That Roosevelt

Penn Law professor, legal scholar, and novelist Kermit Roosevelt III is doing his best to live up to the family name—including, in his latest book, by tackling cousin Franklin's executive order authorizing the confinement of more than 100,000 Japanese Americans in internment camps during World War II.

BY JULIA M. KLEIN

In September 2006, the Penn law professor's phone rang. On the line was a military defense attorney, a reservist trained in tax law.

His client was not an alleged tax evader, however, but a 35-year-old Afghan man suspected of terrorist activities. Abdul Zahir had been in a car in Zormat, Afghanistan, when another man riding with him allegedly threw a grenade at a group of foreigners. Zahir, whom the government said was a translator and money courier for al-Qaeda, had been picked up in 2002 and was being detained at Guantánamo Bay Naval Station. Now he could face a military commission, and the tax lawyer thought a constitutional-law expert would be a useful addition to the defense team.

Kermit "Kim" Roosevelt III—former clerk to US Supreme Court Justice David H. Souter and great-great-grandson of President Theodore Roosevelt, not to mention a distant cousin of FDR—eagerly signed on to the *pro bono* case.

"I said, 'Absolutely, this is important, because I want to make sure that we don't bend the Constitution in order to get these bad guys,'" Roosevelt recalls. "But I said, 'I'm just here for the legal, constitutional stuff. I don't want to be involved in defending anyone on the facts, because they're bad guys.'"

But just how bad a guy was Zahir?

"The government kept saying, 'If you could see the classified evidence, you'd understand why we're doing this, and how this guy's so terrible.' But, eventually, I got a security clearance, and I did see the classified evidence, and they really had nothing on him."

One mid-summer night in 2008, the phone rang again. This time the caller was an official at Guantánamo asking Roosevelt to advise Zahir to consent to an operation to restore movement to his paralyzed legs. Roosevelt did. But the real question was why Zahir needed the operation in the first place.

Zahir's story, which Roosevelt says has never been contravened, was that one night, from about 11:30 p.m. to 1:30 a.m., he had been put outside his cell in heavy rain. "And he didn't like this, so at the end of the [time] he refused to come in. So they called an Emergency Response Force, which went out and cuffed his wrists to his ankles and jumped up and down on his back, with the result that he was paralyzed.

"So then they did this operation," Roosevelt says. "But then the truly horrifying part is, about a week later, there was an op-ed in the *Wall Street Journal* by the former commander of Guantánamo, a guy named Mark Buzby. The title was, 'Guantánamo is a model prison (really).' And it talked about the great medical care that is provided to Guantanamo detainees," citing Zahir's successful surgery.

 PHOTOGRAPH BY CANDACE DICARLO

Zahir has now spent more than 13 years at Guantánamo, often in pain, and at times expressing the desire to die. Though he was never formally charged with a crime, he is "considered too dangerous to release"—possibly because he would talk about his treatment there, Roosevelt suggests. Because the case never went to trial, "I did nothing for him," Roosevelt says, "and I feel very sad about that."

But the prisoner did something for him.

"That experience," he says, "is the emotional backdrop" for Roosevelt's second novel, *Allegiance* (Regan Arts, 2015), which pivots on the controversial World War II internment of more than 100,000 Japanese Americans. "It's the experience of learning what your government has done for you—and thinking it should *not* have done this."

A worn paperback copy of Scott Turow's classic legal thriller, *Presumed Innocent,* sits on a bookshelf in Roosevelt's Law School office, a windowed enclave strewn with piles of books and papers. Along with other popular lawyer-writers like John Grisham and Lisa Scottoline C'77 L'81, Turow is a mainstay of Roosevelt's creative writing seminar, open to 14 law students each spring. He also is a literary model for Roosevelt, who would like his own novels to reach a similarly wide audience.

Roosevelt's shelves and piles reflect the range of his projects. Alongside family photographs, a bobble-head doll of Justice Souter ("a wonderful man and a truly great judge," Roosevelt says), and a piece of coral from Guantanamo is stacked background reading on World War II and Philadelphia history that he used in writing *Allegiance.* He's currently stockpiling "fantasy paranormal" research, including Milton's epic poem *Paradise Lost* and Bram Stoker's *Dracula,* for a novel-in-progress featuring "a law professor, demons, early Christianity, [and] Judas," he says.

