

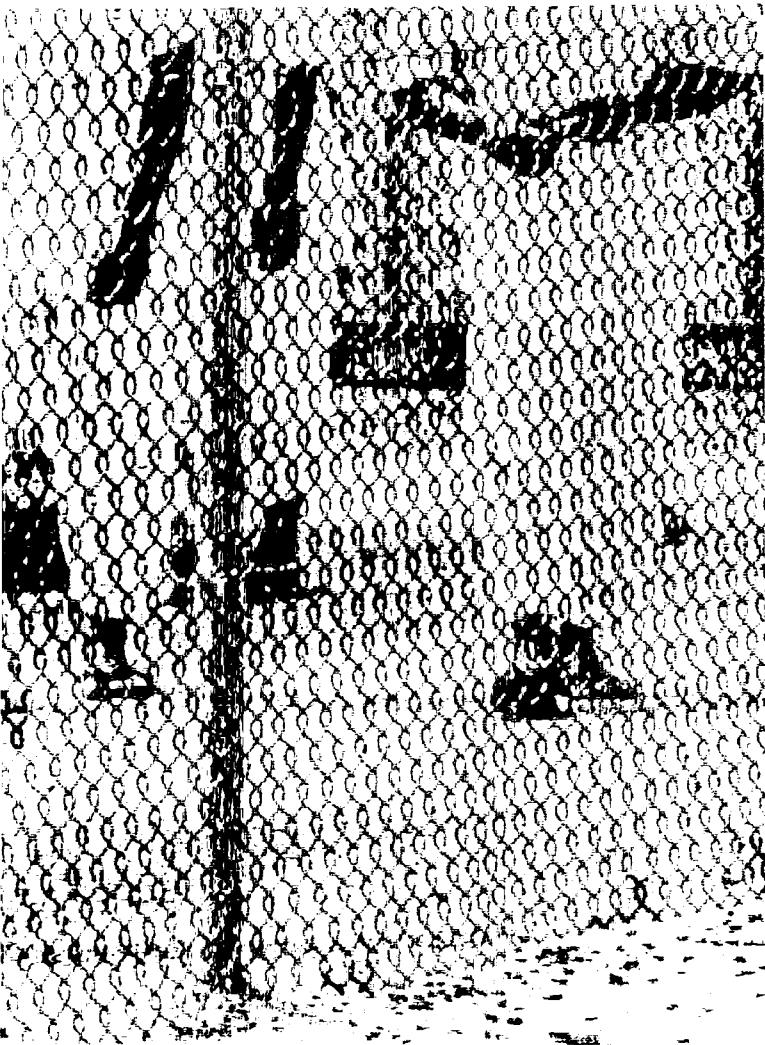


Cover
Story

Guantanamo

■ By Corine Hegland

You may have seen an image of Detainee 032. He came to Guantanamo Bay early on, a slender 18-year-old Yemeni among the anonymous men who knelt, dressed in orange, for the photographs viewed around the world. He was there on January 27, 2002, when Defense Secretary Donald Rumsfeld took four senators to see the “most dangerous, best-trained,



Farouq Ali Ahmed appears to be neither a terrorist nor an enemy. But he has spent the past four years behind bars, and no end to his captivity is in sight.



Caribbean Confinement
Detainees pray with prayer beads in the courtyard of Camp 5 at the Guantanamo naval base. Some 500 prisoners remain; most have been held there for four years.

Guantanamo's Grip

vicious killers on the face of the earth." He was there two days later, when President Bush proudly declared in his State of the Union address that the "terrorists who once occupied Afghanistan now occupy cells at Guantanamo Bay," and he was there one week later when Bush firmly and finally ruled out prisoner-of-war status for any of the men held at Guantanamo.



❑ Farouq Ali Ahmed, then a 17-year-old from Yemen, says he was teaching the Koran to young Afghans on September 11.

❑ One detainee identified Farouq as a guard at bin Laden's airport; another said he was captured with Arab fighters.

❑ The first accuser lied about other Yemeni detainees; the second suffered a mental breakdown during an intensive, months-long interrogation.

