they do around the place they
20 would even be by themselves noticing these events. But I
21 think the theme was these things were so pervasive that
22 there wasn't anywhere to go and to get away.

23 MS JOYCE: Can I just check something, there are a number of
24 children - - -

25 MS GILSENAN: Yes.

26 MS JOYCE: - - - in the container?

27 MS GILSENAN: Yes, sorry. There was Shayan and there was his
28 little sister. His little sister was - - -

29 MS JOYCE: She was already born?

30 MS GILSENAN: Yes, she was born before the August riots and
31 after they arrived in March, so she was fairly new born at

1 the time of the riots. Going back to that point actually
2 they - the parents described to me during those riots as
3 well that there was tear gas used on the people outside
4 protesting, but the tear gas had come into their container
5 and the mother described wetting fabric and trying to hold
6 it over the new born baby and Shayan's mouths so that they
7 didn't ingest or inhale this tear gas. So, yeah, it was
8 two children at the time. The parents also described to
9 me that Shayan saw a man up a tree who was - had climbed
10 up what they described as the only tree in the place.
11 He'd climbed up there and was threatening to jump out of
12 the tree and kill himself and he was yelling this out for
13 everyone to hear. I think that was part of the point, he
14 wanted people to know what state he was in, and Shayan had
15 been playing and they found him there at the bottom of the
16 tree with a crowd of detention officers, adults and
17 children who were around watching what was going on. The
18 other thing that they mentioned had some affect on Shayan
19 in terms of what he talked about to them and what he drew
20 in his drawings and what he woke up talking about when he
21 was having these nightmares and waking up in the night was
22 seeing a man who'd come, who'd just slashed his throat.
23 When Shayan saw him he had all bandages and blood around
24 his throat, but Shayan apparently would be asking them,
25 "Why did the officers slash Uncle Hussein's throat." And
26 the other thing that happened to the family at Woomera was
27 they were placed in a compound called Sierra Compound and
28 that was an area that the detainees generally regarded as
29 a place that people went to be punished. So the family
30 were really unhappy about being moved to Sierra Compound.
31 They were frightened and didn't know why they were being

1 moved there, and Shayan was asking what they had done to
2 be moved to Sierra Compound. The other thing that became
3 apparent through the trial was that in Sierra Compound
4 there was no other children anywhere near Shayan's age, so
5 he was separated completely from his peers. One of the
6 psychologists later told me, who gave evidence in the
7 trial, told me that he would come and get Shayan and take
8 him over to the main compound to look at other children so
9 that he could see that there were other children his own
10 age, but it had to be a specially organised excursion. If
11 he was to have any contact, like proper contact such as
12 playing with these other children it would be a
13 bureaucratic process where someone had to get permission
14 and - it happened infrequently, but that psychologist
15 described to me the sadness of taking a child to look at
16 other children playing just to remind them that there were
17 other children his own age. So that was what they
18 described to me as happening at Woomera.

19 MS JOYCE: Yes. What was the experience like for you? You've
20 told us that you listened in detail for quite a number of
21 days to their story, what kind of an experience was that
22 for you?

23 MS GILSENAN: Exhausting. It was a long time to sit in a small
24 flat and hear about such - you know, for these people
25 really traumatic experiences, so it was quite exhausting
26 and I felt a bit guilty for putting these people through
27 the story yet again. I had explained to them and I
28 understood why I needed to do that, but I felt guilty
29 about asking them to go through in such detail that
30 experience and I could see the effect that it was having
31 on them, so - and I was shocked. It's one thing to read

1 about these things in reports and in documents and things,
2 but it's quite another to hear from the people themselves
3 how they felt and, you know, their emotions about what
4 happened, so it was - it was pretty heavy going, and that
5 was just Woomera.

6 MS JOYCE: Yes. So there was another phase when they were at
7 Villawood?

8 MS GILSENAN: Yes.

9 MS JOYCE: Do you want to say something about that?

10 MS GILSENAN: What was happening at Woomera is that Shayan's
11 symptoms were starting to become apparent not just to his
12 family but to detention centre staff and they had - at
13 various times they had a psychologist working there and at
14 other times there was a man who was a counsellor, but both
15 of these people noticed what was going on with Shayan.
16 They both also described to me that they were completely
17 overwhelmed with detainees who had these sorts of
18 problems, but that they were particularly worried about
19 Shayan because he was so young. Anyway people started
20 noticing Shayan's symptoms and one of the psychologists in
21 January 2001 did a formal assessment of him, and the
22 assessment was that he was displaying all of the signs of
23 post-traumatic stress disorder and he thought that it
24 amounted to a diagnosis PTSD, but that in his mind needed
25 to be confirmed by a psychiatrist, but his conclusion was
26 that the family should be moved to another centre where
27 they would be closer to support services, external support
28 services so that these symptoms could start to be treated
29 more effectively. So a few months after those
30 recommendations were made they flew to Villawood Detention
31 Centre and stayed there in Sydney. Villawood from my

1 observations of the film footage that I'd seen and the
2 photographs and listening to what the family said about
3 Villawood it sounded like a more - a less stark and
4 difficult environment than Woomera. It had been there, it
5 had been well established, it was in a major city. They
6 were still in detention but they weren't living in what
7 they call containers, they were living in some sort of
8 accommodation units and it sounded - it wasn't in the
9 middle of the desert and it wasn't overcrowded and under-
10 resourced in the same way that they had described Woomera
11 as being. But by that stage Shayan's symptoms or his
12 condition had become pretty fragile and within, I think it
13 was about six weeks of arriving at Villawood the parents
14 described that Shayan was out playing with another child
15 and they kept saying to me things like, "The psychologist
16 would tell us to make Shayan go out and play", because all
17 he wanted to do was lay on his bed and cling to his
18 parents, so they described that they were trying quite
19 hard to get him out of the room and out on the grass and
20 trying to socialise with other children given that he at
21 Woomera had been removed from other children. That was
22 important to them that he had some interaction with
23 children. They described a day that he had gone out with
24 another little child and was playing just in the vicinity
25 of their accommodation unit with this child and they -
26 these two kids walked in, or somehow their play moved into
27 one of the other detainee's rooms and as they entered that
28 room this man had just slashed his wrists in his room and
29 was bleeding quite profusely from his arm and that Shayan
30 - the parents described Shayan running back to them saying
31 - I can't remember the name - but so and so is dead, so

1 and so is dead, and instantly that experience came -
2 showed up in a lot of the drawings and things that Shayan
3 did in therapy at the hospital - I'll come to that - but
4 at the hospital and even years later in Shayan's drawings
5 there'd be a man standing with his arms out and he'd have
6 a circle on his arm, which I assume was some kind of hole,
7 and there'd be dripping out of the circle, so this was
8 described by Shayan as the man who cut himself. But that
9 event came to be regarded by the doctors treating Shayan
10 as really the event that in lay terms tipped him over the
11 edge, but I suppose the precipitating event for his post-
12 traumatic stress disorder the parents described to me that
13 after seeing this man Shayan, that's when he stopped
14 speaking.