Other shelves support materials on his two legal specialties, constitutional law and the arcane field of conflict of laws, on which he's written numerous articles and two books. In *The Myth of Judicial Activism: Making Sense of Supreme Court Decisions* (Yale University Press, 2006), he argues that the term *judicial activism* is all-but-meaningless—"a rhetorically charged shorthand for arguments the speaker disagrees with"—and proposes the substitute concept of "legitimacy," meaning that "the chosen resolution is within the realm of acceptable judicial behavior." *Conflict of Laws* (Foundation Press, 2010; 2nd edition, 2014) offers what the publisher's website calls "an analytical overview of the field of conflicts, explaining all major choice-of-law approaches in simple and straightforward text."

At the behest of the influential American Law Institute, Roosevelt and a co-author are currently working on the third official "Restatement" of the field, designed to pick "the most desirable of competing approaches." Roosevelt says the project has been a longtime fantasy of his, ever since a Yale Law School class illuminated what a "mess" the subject was.

"It struck me," he says, "as chaotic and confused—so many different states doing different things, and courts frequently complaining about how complex and unpredictable the whole process was—and I thought then that this was an area where someone could do a lot of good by writing a Third Restatement to straighten things out. And like a child looking up at the moon and dreaming of being an astronaut, I dreamed that that person could be me."

Rounding out his office library are various Roosevelt biographies, including Doris Kearns Goodwin's 2013 tome, *The Bully Pulpit: Theodore Roosevelt, William Howard Taft, and the Golden Age of Journalism.* Roosevelt has literary ambitions in this area, too: He is contemplating writing a book on father-son relationships within his storied family, starting with Teddy and *his* father.

Nearby is Brigid Schulte's *Overwhelmed: Work, Love, and Play When No One Has the Time.* "A book that I'm trying to find time to read," he quips.

The gentle, wry humor is typical, both of the man and of his writing. Roosevelt's incisive mind—he graduated *summa cum laude* and junior Phi Beta Kappa in philosophy from Harvard College, and received Yale Law School's Israel H. Peres Prize for best student contribution to the law journal—is paired with a charming, decidedly modest demeanor. Slight and slim, he looks younger than his 44 years and dresses with a typical academic's rumpled informality.

"He's a very private person," says Tom Baker, a Law School colleague and frequent squash partner whom Roosevelt describes as his closest law faculty friend. (Roosevelt is faculty adviser to the men's squash team.)

"Kim is a very low-key guy, especially given his pedigree," echoes fellow lawyer-novelist Andy Abramowitz, Roosevelt's neighbor in the city's Logan Square area. "He's very humble."

Abramowitz received evidence of this early in their acquaintance when he innocently asked, "Are you the Roosevelt of the Roosevelt Pub?" referring to a now-defunct Center City hangout known for its cheap burgers and beer. Another friend later set him straight ("'Andy, you idiot—he's the *other* Roosevelt, the one who's related to the president'"), but Roosevelt himself said only, "No, I'm not that Roosevelt."

"He didn't want anyone to think he got anywhere because he had that name," says Roosevelt's wife, Felicia Lewis. If anything, "it might have given him a little extra impetus to do well." The Yale-educated infectious-disease specialist, who met her husband in 2004 at a Philadelphia dinner party, describes him as "boundlessly optimistic," "able to grasp things incredibly quickly," and "relatively mild-mannered."

Second-year law student Bob Teoh, who took Roosevelt's required first-year constitutional law class, calls him "an extremely charismatic professor who really knows about the law." Teoh adds: "He's really great at crafting stories, but he also engages you. Even though it was an 80-person class, it felt like a conversation between people talking about law and history."