Like many of the men who came handcuffed to Cuba, Detainee 032 has never been accused of fighting against America. He fell into U.S. custody far away from any battlefield. But today, after four years of interrogations and investigations, he is still an "enemy combatant," even though he was never an enemy or a combatant. He is something else: something that might be dangerous or might not. But he's securely in our custody, and raise your hand if you want to be responsible for releasing the man who next flies an airplane into a skyscraper.

In some other world, one where the earth still turned west to east instead of inside out as it did on September 11, 2001, Detainee 032 would be finishing college this year, like his brother, father, and uncle before him. In this world, he's beginning his fifth year in prison, with neither charges nor freedom in sight.

"No Court, Justice, or Judge ..."

David Remes, a veteran litigator at the Washington law firm Covington and Burling, spotted the first sign of trouble over his morning coffee on November 8 last year. He was reading a *Washington Post* story about the Supreme Court's decision to accept a challenge to the military commissions that had been set up to decide the fate of a handful of Guantanamo detainees. The military lawyers defending the men had sued the government, arguing that the proposed proceedings fell outside any military, criminal, civil, constitutional, or international law that they had ever heard of. Turning to the jump page of the *Post* story, Remes saw an unexpected item in the penultimate paragraph, a report that Sen. Lindsey Graham, R-S.C., hoped to "add language to the Defense authorization bill that would eliminate habeas rights for detainees captured during the terrorism fight, to halt 'the never-ending litigation that is coming from Guantanamo.'"

Outside of the Ten Commandments, laws don't come much more primal than habeas corpus. It's an ancient bulwark

against imprisonment without charge; the medieval Latin phrase, roughly translated, means "You have the body." Bringing a habeas petition forces the jailer to explain why he's holding the petitioner. Habeas corpus predates even the Magna Carta of 1215. The right is enshrined in the U.S. Constitution, and on June 28, 2004, the Supreme Court said it extended to the detainees at Guantanamo Bay.

Upon reading of Graham's intention, Remes, who has 17 habeas petitions in court on behalf of Guantanamo prisoners—including one for Detainee 032—fired off an e-mail to the 500-plus lawyers volunteering their services for the detainees. The lawyers started asking around: "Does anybody know anything about this?"

It was the first any of them had heard of Graham's proposal. "We're not lobbyists, we're litigators," one lawyer later moaned, recounting the ensuing panic. They had spent a year and a half duking it out in court with the Bush administration's attorneys, slowly forcing the executive branch to explain why it was holding individual men—132 such explanations so far. Two federal judges had split over the habeas petitions. One declared that the men had a right to court; a second said they did not and granted the government's motion to dismiss the cases. Everybody was waiting for the U.S. Court of Appeals for the D.C. Circuit to speak about the conflicting decisions, and whatever the appeals court ruled would likely head to the Supreme Court. The lawyers had simply never considered any role in this dispute for the third branch of government, Congress. It was as though they were playing checkers and winning—only to discover that the game was chess.

The attorneys scrambled into a full-court press, calling their senators, writing editorials for local and national papers, walking the halls of Congress. But it was already too late. A week later, Congress passed the Defense authorization bill, including

the amendment, which had been somewhat modified by Sen. Carl Levin, D-Mich. President Bush signed the bill into law on December 30, and on January 6 the Justice Department began asking judges to dismiss the cases.

But the game is not over yet. The Graham amendment leaves detainees one avenue of judicial appeal. They can challenge the process by which they were designated "enemy combatants" before the U.S. Court of Appeals for D.C., although the court's jurisdiction stops when the men are removed from Guantanamo Bay. The appeals court typically takes months, if not years, to work through a case. Furthermore, a narrow interpretation of the amendment means that the men might be able to challenge only the process—the dotting of i's and the crossing of t's—not the underlying facts.

More promising for the advocates, the Center for Constitutional Rights, which has coordinated the pro bono detainee effort since 2002, filed habeas petitions on behalf of every remaining man at Guantanamo before Bush signed the bill. The lawyers intend to argue that the legislation can't strip courts of their ability to hear pending cases, a position bolstered somewhat by Levin's contention that the bill was never intended to affect those pending petitions.

The amendment's language, though, is stark: "No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba."

Law of War

Most of the lawyers who represent the detainees say they volunteered their services because of a gut impulse about the importance of due process; they didn't spend a lot of time musing about why due process exists. Their prospective clients, they thought, were probably terrorists, the infamous "worst of the worst." They may have killed Americans in Afghanistan; they may have helped to kill Americans in America. Still, even terrorists are entitled to their day in court. Lawyers don't take kindly to being told that their skills aren't needed.