15 MS JOYCE: Could I just check something, that they had already
16 identified PTSD in Woomera as well and so this was a
17 further experience of exposure to trauma for him?

18 MS GILSENAN: Yes, it was. The psychologist in Woomera had
19 written a report saying that he thinks he fulfils all the
20 criteria and identified the symptoms that meet with the
21 (indistinct) and full criteria, but he explained to me
22 that he didn't want to make the diagnosis without
23 consulting with a psychiatrist.

24 MS JOYCE: I understand.

25 MS GILSENAN: But when he transferred to Villawood and saw this
26 event the treating team at the Westmead Children's
27 Hospital came to see that as really the trigger event I
28 guess for the really severe deterioration that followed.
29 As I said his parents described that after that event he
30 really stopped speaking and they described that for three
31 or four days he just sat on the bed and wouldn't speak or

1 eat or drink or anything, he was just listless and they
2 were getting quite desperate by this stage. I think
3 shortly after that he was admitted to Westmead Children's
4 Hospital on an emergency basis to be rehydrated and his
5 first admission to the hospital was a relatively short
6 one. The doctors I've met, spoken to and read all of the
7 reports that the treating team at Westmead prepared about
8 Shayan over this period, but that short hospitalisation
9 was to be the first of I think maybe six or eight
10 admissions to Westmead on an emergency basis for
11 rehydration and psychological treatment. So after that
12 first week he was sent back to the detention centre, I
13 think the doctors immediately started recommending that he
14 not be sent back and that he be protected from seeing any
15 more, any further traumatic events, but it seemed that it
16 was too late by then. Even a return to the environment
17 without an additional traumatic event on top of that was
18 enough to cause his symptoms, all those really severe
19 symptoms to re-emerge, so I think he was back at the
20 detention centre for less than a week before he was taken
21 back to the hospital and that hospital stay was about two
22 months, the second one, it was really long, and there
23 became a sort of tussle I guess between the treating team
24 at the hospital and on the other hand the Department of
25 Immigration and the minister. The treating team were
26 writing to the management of the detention centre as well
27 as after a while writing directly to the minister saying
28 it is not in this child's best interests to be returned to
29 the environment of the detention centre, his symptoms will
30 re-emerge. Their recommendations were I suppose in the
31 strongest terms that he shouldn't be returned to that

1 environment and he was a very sick child. Nevertheless he
2 was after the two month hospitalisation returned to that
3 environment and after that I think there were another five
4 or six hospitalisations for shorter periods of time, but
5 for the same thing. He'd go back to the detention centre,
6 he would shut down, he wouldn't eat, he wouldn't drink, he
7 wouldn't interact, lay on his bed until his body would
8 start shutting down and he'd have to be readmitted to the
9 hospital for treatment. At that time the parents
10 described to me just becoming more and more desperate and
11 some of the actions that they had started to take by then
12 indicated how desperate they were. There was - the father
13 described to me there was one incident where he went - he
14 had this floppy listless child and he would describe going
15 to the medical centre several times a day asking them to
16 take his child to hospital and them not being willing to
17 take the child to the hospital and the father was
18 desperate, completely desperate for his child to be
19 treated. He couldn't be treated on site, but they would
20 apparently say to him, well he's okay, he's not - you
21 know, he's not on the verge of shut down, or I don't know,
22 death, so we'll keep him here for a few more days until he
23 will have to be admitted on an emergency basis, but the
24 father described to me at one stage having this incredibly
25 sick child and going over to the visitors area at
26 Villawood and holding the child up above his head and
27 yelling out, "My child is sick. My child is sick. He
28 needs treatment. They won't take him to the hospital",
29 just to try and get I suppose the outside world's
30 attention to what was happening to his child and he was
31 helpless, angry, panicking and desperate, so -

1 incidentally, in the trial that we ran, that came to be
2 one of the matters about which his dad was cross-examined
3 and criticised for, that, "How could you do this to a sick
4 child", it was suggested to him, you know, "What kind of
5 effect do you think that losing your temper is going to
6 have on your incredibly sick child?", so that was one of
7 the many, many events in the trial that was upsetting, I
8 suppose, not just for the father who was sitting in the
9 witness box being cross-examined, but for the whole legal
10 team, including me. It was so clear to us that, you know,
11 the desperation - it indicated desperation, rather than
12 lack of care for his child's well-being. Anyway, this to-
13 ing and fro-ing from hospital at Woomera - sorry,
14 Villawood - and the Children's Hospital at Westmead went
15 on, and the department was scrambling around trying to
16 find some solutions - all the doctors were recommending
17 that the family and the child be released to some sort of
18 community placement, so that they could start to try and
19 help Shayan to live a normal life and not be returned to
20 the environment where the symptoms just re-emerged. One
21 of their solutions, if you like, that the government came
22 up with was to put Shayan in a foster care placement
23 outside of detention, but to keep his family in detention.
24 The treatment team wrote to the minister about this saying
25 that the last thing that this child could cope with would
26 be to be separated from any of his family, that he was
27 heavily dependant on his parents and very anxious of any
28 separation from them, and that the - those doctors
29 recommended in very strong terms that he not be placed in
30 foster placement, not be put into a foster placement.

31 MS JOYCE: Were they allowed to go to the hospital when he was

1 hospitalised, especially fro the long period?

2 MS GILSENAN: Yeah. When he was hospitalised, he would have
3 one parent there most of the time.

4 MS JOYCE: Right.

5 MS GILSENAN: So he wasn't being separated at the hospital, and
6 the parents would take turns, and the young daughter would
7 be there as well, so the hospital was very accommodating
8 of that, and the detention centre allowed that to happen
9 as well. Mind you, they did send a guard, so a guard
10 lived at the hospital with Shayan along with the parent,
11 whichever parent that was at the time. So, I think I just
12 told you about the foster care.