Roosevelt is equally passionate about his popular creative-writing seminar, which always has a waiting list. Even for law students who don't see themselves as future Turows (or Roosevelts), "the techniques of creative writing are actually very helpful," he says. Litigation, after all, involves "telling a story to the judge or the jury," while the other side tells another story, with "a different hero and villain." The litigator's job is "to convince the judge and the jury that [his] story is the true one."

In Roosevelt's own fiction, he tries to write characters with whom he feels an emotional connection, "so there's something

about the character that I can understand and almost feel myself. Because when I write the character I do try to inhabit them, and think like them, and ask myself, 'What would I do now?' rather than look at them from a distance and say, 'What would that person do?'"

His first novel, *In the Shadow of the Law* (Farrar, Straus and Giroux, 2005), a multigenerational epic about a Washington law firm, drew on Roosevelt's two years of practicing big-firm law at Mayer, Brown and Platt in Chicago. Writing in *The New York Times*, Alan Dershowitz called the book "an impressive first novel" and commended its "gritty portrayal of the transformation of bright-eyed and colorful young associates into dim-eyed and gray middle-aged partners"—a fate Roosevelt nimbly dodged by decamping to academe. (On the strength of his early publications, Penn hired him directly from his Supreme Court clerkship, but allowed him to defer his start to acquire some hands-on appellate experience.)

Allegiance benefits from Roosevelt's insider knowledge of the Supreme Court, transposed to the 1940s. The book is also a thriller, a *Bildungsroman*, and a love story (in fact, two). Its complicated murder mystery is grafted onto a fact-based backstage drama, involving the court, the executive branch, and the fate of Japanese Americans. The echoes of Guantánamo are deliberate. "The story of America," Roosevelt writes in an author's note, "is a story of trying to live up to our ideals, of falling short, and of trying again."

Roosevelt's protagonist, Caswell "Cash" Harrison, is a scion of the moneyed, insular Main Line, a man of impeccable Establishment pedigree. After Pearl Harbor, he is desperate to enlist in the Armed Forces. Ruled medically unfit, he instead lands a job as a clerk to Justice Hugo Black, and then as a Justice Department lawyer. (Harrison's tennis games with Justice Black are modeled on Roosevelt's matches with Justice Antonin Scalia during his clerkship.) Along the way, Harrison helps litigate Japanese American cases, visits the Tule Lake internment camp, meets J. Edgar Hoover, and occasionally pines for home—when he isn't busy investigating why one of his fellow Supreme Court clerks ended up dead, or dodging bullets himself. In the process, he will transcend his privileged upbringing and enlarge what Kim Roosevelt, quoting Francis Biddle, Franklin Roosevelt's attorney general, calls his "compass of sympathy"—the book's original title.

Writing in the *Wall Street Journal*, David Lat lauded *Allegiance* for its "meticulous portraits of the Washington legal world, Philadelphia high society and the West Coast internment camps," as well as the "profound questions that it raises—about the powers of the president in times of war, the tensions between liberty and security, and the role of the courts in resolving those tensions."

Roosevelt says he wrote his first short stories in third grade, and started his first novel in sixth. He quit after 100 pages: "I sort of lost patience and killed all the characters off. A dragon killed everyone."

His eighth-grade ethics and social studies teacher at the private St. Albans School in Washington, Hugh Taft-Morales, remembers Roosevelt as a "relatively quiet" student who sat off to the side to observe the class and was "always listening, always thinking." Taft-Morales says that even then Roosevelt's writing was "very precise"—so much so that the teacher held on to his paper on the philosopher David Hume, returning it when the two reunited in Philadelphia decades later. As a graduating senior, Roosevelt was named a US Presidential Scholar, an honor accorded to only about 160 high school students each year.

An academic whiz kid, Roosevelt has had a slightly bumpier road as a writer of fiction.

Before *In the Shadow of the Law* was published, he says he wrote three other novels—all heavily autobiographical—that never made it to print. "The first one was ... about my experiences in college," he says. "The second one, which I wrote after I graduated, was about recent college graduates. But rather than living in Cambridge, as I was, I [had] them living in DC, where I'd grown up. So I was slowly getting a little farther away from my experiences. So for my third one, when I was in law school, I wrote about students in a philosophy graduate program."