"These are people picked up off the battlefield in Afghanistan. They weren't wearing uniforms, they weren't state-sponsored, but they were there to kill," President Bush said last June, after Amnesty International criticized Guantanamo as the "gulag of our times."

But a battlefield implies stark lines of separation: Here, I'm trying to kill you. There, you're trying to kill me. Battlefield justice is swift, proximity implies culpability, and buzzing bullets brush aside legal niceties. The farther you move from the bullets, however, the grayer and messier the lines become. If the law of war surrounds the battlefield, and you know what to do with men who are captured with guns in hand, then consider this: More than 3,000 Taliban fighters surrendered to Gen. Rashid Dostum, a U.S. ally in the anti-Taliban coalition, at Konduz, Afghanistan, in November 2001. The agreed-upon surrender terms were that Afghan nationals would be allowed to put down their weapons and go home but that any foreign fighters would be placed in U.N. custody. Instead, Dostum, acting in accordance with his historical disregard for human life, locked them all into airtight container trucks. Some sympathetic Afghan drivers punched

holes in the trucks and passed water to the prisoners when the general's men weren't looking, a crime for which one driver was brutally beaten, they later told *Newsweek*. When the trucks finally arrived at the Sheberghan prison in northwest Afghanistan, dead bodies spilled out. How many of the men died isn't clear: Nobody has exhumed their mass grave, although both the United Nations and the Physicians for Human Rights have identified its location as only a few minutes from the prison.

Some of the men who survived that convoy are at Guantanamo, and clearly, they were captured on a battlefield. But if proximity implies culpability, how do you justify the detention of so many others in Cuba who were arrested far from any Afghanistan front? How about the aid worker sleeping at home in Karachi, Pakistan? How about the men arrested in Sarajevo and sent by the Americans to Guantanamo even though they were clutching their exoneration-from-terrorism papers issued by the judge who had reviewed their cases? How about miscellaneous Arabs—some fighters, some not—who together with other refugees passed through Afghanistan's borders as war arrived? How about two British Muslims arrested as they stepped off a plane in Gambia? How about a hypothetical little old lady in Switzerland who writes checks to a charity, not knowing it's a terrorist front, but who a government lawyer nevertheless conceded in court could be properly termed an enemy combatant? The law of war has come far in a century of genocides and massacres and nuclear bombs. But has it come so far that when Al Qaeda made the entire world a battlefield, all of the world's population fell under the law of war?

As the U.S. government started putting its cards on the table, explaining why the men described above, and others like them, were still behind bars, the habeas lawyers started to ponder more deeply what happens to justice—even in a wartime setting—when you strip away due process and the presumption of innocence.

The government told the lawyers that their clients were all well-trained liars. But as the lawyers read the files, they started to wonder whether they were facing an impossible paradox: After all, if a well-trained liar looks like an innocent man, what does an innocent man look like, if not a well-trained liar?

Detainee 032

Back before everything happened, before the world came unhinged, Detainee 032 was a boy of 16 living in Yemen with his mother, his father, his four sisters, and his five brothers. His name was Farouq Ali Ahmed, and he studied Islamic law in high school.

One day, the boy made a solemn vow before God: If it was God's will that Farouq commit the Koran to memory, more than 6,000 verses in all, he would spend a year, before he went off to college, teaching the holy texts, in Afghanistan. A man who did this thing, he'd been told, would be rewarded by God.

Any number of young men in those years set off for Afghanistan with their heads full of God. The land of the Hindu Kush mountains was a broken Islamic nation, in desperate need of succor. Some tales say that the Taliban rose to power after young ethnic Pashtuns executed an Afghan warlord for raping two young girls; others say a single young boy was the victim. Regardless, the men from the eastern mountains had rallied under the name of the Taliban, "the students of the book,"

“Terrorists who once occupied Afghanistan now occupy cells at Guantanamo Bay.”

—President Bush

and they promised stability and a return of piety in a country sick to death of two decades of war. Fighting continued in the north, with the Northern Alliance and the Taliban trading atrocities as they traded ground, but the land under the Taliban's control remained stable, if barbaric.