13 MS JOYCE: Yes.

14 MS GILSENAN: Or the foster care option, if you like. Now, in,
15 must have been by this stage about August 2001, the
16 parents were - positively desperate time - they were
17 shuttling to and from the detention centre and hospital,
18 they couldn't see a solution, and the department had
19 introduced to them the idea of possibly putting the child
20 in foster care. The parents were absolutely desperate at
21 this stage. Incidentally, they'd also received a
22 deportation order saying that they had come to the end of
23 their - their immigration process, and they'd been
24 unsuccessful and that they were going to be deported any
25 moment back to Iran with this sick child, so the parents,
26 in their desperation, agreed to participate in some kind
27 of filming where somebody had somehow gotten hold of a
28 camera in the detention centre - or smuggled it, I don't
29 know - and the parents were filmed by another detainee and
30 were telling the story and showing their child, they had -
31 both of the parents were sitting down on the ground and

1 telling the story about what was happening with their
2 child. That footage ended up being displayed on Four
3 Corners, and it's some footage, I believe, that a lot of
4 people have seen, and those images of Shayan, I think
5 reaching the outside world, actually shifted people's
6 consciousness about what was happening in detention
7 centres, particularly in relation to children - I think I
8 read the other day on Chillout's web site that Chillout
9 was formed after a group of parents and concerned other
10 citizens had seen this footage of Shayan and his family in
11 the detention centre at Villawood. Anyway, that footage
12 was filmed and displayed on Four Corners along with
13 footage of other people in detention. Shortly after that
14 went to air, just to give a point in time, the Tampa
15 incident occurred - I think it was about two weeks - - -

16 MS JOYCE: Yeah.

17 MS GILSENAN: - - - after that footage was shown on Four
18 Corners, so I suppose just to give you an idea of what was
19 happening in the wider world at the time.

20 MS JOYCE: That's good, that's good.

21 MS GILSENAN: And then two weeks after that the parents, faced
22 with the decision of keeping the child in detention where
23 his symptoms re-emerged and were so bad that he just had
24 to keep being ferried to hospital, or going back to Iran
25 where they said that they would face persecution, or
26 putting their child in foster care, they took, I suppose,
27 the impossible choice of putting the child in foster care.
28 They didn't know what else to do, but they could see that
29 the detention environment, the effect that it was having,
30 and there was no option for them to care for him in the
31 community, so they took that decision. Initially the

1 department had offered them a Palestinian family, and the
2 parents didn't want their child to be placed with a
3 Palestinian family because he didn't speak the same
4 language as them. They had identified an Iranian family
5 who I think they had met once in the visitors section of
6 Villawood Detention Centre, but such was their
7 desperation, they asked the department and Community
8 Services, to get in with touch with this family and assess
9 them as potential carers, so Shayan was shortly after
10 moved into that setting. Once he went to foster care he
11 wasn't hospitalised again, so there was some improvement,
12 although he was separated from his parents and, by all
13 accounts, everyone found it extremely difficult, including
14 the foster parents who had had - who weren't trained
15 foster parents, and were trying to look after a child
16 along with their own children, who had incredibly complex
17 needs. I suppose unsurprisingly that placement broke down
18 by, I think within about five months, and then finally the
19 minister exercised his discretion to grant a Bridging Visa
20 to Shayan, his baby sister and his mother to live in the
21 community, while their immigration claim continued. By
22 that stage they'd gotten in some appeal into the Full
23 Federal Court, I think, and so the immigration claim was
24 back in the courts, so the father, I think, stayed in
25 detention for another seven months until they were finally
26 accepted as being entitled to Australia's protection and
27 given a Temporary Protection Visa, but once - once Shayan
28 was living in the community with his stepmother and his
29 little sister, things, he - you know, there was some
30 improvement in his symptoms. So, then, you know, some
31 years later, I suppose two years later, is when they first

1 approached me and we started the case.

2 MS JOYCE: So that's been a long lead-in, really, to the case.

3 MS GILSENAN: It has.

4 MS JOYCE: And a huge experience for you in becoming involved
5 in something so different from the rest of your work, so
6 do you want to tell us something about the case and the
7 court experience, is that - - -

8 MS GILSENAN: Sure. We filed the case in late 2003, and it
9 didn't get to trial till August 2005, so it was almost two
10 years of preparation once we'd started the case in the
11 courts. Through those first two years of preparation, I
12 was surprised to find that the government were being quite
13 reasonable in terms of their approach to the interlocutory
14 stages of the matter, they weren't challenging everything
15 that we did. We had a discovery process where they had to
16 produce all of the documents that were relevant to the
17 case, and everyone had said to me beforehand, "You will
18 never get these documents" - this was at the beginning of
19 the case, you know - "You can't imagine what litigating
20 against the government's going to be like, you'll never
21 get hold of even the documents that talk about what
22 happened", and I had to say to these people along the way,
23 "Well, actually, they're - you know, it seems fairly
24 straightforward so far, and they have produced all the
25 documents" - well, you know, you don't know what you don't
26 know, but I couldn't identify anything that seemed
27 obviously to be missing, and they had produced some fairly
28 damning documents about what had happened that they had
29 produced, that they'd created, so as we went along, I was,
30 I suppose being lulled into a sense that this case, we
31 were really just going to focus on the real legal issues,

1 and the government would approach it in quite a reasonable
2 way. We had a mediation that didn't result in a
3 settlement, so by August 2000 - 2005, sorry - we were
4 ready to go to trial. The - both parties estimated that
5 the trial would take four weeks, we provided that estimate
6 to the court and so the court had set aside four weeks for
7 us. We actually thought it would be shorter than that but
8 it was four weeks at the outside. Well, we used the first
9 four weeks and got through a tiny amount of our case.
10 When we got to court, things changed, things changed in
11 terms of the government's approach to the litigation.
12 Along the way, as I said before, I really expected that
13 the focus would be on what I identified as the real legal
14 issues, whether, you know, whether the government had a
15 duty to Shayan, whether they had breached that duty of
16 care, and what damage that Shayan had suffered as a
17 consequence, but when we got to court, the first thing
18 that happened after our opening was that the parents were
19 cross-examined, and I think the cross-examination of the
20 parents lasted for about four weeks, and that is an
21 extremely long time to be cross-examined - admittedly it
22 was through an interpreter, so that takes a longer time -
23 but I mean, these - the matters about which these parents
24 were cross-examined was just extraordinary. To give you
25 some examples, they were cross-examined about whether they
26 were encouraging Shayan not to eat in order to ultimately
27 get a visa, I suppose; they were cross-examined about
28 whether the father was violent towards the birth mother -
29 I don't think I've described this up to date, but the
30 woman who has been Shayan's mother for most of his life
31 was not in fact his birth mother, his birth mother and his