> "In this case [FDR] just failed. The welfare of the Japanese American population was not very high on his list of priorities."

For Roosevelt himself, that was a road not taken: though he had studied philosophy at Harvard, his parents convinced him that law school was a more practical path—to teaching, making a living, and affecting real-world problems.

His choice likely was reinforced by his skepticism about the field, reflected in his undergraduate thesis, on "later Wittgenstein" and his attack on traditional philosophical problems as "pseudo-problems" resulting from linguistic confusion. Roosevelt agreed with Wittgenstein, "which, in one sense, makes it natural that I would not go on to a graduate career in philosophy," he says. On the other hand, "a lot of my legal scholarship is trying to do the same thing—trying to untangle conceptual confusion where we think there is some distinction or question, but actually it doesn't really exist."

Initially, adjusting from philosophy, with its focus on "very fine distinctions and very particular details," to the law entailed a "hiccup," Roosevelt says. He cites the question in contract law of what counts as adequate consideration to form a contract; preexisting legal duty, for example, doesn't qualify. "For a philosopher," he says, "it's very interesting to explore the boundaries of that concept. So I said, 'What if I promised to do something that I have no obligation to do, but it would be impossible for

me *not* to do—so I promise not to travel faster than the speed of light?' And the professor was like, 'What?'

"I was trying to explore the limits of the concept," Roosevelt explains, "because in philosophy that's where the action is. In law you're more interested in what happens at the heart of the concept." In the end, he says, "I figured it out."

Roosevelt says he'd hoped he wouldn't have to finish law school—that he could instead have published the novel he was working on at the time. When that didn't happen, his fallback was an academic legal career.

After securing a clerkship for a federal appeals court judge in Washington, he applied for a highly coveted Supreme Court clerkship. Initial screenings often are conducted by past Supreme Court clerks, and Roosevelt's interview for Justice Clarence Thomas brought him face to face with John C. Yoo, a 1994-95 Thomas clerk. Later, as a deputy assistant attorney general in George W. Bush's Justice Department, Yoo would be associated with the so-called Torture Memos justifying "enhanced interrogation" techniques. At the time, Roosevelt says he probably failed to pass muster with Yoo because he was "insufficiently devoted to originalism."

He later interviewed with two other conservatives—his future tennis partner Justice Scalia and Chief Justice William H. Rehnquist—before talking with Justice Souter. The Rehnquist interview "went south" the moment "I tried to talk to him about my philosophy undergraduate thesis," Roosevelt recalls. "He stared at me for a while, and said, 'Philosophy always leaves me feeling I've gone out the same door I came in.' I tried to say that Wittgenstein had the same view, but he wasn't really interested."

From Justice Souter, a President George H.W. Bush appointee who would increasingly side with the court's liberals, Roosevelt says that he "learned something about the practical side of judging." In one case, the justice rejected Roosevelt's complex theoretical take on an issue. "He understood that the best is the enemy of the good," Roosevelt says. "If you're trying to come up with a rule that gets you the right answer in every case, and you come up with something very complicated and hard to apply, you can produce more error."

One of the most memorable portraits in *In the Shadow of the Law,* whose characters represent different values and perspectives on the legal system, is that of a brilliant but morally suspect former Supreme Court clerk named Walker, who "is supposed to be a purely abstract theoretical person who cares about the law and not people," Roosevelt says. Walker's devotion to the law's "beauty and coherence and elegance" comes at the expense of empathy, a recurrent preoccupation of his creator. "And part of the reason that I felt that it was okay to give him so much biographical overlap with me was that I was sure people would not mistake him for my alter ego, because he's a bad character," Roosevelt says. When some readers nevertheless did, "I was horrified."

The first Kermit Roosevelt during an ill-fated 1913 expedition to the River of Doubt in the Amazon, where he saved his father Theodore Roosevelt's life.

Roosevelt is descended from Theodore Roosevelt and his second wife, Edith Kermit Carow Roosevelt; he's also the second cousin, four times removed, of Franklin Delano Roosevelt.