World governments shunned the Taliban, which gained diplomatic recognition from only three countries—Pakistan, Saudi Arabia, and the United Arab Emirates—but conservative and radical imams throughout the Islamic world exhorted followers to help their Afghan brothers defend Islam against those who would destroy it: the Tajiks, Uzbeks, and apostate Shiite Hazara of the Northern Alliance. Osama bin Laden came early on; his Arab fighters helped the Taliban soldiers and trained new arrivals.

Nearly all of the foreigners who came to Afghanistan for jihad came to fight not the United States but the Northern Alliance. Some put in a few months of fighting in the north before returning home, their Islamic duty done; some stayed longer. One man in Guantanamo, asked whether he was a member of Al Qaeda, replied simply, "I do not know. I am an Arab fighter."

Others didn't go to Afghanistan to fight but to help in other ways, or just to work and live. The Arabs in Afghanistan, according to Barnett Rubin of New York University, who has studied the country since the 1980s when the United States funded the mujahedeen fighting the Soviets, weren't all jihadist fighters, any more than all Westerners in Afghanistan at the time were CIA operatives—although many in both groups properly fell under those assumptions. "Arabs went there for a lot of reasons," Rubin said. "There were humanitarian organizations, religious missions, and adventure-seekers." A Christian nonprofit group, Save the Children, had workers providing schooling and medical care. Muslim organizations ran clinics and schools and dispensed what aid they could; U.N. workers provided daily bread for more than 3 million people.

And some Arab men went to Afghanistan to teach the Koran in an Islamic land where few could read the word of God.

Such was Allah's will that in the spring of 2001, Farouq, then 17, set off for Afghanistan. He took a little room in a big house in Kabul and began teaching 7- and 8-year-olds, gathering four or five of them together and reciting Allah's words until the children had them memorized. It wasn't easy work. The Koran is always taught in Farouq's native language, Arabic, which the Afghan children didn't understand, and Farouq didn't speak their language. But he had made an oath to Allah. After a few months, he moved to the city of Khost, where he continued to teach out of a mosque until the Taliban fell and the cities were no longer safe for Arabs. One day, his host told him that if he stayed any longer, his life would be in danger. He had left his passport in Kabul for safekeeping, but he was told there was no time to get it back. He was taken to Pakistan, where Afghans have long sought haven from their never-ending wars.

Once across the border, Farouq encountered the Pakistani military. "One of the soldiers pointed a weapon toward me," Farouq told his Combatant Status Review Tribunal. The Defense Department established the tribunals after the Supreme Court ruled that the detainees could challenge their imprisonment. "The Pakistani officer took me and said, don't be mad at him, we are Muslim, we will take care of you. He asked me about my parents. He said, you are a kid, you are going to the Yemen Embassy, and you shouldn't have any problems getting back to Yemen. After that, they took me to a jail, and there were lots of people. They put handcuffs on our hands."



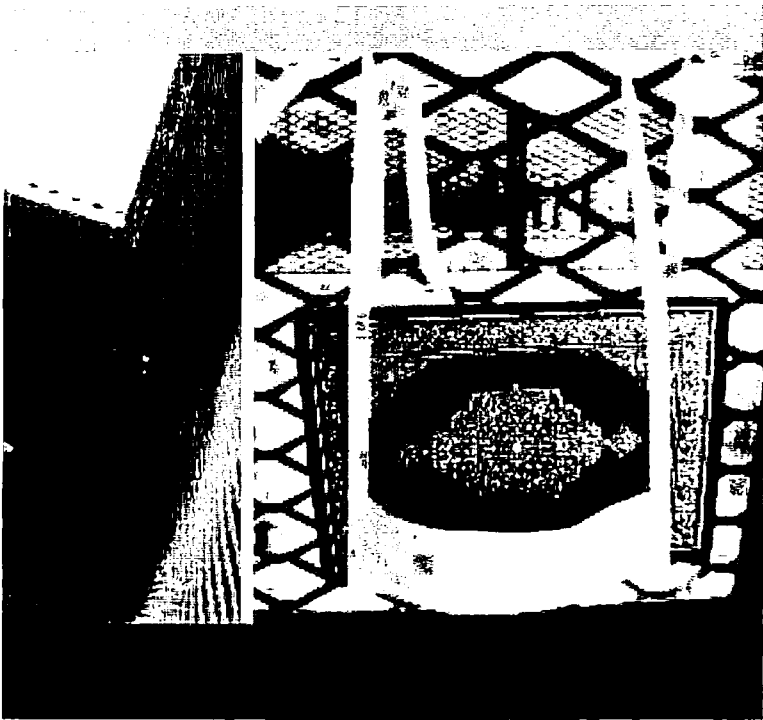
Farouq spent time in two Pakistani prisons before the government handed him over to American forces in Afghanistan. As a foreigner without a passport, he met the U.S. criteria for Guantanamo, and he was quickly whisked onto a plane headed for the sunny Caribbean jail that most military people refer to simply as "The Bay." In the chaos of post-9/11 Afghanistan, military leaders say, there wasn't time for much consideration of anomalies like Farouq. The United States was pulling Arabs, Afghans, Pakistanis, Chinese into detention centers, some tens of thousands in all. U.S. intelligence agents weren't able to debrief every prisoner; just keeping them secure was difficult, as Afghans gathered outside temporary holding facilities and clamored for blood. They had never much liked the foreigners, whose idea of Islamic law was sometimes harsher than even the Taliban's.