1 father separated when he was quite a young child - but
2 anyway, cross-examined about whether he had been violent
3 to the birth mother back in Iran. They told him in the
4 witness box that he'd in fact lost custody of Shayan in
5 Iran after he'd left, that the birth mother had gone and
6 gotten some court orders that changed the position; when
7 they left he did have custody of Shayan, as is the
8 practice in Iran as I understand it, that once a male
9 child is two years old, the custody is given to the
10 father, but even before that, the birth mother, when they
11 separated, had agreed that the father would have custody
12 of the child, but in the witness box without any warning,
13 so that we could have told him beforehand, the
14 Commonwealth's barrister told him, or asked him, did he
15 know that he didn't have custody of his child any more.
16 That was the only time that the father broke down in the
17 witness box. I mean, he was subjected to the most
18 vigorous questioning, but that was the - that was what
19 really got him, I suppose. He had no idea of this. They
20 also cross-examined the parents about whether they were in
21 fact members of the El-Hak religion, and that was the
22 basis for the family's immigration claim. I guess what I
23 haven't mentioned is that, around this time - I can't
24 remember whether it was right bang in the middle of cross-
25 examination or not - their Temporary Protection Visas
26 expired, so it was during the time that we were in court,
27 and they had expected that there would be a decision on
28 their permanent protection visas by then. There was no
29 decision on their permanent protection visas by then, so
30 they were, I suppose, on some kind of Bridging Visa
31 because they didn't have a Temporary Protection Visa or a

1 Permanent Protection Visa, so their status in the country
2 was quite uncertain to them, they didn't know decision was
3 going to happen, and then part of the way into the cross-
4 examination the Commonwealth's barrister started cross-
5 examining them to the effect that they weren't members of
6 the El-Hak religion, so in the setting that that was the
7 basis of their refugee claim, that their TPVs had expired,
8 and they hadn't yet received a decision about their
9 permanent protection visas, their worst fears were coming
10 to life. I think I said at the beginning, that the real
11 thing that they were uneasy about bringing the case, or
12 the thing that made them nervous about bringing this case,
13 was that somehow it would impact on their ability to stay
14 in Australia and at a time when they were under huge
15 pressure, because they were in the witness box, the father
16 was in the witness box getting cross-examined, these worst
17 fears started coming to life that in fact the Commonwealth
18 was going to somehow not allow them to stay in Australia
19 because of this case. So, at around that time the
20 Commonwealth also sought permission from the court to
21 amend their defence to the case, and the amendments were
22 to the effect that the parents were responsible for
23 Shayan's injuries because they entered Australia as
24 unlawful non-citizens and therefore he was put in
25 detention; secondly, once he became ill, they failed to go
26 back to Iran, and therefore they were responsible for his
27 injuries; and thirdly, they tried to add a defence in
28 answer to the whole claim, that the claim would be
29 defeated because they had obtained their visa
30 fraudulently. The judge - there was a couple of other
31 things that they sought to add as well, that the parents

1 had contributed to the injuries by encouraging him not to
2 eat and a couple of things like that - but - - -

3 MS JOYCE: By saying they've obtained their visas fraudulently,
4 do you mean the temporary protection visas?

5 MS GILSENAN: Yeah.

6 MS JOYCE: Yes.

7 MS GILSENAN: The thrust of that part of the defence - - -

8 MS JOYCE: Yes.

9 MS GILSENAN: Was that they weren't of that religion that they
10 claimed to be and therefore they'd obtained the visas
11 fraudulently, therefore Shayan could not bring this claim.
12 The judge said, in relation to the claim that they were
13 responsible for the injuries because they entered
14 Australia as unlawful non-citizens and that they failed to
15 leave Australia once their child became sick, the judge
16 refused those amendments, said that they didn't give rise
17 to an arguable defence to this proceeding, and therefore
18 he wouldn't give them permission to add that to their
19 defence. The judge's response to the third thing, that in
20 answer to the whole claim they obtained their visas
21 fraudulently, the judge said well, it would be futile, and
22 therefore he wouldn't give them permission to do that,
23 because whatever basis Shayan was brought into this
24 country on, he was a child, he didn't bring himself here,
25 and it didn't matter whether he was here rightly or
26 wrongly. Whether - even if he was here wrongly, he was in
27 detention under the government's care and whatever the
28 basis of their refugee claim, so long as they were in
29 detention the government had a duty to - duty of care to
30 Shayan, so the judge refused that amendment. The rest of
31 the trial: so, after the first four weeks, the court had

1 only set aside four weeks, I think - no, the parents
2 cross-examination hadn't finished in that first four
3 weeks, it continued over to the next sitting, so I can't
4 remember how long the break was. We had about four weeks
5 off because the court hadn't allocated any more time than
6 we'd estimated that it would take, and we were still
7 really only at the beginning of our case by the time the
8 four weeks had been up, so we came back, you know, some
9 time later. I think the case was done in three different
10 sittings, because, you know, when we came back I think it
11 was for three weeks. Again, we thought we might have
12 finished in three weeks, but we were nowhere near
13 finishing, and then we came back in early 2006 for another
14 set of sittings, and the parents cross-examination by this
15 stage had finished, and a number of the other witnesses
16 had come to give evidence. Once the parents cross-
17 examination had finished, the case became less stressful
18 for the parents, because they weren't in the witness box
19 being cross-examined, and they didn't have to come to
20 court every day and be subjected and answer allegations
21 about them not looking after their child, and not feeding
22 their child and so on, and I guess for me the case became
23 a bit less stressful because I didn't have to - I knew
24 that they were in a better position than they were when
25 they were coming to court. During that period that I
26 talked about before when the government had brought up the
27 issues of visas, we were - I mean, that is the only time
28 that I got really frightened. I started to worry, but I
29 was naïve to think that the rule of law prevailed in
30 Australia, and that I'd gotten these parents, in my naïve
31 way I'd gotten them into a case where they might lose