His old teacher Taft-Morales is a great-grandson of President (and Chief Justice) William Howard Taft, TR's friend and later rival, and the two have compared notes on the presidential lineage issue. They share "an attitude that it's nothing that we've done—we haven't earned it," says Taft-Morales, now leader of the Ethical Humanist Society of Philadelphia and the Baltimore Ethical Society. "There's an acknowledgment of having a responsibility to use your resources to try to make the world better. Cashing in on fame—that's almost the reverse of that civic obligation."

However chary he may be of capitalizing on his heritage, Roosevelt inevitably has been shaped by it. His preoccupation with the contours and limits of American democracy is at once fitting, layered, and ironic: When he criticizes the internment of Japanese Americans, he is attacking his own cousin's decision to sign the infamous executive order that made it possible.

"FDR was a great president," Roosevelt told a group of Penn law students at a talk last fall about *Allegiance.* "I think FDR was a good man—he had more empathy than you might have expected for someone of his background. But in this case he just failed. The welfare of the Japanese American population was not very high on his list of priorities."

Roosevelt calls his heritage "a gift," not a burden. "I felt some pressure, I think, to not squander the opportunities that I had been given," he adds. "Because I certainly did understand that I was lucky to be born in the circumstances I was. And I guess I felt some pressure toward public service, to do something good, to contribute something to the national welfare."

Roosevelt is the fourth Kermit in his family line. Alternate Kermits are called *Kim* in a mostly futile bid to avoid confusion. "Who can keep track?" says Lewis.

The name is a legacy of TR's wife Edith's family. Her second son, the first Kermit Roosevelt, was a talented businessman and adventurer who saved his father Teddy's life in the Amazon but met a dismal death himself. Roosevelt says that his great-grandfather "had a sort of pathological need for adventure—it's a trait that TR sort of had, but not in quite the same way. But Kermit, I think, got depressed if he wasn't stimulated by the next danger. Particularly after his father died, he kept trying to find that, and when he couldn't find it, he became an alcoholic and his life sort of fell apart." He left his wife for a mistress and eventually committed suicide. "It was very sad in the end," Roosevelt says. "He had a pretty great life up to the point that his father died, I would say, and after that it kind of went off the rails."

Roosevelt's grandfather was notorious in a different way: As a Central Intelligence Agency operative, he engineered the coup that unseated a democratically elected prime minister and installed Mohammad Reza Pahlavi as the Shah of Iran.

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His 1979 memoir, *Countercoup: The Struggle for the Control of Iran*, detailed his exploits. A *New York Times* obituary called the action "the CIA's first successful overthrow of a foreign government" and reported that Roosevelt declined the chance to stage a similar coup in Guatemala.

Kim Roosevelt's memories of his grandfather are more intimate. He recalls the second Kermit Roosevelt as a "quite reserved" man who enjoyed reading "The Night Before Christmas" to children in the family on Christmas Eve. "I also remember beating him at chess, which seemed to vex him," he says.

"I'm not sure that he influenced me directly, but I think there is a family resemblance between him, my father [a retired lawyer], and me—we're all pretty quiet by nature. That's diminished a bit over the generations and also in part because my teaching requires me to perform for an audience, but it's still my first impulse to be quiet and observe."

If there are have been four Kermits, how is it that Penn's is only Kermit Roosevelt III?

"There's an argument about it on Wikipedia," he says, with the barest trace of irritation. "I tried to explain it. They would not accept that I was an authority on what my name was. They wanted me to be the fourth."

And the reason he isn't?

"I was the third because I was the third living Kermit when I was born, and that's how they were doing it—they were updating when people died," he explains. To add another wrinkle, Roosevelt balked at going from *III* to *Jr.* after his grandfather's death in 2000. "I said, 'That's crazy. I have a professional identity, I've published everything as Kermit Roosevelt III,' so that people know it's me and not my father. And then if I say I'm Kermit Roosevelt Jr., nobody will be able to keep it straight. I get emails that are intended for him all the time anyway."

Roosevelt insists there was no family pressure to continue the tradition into the next generation, but Lewis told her husband, "I'm not going to be the person to break the Kermit chain."