1 their visa and they might be sent back to Iran, and that
2 was, I think I came back from court one day and rang one
3 of my partners saying, "I've bitten off more than I can
4 chew, I can't", you know, "I'm so naïve to think that this
5 wouldn't happen and I might be partly responsible for this
6 family being sent back to Iran where they're going to get
7 persecuted and possibly killed, and I don't know what to
8 do. Please, reassure me, reassure me that this is the
9 right thing to do, tell me it will be okay", and the
10 parents similarly were coming to me and saying, "Do you
11 think that we can stop this case now, do you think that we
12 can get out of it", you know, "our security in Australia
13 is more important than any justice or money or anything.
14 Can we get out of this now", and their support, Jackie
15 Everett who I talked about earlier, was also part of this,
16 and we spent a few agonising days over a weekend, I think,
17 working out what to do and whether we should go on and
18 what's - you know, how we'd manage. We pulled ourselves
19 back together and - and went on, but, you know, that was
20 really the low point, I suppose, or the - the most fearful
21 time in that case. So, we got back on track and some more
22 of our witnesses were cross-examined; the psychologists
23 who'd treated Shayan at Woomera; the head of the treatment
24 team at Westmead Hospital, Dr David Dossiter who is the
25 head of Psychological Medicine at Westmead Children's
26 Hospital; a detention officer or the head of operations, I
27 think he was, which was sort of uniform and security
28 matters at Woomera Detention Centre, he came and gave
29 evidence about what had been going on at the detention
30 centre and how under-resourced it was and how difficult
31 they found threats to security because of the lack of

1 resources, and the overcrowding - they just, according to
2 his evidence, didn't have the amount of uniformed officers
3 or understand-uniformed people providing programs to the
4 detainees to keep them entertained. Who else did we have
5 give evidence? I think - I think that was about it. We
6 had the parents, the treating psychologists and the head
7 of psychology from the hospital, and then we commenced on
8 the Commonwealth's witnesses, cross-examining them, then
9 Philippa Bodwin who was one of the, I think the third most
10 senior department at the time, we had - we were to have
11 one of the detention officers who'd written a report that
12 the parents, that - it was one of the detention officers
13 who was going to hospital with the parents each day and
14 guarding them at the hospital, at some point had written a
15 report saying that she thought that the mother was
16 encouraging child - the child - encouraging Shayan not
17 to eat, so we were about to get to cross-examine that
18 detention officer, and I was really looking forward to
19 that, but at that time, in fact I think the day before
20 that officer was to give evidence, we actually reached a
21 settlement with the Commonwealth; they had made an offer
22 to pay Shayan, or a trust for Shayan, \$400,000 to conclude
23 the case, so by that stage, it was the 63rd day of the
24 trial, and Shayan's family gave us instructions to accept
25 that offer. It was a relief. We had a long way to go in
26 the trail yet. The judge was quite cranky that the trial
27 was taking up so much of the court's resources - whilst
28 there was no suggestion that it wasn't a proper matter to
29 be brought before the court, we had estimated that it
30 would take four weeks and by that stage we were in the
31 12th week and we had a long way yet to go - so we got

1 together with the parents, we adjourned the court
2 proceedings for a while, we went down to the barristers
3 chambers and talked through this offer that the
4 Commonwealth had made, and they decided to accept it, so
5 we went back to the judge on the same day and told the
6 judge that we'd reached a settlement, and that - we asked
7 the judge if he would refer it off to another judge,
8 because the case was being brought on behalf of a minor,
9 the court has to approve any settlement that we had come
10 to, but we had to go to another judge because if that
11 other judge didn't approve of the settlement, we had to go
12 back before our judge and plough on with the trial, and
13 our judge would then know what the settlement was and what
14 we thought about it and what we thought the weaknesses and
15 strengths were, so we had to go before another judge. The
16 other judge approved the settlement immediately, I think a
17 day later. What was really interesting though, was, I
18 think within 15 minutes, 20 minutes of the parents
19 communicating or us communicating to the Commonwealth that
20 they had accepted this settlement, their permanent
21 protection visas were rung through to their immigration
22 lawyer, so, you know, it was a striking coincidence, but
23 the family were elated; they had gotten their Permanent
24 Protection Visa and settled this case all in the same day,
25 and so it was an extraordinarily happy day that was full
26 of relief for them.

27 MS JOYCE: Yeah.

28 MS GILSENAN: So - - -

29 MS JOYCE: And for you probably, too.

30 MS GILSENAN: It was. It was. As a lawyer, I think I would
31 have, purely from the legal perspective, I would have

1 loved to have seen what the court said about this case.

2 MS JOYCE: Yes.

3 MS GILSENAN: I would have loved for this case to establish a
4 precedent that talked more about what the government ought
5 to do in order to fulfil their duty of care to people in
6 immigration detention, and in particular to children, but
7 you know, that was the wider point; my main focus was on
8 those human beings that I was dealing with, and I was so
9 glad for them that they didn't have to go through any more
10 of this. I mean, even if they had won this case through
11 the court system, it could have been appealed for years
12 yet, so, I mean, we went into this case with a wider point
13 - this isn't the kind of work that my firm usually does,
14 but we cared a lot about what was happening in detention
15 and saw this as one way that we could do some small thing
16 about what was happening, and so we went in with a wider
17 perspective hoping that it would do something about
18 detention conditions generally, and so purely from a legal
19 perspective and from the perspective of wanting it to have
20 some effect on what happens more widely, it would have
21 been lovely to see a decision and see what the courts had
22 to say, but for the sake of these individuals - - -

23 MS JOYCE: Yes.

24 MS GILSENAN: The settlement was the best outcome, and, yeah,
25 it was a huge relief, and a huge relief to see them get
26 their visa on the same day. So that was Shayan Badraie's
27 case. Subsequent to that they had - the first thing that
28 they did with the compensation, they applied to the
29 trustee to use some of the money to go to Syria, to take
30 Shayan, his little sister who was now quite a big sister,
31 I think she's about six now, they'd applied to take the

1 family off to Syria and to meet up with their extended
2 family who travelled from Iran to Syria to see them. The
3 other thing that happened in Syria, that I didn't know was
4 going to happen which was probably a very good thing, was
5 that Shayan met his birth mother again, and subsequent to
6 that they've - they, in agreement with the trustee - have
7 bought a house in Sydney for them to live in, in Shayan's
8 name, so that's, you know, the postscript to that case, I
9 believe that Shayan is showing some improvements, I think
10 the fact that this case is over and the fact that they
11 have a visa and he's now got a stable situation in
12 Australia, has meant that he's been able to, you know, get
13 on with life to some degree, so that's Shayan's Badraie's
14 case.

15 MS JOYCE: Thank you, Rebecca. Does this seem like a good
16 moment for you to move on to the second case of Parvis
17 Yousefi?

18 MS GILSENAN: Sure. I'm trying to think how we came into
19 contact with that family. Jackie Everett, who I have
20 talked about before as being the person who supported and
21 assisted the Badraie family, is also a lawyer, and she
22 came and did some work with our firm. She was really
23 looking for, or talking to former detainees about these
24 types of cases and whether or not they could bring these
25 cases, and I think through Jackie's efforts, the Yousefi
26 family got in touch with us. At the time, they were
27 living in Adelaide, so we had - I talked to them over the
28 phone and corresponded with - it was Parvis' wife, Manish,
29 who is the person who I really have contact with and did
30 have contact with from the beginning. I had seen their
31 story in the paper, probably six months or something

1 before we got in contact with them, but their story was,
2 what I read in the paper, was this man who used to have
3 quite a decent job in Iran, working in oil drilling and
4 they lived a fairly comfortable life in Iran. The father
5 had a good job and his wife and child were with him there,
6 but they had moved to Australia and they had such a
7 difficult experience in detention centres, that this
8 person who used to hold down a very good job, was
9 vegetative, in their home in Adelaide, and the mother and
10 child also weren't particularly well, so I'd read about
11 it, I had some idea of what this case was about and had
12 also looked - had something on their case in one of the
13 HREOC reports about detention - there was a little excerpt
14 on them - but then they got in contact with us and we
15 talked to them about starting a case. Shortly after we
16 made first contact with them or they made contact with us,
17 they moved to Sydney and so I went again to their
18 temporary accommodation in western Sydney and talked to
19 Mehrnoosh about commencing a claim for Parvis.

20 MS JOYCE: When was this, Rebecca?

21 MS GILSENAN: I thought you'd ask me that. About two years
22 ago, so - - -

23 MS JOYCE: So it overlapped with the other case?

24 MS GILSENAN: It did, it did. We hadn't finished Shayan's case
25 by the time this other family got in contact with me. But
26 we were waiting to see what would happen in Shayan's case,
27 to make a decision about whether we would progress with
28 this other case. I went to their house, I interviewed
29 them. I interviewed the first time, the mother and the
30 child. I didn't interview the child, but their child was
31 present, he's a teenager. I interviewed them - - -

1 MS JOYCE: What is his name?
2 MS GILSENAN: Manoochehr.
3 MS JOYCE: That is the mother's name.
4 MS GILSENAN: No, Mehrnoosh is the mother.
5 MS JOYCE: Manoochehr?
6 MS GILSENAN: Mehrnoosh is the mother.
7 MS JOYCE: Mother - - -
8 MS GILSENAN: And Manoochehr is the son.
9 MS JOYCE: Thank you.
10 MS GILSENAN: That's all right. When I went to see them in
11 their house, Parvis was home, but he wouldn't come out and
12 see me, he was in his bedroom, and as I said at the
13 beginning of the tape, I've been there a number of times
14 since and I still haven't seen Parvis. He's not been
15 willing to come out of his bedroom and see me.
16 MS JOYCE: What did you understand was the reason why he
17 wouldn't come out? Or couldn't come out?
18 MS GILSENAN: Yes, well, I knew about his psychiatric state to
19 some degree, because I'd read by that stage, reports about
20 him. Mehrnoosh, before they moved to Sydney, had sent me
21 a lot of documents about the case and psychiatrists
22 reports and so on and I knew that in detention Parvis was
23 not coming out of his donga, as they call it. These
24 families call it a donga - the Badraies called it a
25 container - but Parvis was staying in his donga all the
26 time and he wouldn't come out and interact. So I had a
27 good understanding of his psychiatric state. So
28 Mehrnoosh, just, when I said that I would like to talk to
29 Parvis about his case, she went and talked to him, and he
30 wasn't willing to come out and I wasn't going to go and
31 force myself into the room to talk about him - talk to

1 him, sorry - so it was because of his psychiatric
2 condition.

3 MS JOYCE: Is there a name for that psychiatric condition, that
4 you know?

5 MS GILSENAN: Yes. When he was in detention, the diagnosis
6 that kept being made was Major Depressive Disorder and
7 subsequently there's been a diagnosis of Post Traumatic
8 Stress Disorder.

9 MS JOYCE: Thank you.

10 MS GILSENAN: So, in a similar process I interviewed his wife
11 with an interpreter on a number of occasions, and we were
12 hanging back a bit to see what happened in the Badraie
13 case. The Badraie case ended up as I've described, taking
14 such a long time in court, that I think we must have filed
15 the Yousefi case before it finished. So that case, you
16 know, we've been through the same process, the long
17 interviews with the family, although these interviews were
18 a bit different, because it was with Mehrnoosh, who is
19 Parvis wife, and my observations of Mehrnoosh is that she
20 is, you know, she's not - I don't think that she's got a
21 psychiatric illness but she's under huge amounts of
22 pressure; she's trying to care for an incredibly sick
23 husband and a child, whose also still self-harming and has
24 all sorts of issue of his own on top of being a teenage
25 boy. So, Mehrnoosh, you know, it was a different style of
26 interviewing. With the Badraies I was interviewing two
27 parents who had had extraordinarily difficult experiences
28 but had come out of those experiences, and for Shayan, he
29 had these two parents who remained relatively strong and
30 well, although desperate, through their experiences. In
31 Parvis' case, what I'd read in the reports and what seemed

1 to me to be the case when I went to see them, the whole
2 family had broken down. Mehrnoosh, the wife, was the most
3 well, but even then she was struggling, I suppose, even
4 after they'd been released from detention and I was
5 interviewing them. So we read all their documents, we
6 interviewed them and we made a decision with Mehrnoosh to
7 commence the claim. So that claim was filed in the New
8 South Wales Supreme Court and it's being prepared at the
9 moment for trial. I think that we'll get to a trial in
10 that case, towards the end of this year.

11 MS JOYCE: This might be a moment to stop the tape.

12 MS GILSENAN: Okay.

13 (Short adjournment.)

14 MS JOYCE: Rebecca, you were talking about the filing of a case
15 for the Yousefi family. Would you like to tell us some
16 more about that case?