They didn't have to deal with issue when their first child was born, since Rana, now eight, was a girl. When their son arrived, they decided to name him Kermit Maron, "so he didn't have to get a numeral," Roosevelt says. The boy turns four in April, and his parents call him Maron. "I like [Kermit]. It's a good name. But I tried to spare him the confusion," Roosevelt says. "*Kermit* is there if he wants it. We'll see what he calls himself."

Roosevelt got his first big literary break when his agent inked a two-book deal with Farrar, Strauss and Giroux on the strength of a draft of *In the Shadow of the Law.* His model for the book, Roosevelt says, was Turow's 2002 novel *Reversible Errors*—but as though it had been written by Jonathan Franzen, known for his vivid portraits of contemporary American life. "The offer to publish with FSG and Jonathan Galassi [the imprint's president and publisher], who worked with Turow and Franzen, was incredibly attractive to me," he says.

The collaboration went smoothly—Galassi helped him develop his characters and the firm's backstory—and he sold the dramatic rights to Paramount. (Roosevelt did some writing on the CBS television-series pilot, which starred Frank Langella, but the show was never picked up.)

It was Galassi who suggested the Supreme Court as the backdrop for Roosevelt's second novel. He liked the idea, but worried about people "thinking that I was revealing secrets that I'd learned during my clerkship with Justice Souter," he says.

His wife suggested setting the story in the past—and Roosevelt landed on the 1940s, with its resonant contemporary parallels. As he explained in his talk at Penn: "There's a shocking attack that strikes us in a way we didn't think was possible. There's a president expanding the power of the federal government, asserting that he can do whatever is necessary to protect the nation in wartime. And there are several Supreme Court cases about the limits of government authority."

Both eras suggest a recurrent cycle in American history. "In times of national insecurity," Roosevelt says, "we get scared, we face a threat, and we react by taking strong measures. In the name of national security, we do what must be done to keep America safe. Then the threat abates, the fear subsides, and, looking back, we decide that maybe we made a mistake, we overreacted, we did some things that weren't necessary ... that maybe were wrong, that weren't consistent with our values as a nation, with the kind of people that we want to be. So we do an investigation, we write some reports, sometimes we even change our laws to ensure that it won't happen again—but it does."

Roosevelt's first draft of *Allegiance* relied on the history, and Galassi suggested that he add the thriller plot. "And what I tried to do with the conspiracy murder mystery," Roosevelt says, "was illuminate the same themes—about loyalty and identity and trust." But after Galassi rejected his third draft, Roosevelt and FSG parted company, and the book was published by Regan Arts, headed by the flamboyant and sometimes-controversial Judith Regan.

The murder plot remained. So did the protagonist's strong autobiographical echoes. "He's supposed to be an insider," Roosevelt says, "someone who has nothing to fear from the government, who strongly identifies with the government and really can't believe that the government would be doing something wrong. And he's going to come to a greater awareness of the realities of the world."

Like Roosevelt himself, after Guantánamo, after Zahir.

Roosevelt's novels so far haven't reached a mass audience, perhaps because of their complexity. ("What Kim thinks sometimes is glaringly obvious is [often] extremely subtle," his wife says.) But he is hoping that his next book will strike commercial gold. "This one," he says, "is supposed be *The Da Vinci Code* as written by Lev Grossman," author of the fantasy trilogy, *The Magicians*.

"The idea is that there are demons who are sort of like vampires. They don't actually suck blood—it's more like they feed on human despair." The plot, he says, was inspired by the real-life discovery of the Gospel of Judas, telling "a different version of the Crucifixion, in which Judas is a good guy." Roosevelt says he is trying to re-imagine the origins of Christianity, the relationship between Jesus and Judas, "and how it plays out in a modern-day struggle between good and evil."

The devil, one suspects, is in the details.◆

Julia M. Klein, a cultural reporter and critic in Philadelphia, has written for *The New York Times*, *Wall Street Journal*, *Mother Jones*, *The Nation* and other publications. Follow her on Twitter @JuliaMKlein.