17 MS GILSENAN: And your of their experience, I suppose.

18 MS JOYCE: Sure.

19 MS GILSENAN: The Yousefis arrived at Woomera, I think it was
20 late 2000. So they arrived at Woomera around the same
21 time as Shayan's family were close to leaving Woomera. It
22 might have been about August 2000, and when they arrived,
23 they stayed together, the three of them were living
24 together in accommodation within the detention centre.
25 I think I described to you before, what I understand was
26 happening in the detention centre at that time. That is
27 was overcrowded but it was under resourced, in terms of
28 security staff, as well as non-security staff who were
29 there to provide support and programs for the detainees.
30 There were frequent unrests, and that was going on when
31 the Yousefis were there. Some time into their detention,

1 it was before the end of 2000, Mehrnoosh and Manoochehr,
2 so, Mr Yousefi's wife and son, went to live in the Woomera
3 Residential Housing Project, which, as I understand, is
4 accommodation off-site from the detention centre which is
5 more community-like and was for women and children, so the
6 family together made a decision that they would move to -
7 the mother and son would move to that accommodation. I've
8 been reading the records just this week, actually, because
9 the discovered documents have just arrived from the
10 Commonwealth. What was happening in that period, was that
11 Mehrnoosh and Manoochehr seemed to be getting more and
12 more stressed and unwell. It was manifesting in Mehrnoosh
13 in terms of physical problems that she was having, you
14 know, some quite significant health problems at the time,
15 but it was also manifesting as requests to see
16 psychologists. Manoochehr might have made some threats to
17 self-harm himself, to self-harm, by that time and so what
18 I'm seeing in the documents is a series of referrals for
19 psychological or counselling help - I haven't yet seen the
20 notes of any counsellor, but I'm seeing those referrals.
21 Let me go back a step and say with Parvis Yousefi, what
22 I'd seen from the psychiatric reports that I'd read before
23 discover documents arrived, was that no one seemed to, in
24 the detention centre, have seen what was going on with
25 this guy or he was, you know, he wasn't one of the
26 detainees who was manifesting problems particularly, but
27 suddenly he hung himself, and I was - couldn't understand
28 how you could go from not being noticed, to hanging
29 yourself, and quite a genuine hanging attempt, not quite a
30 completely genuine hanging attempt, that happened early in
31 the morning at a time that he had planned because that was

1 a time that he didn't think that he would get found, and
2 he would be successful in his effort, so I was, I couldn't
3 understand how you could go from not being noticed to
4 hanging yourself, and so I've just started going through
5 the documents trying to understand what was going on with
6 Parvis during this time, and I also can't get really the
7 instructions from him because he's so unwell now that
8 I don't think that I'm really qualified, or he's able to
9 give solid instructions about what happened. He's -
10 I mean, I get something from the psychiatrists who I've
11 sent him off to see as part of the case - they go through
12 some of these events with him but even so, I'm still
13 perplexed as to how this can happen. But, going through
14 the documents that I see, insofar it does seem to be the
15 case that he was quietly withdrawing, becoming more unwell
16 - other detainees were saying to Mehrnoosh "Your husband's
17 becoming more withdrawn, he used to be more outgoing, he
18 used to be somebody who was strong and was, you know, a
19 person that other detainees would go to, and he's
20 withdrawing", and so while Mehrnoosh and Manoochehr's
21 problems were starting to manifest in public ways, if you
22 like, Parvis was quietly living by himself over at the
23 detention centre separate from them, an apparently
24 becoming so unwell that around April he made this attempt
25 to hang himself. After that attempt, the attention of the
26 authorities had been drawn to what was happening with him,
27 and so the things that followed were much more documented
28 in the documents that I'm looking at so far, but from that
29 first hanging attempt in April, the deterioration was
30 extreme - he made repeated serious attempts to hang
31 himself over the coming months, I think possibly up to six

1 or eight times; he did other self-harm activities, he
2 ingested fly spray - I can't think of any other different
3 types of things beside the hanging and the fly spray, but
4 it was extreme - and what's so striking about his case is
5 the response, what response was there to this man who was
6 so distressed that he was making serious hanging attempts
7 repeatedly, like one week apart. He would be put into an
8 isolation room and watched, he would - you know, the
9 treatment was he would be on observations every one minute
10 or every five minutes or every ten minutes, and in an
11 isolation room. The detainees, or Mehrnoosh calls this
12 room "the silly room" - I'm sure that's not what it was
13 known as by detention officers, it was probably called a
14 "management room" or something like that, but he would be
15 put into this room and watched. Everything that really
16 has struck me as the absence of - you know, he would see a
17 psychologist but I haven't seen the notes yet, so I'm not
18 sure what that psychologist was doing with him, but the
19 management it seems to me, at this stage, was much more
20 focussed on management rather than treatment.

21 MS JOYCE: Can you just go back a little bit to this "silly
22 room". Do you know what the conditions were like in the
23 silly room?

24 MS GILSENAN: From what I understand from what Mehrnoosh has
25 told me, I believe it was just a sparse room where there
26 weren't any equipments or places that people could hurt
27 themselves further.

28 MS JOYCE: Did he have his clothes or - - -

29 MS GILSENAN: I don't know.

30 MS JOYCE: Okay.

31 MS GILSENAN: I don't know if he was wearing his clothes.

1 MS JOYCE: Okay.

2 MS GILSENAN: I don't know. All I know is that it was a safe
3 room, if you like, in that there wasn't anything that he
4 could harm himself further on, but you know, it wasn't a
5 place where you'd see psychiatrists, for example, and be
6 treated; it was for the purpose of observation, to make
7 sure you didn't do it again, rather than for the purpose
8 of treatment to make sure that you didn't do it again.
9 Anyway, with this family, you know, in the months that
10 followed, there were repeated self-harm attempts by
11 Parvis, and this came to be mirrored in his child's
12 behaviour, so the child started slashing his wrists, you
13 know, making public, sort of, public displays of
14 desperation, if you like: "Why won't you get my father a
15 doctor, my father needs a doctor and I'm going to slash my
16 wrists unless you get him a doctor", this type of thing.
17 Eventually Parvis was hospitalised at a psychiatric unit
18 in Adelaide and, you know, at that time a more -
19 qualified, I guess - group of practitioners started being
20 involved in his case, and those practitioners
21 unsurprisingly recommended that he not be separated from
22 his wife and child any further, and that he be transferred
23 out of the detention centre environment in order that he
24 could get some proper treatment and attempt to recover
25 from what had then been diagnosed as major depressive
26 disorder. The family weren't, on the basis of, I mean,
27 you know, I can't count how many recommendations there
28 were, there were many, from different psychiatrists,
29 different psychologists, psychologists that were employed
30 by the department, employed by the detention centre
31 operators, independent, independent experts appointed by

1 the department; they all recommended that he not be
2 returned to the detention centre environment, but
3 repeatedly he was returned. Some time after that
4 admission to Glenside Hospital in Adelaide he, he and his
5 family, were transferred to Baxter Detention Centre.
6 I don't understand that that transfer was for therapeutic
7 reasons, I understand that it was for management reasons,
8 and my instructions from Parvis wife is that that transfer
9 was incredibly traumatic for the family. Instructions
10 from her are that the family was in their accommodation
11 area and that 30 guards in riot gear came to collect them
12 out of their accommodation area and move them to the
13 transport to Baxter. Parvis has described to one of the
14 psychologists who's assessed him for these proceedings,
15 that has been one of the three or four most traumatic
16 events that he's ever been part of. The instructions are
17 that the guards beat him around the stomach and around the
18 arms with batons, and that they cuffed his hands and
19 cuffed his feet for this transfer. Now, I just want to
20 take you back and remind you that this was a man who had
21 made perhaps by then, six serious hanging attempts and was
22 severely, severely sick. So that was the transfer to
23 Baxter, and I believe that there's some independent
24 corroboration of him having injuries from the restraints
25 on his wrists and ankles and some lacerations to his
26 stomach, but, you know, we're only part of the way through
27 our preparations, so I don't know yet, but that's the
28 instructions that I've been given, and that - the history
29 that Parvis has told to a psychologist who's assessed him
30 for us for these proceedings. The family remained in
31 Baxter for, I think altogether the family were in

1 detention for over two years, two or three years, so right
2 towards the end of the detention at Baxter the department
3 I think offered them to have a Bridging Visa, but for some
4 reason, and my understanding of this is a bit sketchy,
5 they had - Mehrnoosh refused the offer of a Bridging Visa,
6 she wanted the proper Temporary Protection Visa. She
7 thought that somehow accepting a Bridging Visa would
8 prejudice or make her ability to be in Australia less
9 secure than if she'd gotten a Temporary Protection Visa,
10 and shortly after that the Temporary Protection Visa was
11 in fact granted to them, but I suppose the thing too,
12 that's striking about the Yousefi case is just how unwell
13 this whole family became, and the fact that there weren't
14 any - the recommendations, and this is similar to Shayan's
15 case, the recommendations that were being made by all
16 sorts of doctors were just not being followed, and these
17 people became progressively more and more unwell. Parvis
18 was so unwell that he would be found wandering around the
19 compound at night nude wearing a beanie. He became
20 unkempt, he wasn't washing any more, he wouldn't even see
21 a psychiatrist when the psychiatrist came to see him.
22 They weren't letting people into their donga, they weren't
23 coming out, it was just - the disintegration of these
24 people who previously were well functioning adults and,
25 you know, and a young man, was just extreme.

26 MS JOYCE: So where is this case up to at this point?

27 MS GILSENAN: It's up to the point where I think we'll go to
28 trial later this year if it doesn't settle in between, so
29 we're - yeah, we're still part the way through.

30 MS JOYCE: And are you currently seeing the family or is - - -

31 MS GILSENAN: I am. I'm - - -

1 MS JOYCE: In an ongoing way, yeah.

2 MS GILSENAN: Yeah, I'm seeing them quite a lot at the moment,
3 and when I say "them" I mean Mehrnoosh primarily. I for
4 the first time heard Parvis speak the other day. He never
5 answers the phone when I calls their house, it's either
6 Mehrnoosh or her son Manoochehr, but I rang to ask them
7 some questions because I was trying to prepare something
8 for their case, and I could hear Parvis in the background,
9 I could hear Mehrnoosh translating what I was saying to
10 her in English, into Farsi, and the information that I was
11 trying to get coming back to me, because they were
12 questions - the questions that I had were only questions
13 that Parvis would know the answer to because it was during
14 the period that Mehrnoosh and Manoochehr were living
15 separately to him, so I heard his voice which was a
16 breakthrough, I suppose.

17 MS JOYCE: Yes.

18 MS GILSENAN: But, yeah, I'm seeing a lot of Mehrnoosh at the
19 moment, trying to prepare their case and work out details
20 of what really happened.

21 MS JOYCE: So this is very much an ongoing story for you and
22 for them.

23 MS GILSENAN: It is, it is.

24 MS JOYCE: Do you want to just close the interview with a
25 little bit of - a reflection on how this might have
26 changed your life or influenced you personally, or
27 impacted on you?

28 MS GILSENAN: I think the thing - there's two things that have
29 really struck me about these cases. The first thing is
30 the absolute bloody-mindedness of the response to these
31 people's plight. I just can't understand how sick people,

1 people who become sick in this system, encounter the
2 responses that they did, the bloody-mindedness of - later
3 today I'm giving a talk about Shayan Badraie's case and
4 I have a document that we discovered in the course of the
5 trial where a minute had been prepared for the minister
6 setting out all the things that all these doctors that
7 I've talked about earlier had said about Shayan and how
8 unwell he was and that how important it was that he be
9 released from that environment so that he could hope to
10 recover, and the response to that recommendation was
11 written on the document and it says, "Buckley's",
12 "Buckley's" chance. And the second thing I wanted to say
13 is I just can't believe that that happens in our country
14 in Australia, I just - it was done a long way away from
15 people who care about these things and who notice them. It
16 was done out in the desert in South Australia and for a
17 long time none of us really knew what was going on, and
18 seeing what was going on through these cases that I've
19 worked on, I'm horrified that this happened in my country.

20 MS JOYCE: Well, I'd like to thank you very much for your
21 interview, Rebecca, and for sharing your knowledge and
22 experience for the detentioning and the project. We
23 appreciate that very much.

24 MS GILSENAN: It's my pleasure, thank you for interviewing me.

25 MS JOYCE: And we wish you well.

26 MS GILSENAN: Thanks.

27 MS JOYCE: For the continuing case.

28 MS GILSENAN: Thank you.

29 MS JOYCE: Thank you.

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