Incentives

But Cuba wasn't much less chaotic. Interpreters were scarce; facilities were rudimentary, with buckets for drinking and urinating. Background information about anything—detainees, Islam, Al Qaeda—was hard to come by. The American military officers had been ordered to set up a prison at Guantanamo practically overnight. Intelligence agents there were asked mainly to certify, in short order, that the president "had reason to believe" that each shackled man was involved in terrorism. The agents rapidly reported back, according to *New York Times* accounts of that time, that they didn't have enough information to do even that.

"If we had any information, many times [the detainees] had multiple identities and multiple passports," recalled Army Maj. Gen. Michael Dunlavey, who headed the interrogation effort at Guantanamo through November 2002.

So the interrogators started asking routine questions of all the prisoners: many of the sessions were documented in FBI memos released to the American Civil Liberties Union under a Freedom of Information Act lawsuit last year: Where are you



LEFT TO RIGHT: REUTERS/SCORRIS/JOE SKIPPER; AP/WIDEWORLD; IMA/GSANCHEZ/ELLE SHERHARD

from? Why were you in Afghanistan? What do you think of jihad, of Osama bin Laden? When did you hear about 9/11? What do the detainees talk about? What do you know of attacks planned on the United States? Have you heard whispers about attacking the Guantanamo guards? Do you know any of the other detainees? More than 24,000 interrogations have now taken place among the 800 men who have been held at The Bay.

The prisoners were shown photographs, too, large books containing mug shots of all the men held at Guantanamo: Do you recognize any of these men? Can you tell me about them?

If a man talked, if he cooperated, he received rewards: tobacco, a game of chess, a milk shake, free time in a room with movies and books, the chance to have a countryman put into the neighboring cell to ease the loneliness, a promise of a return home. Simply attending a Qaeda training camp before 9/11, an FBI interrogator told a detainee, "did not constitute a crime." Just talk to us, was the interrogators' refrain.

But many of the men wouldn't talk, according to Dunlavey. Citing the so-called "Manchester document," a Qaeda training manual discovered in England that advises captured jihadists to lie about their identity, stick to a cover story, and claim torture, Dunlavey said: "They followed it to a 'T.' "

The Americans came up with inducements for those who wouldn't talk: A prisoner could be chained in a strobe-lit room with Metallica or Britney Spears playing at full volume; interrogated for 16 hours straight; awakened every few hours for a move to a new cell; questioned while shivering in full-blast air conditioning; stroked by a woman who whispered that his situation was hopeless. In July of last year, the Defense Department released a report on allegations of abuse at Guantanamo Bay: All of the above tactics were used, and were acceptable at the time, according to the report. Other tactics deemed unacceptable were also used, according to the report, FBI memos, and the International Committee of the Red Cross.

For one special prisoner who wouldn't talk, interrogators employed further inducements. Detainee 063, a Saudi, had stubbornly claimed that he had gone to Afghanistan merely for love of falconry. By July 2002, the FBI knew that in August 2001 he had flown from a foreign country to Orlando, where a customs agent turned him away while a cohort, Mohamed Atta, the lead 9/11 hijacker, waited for him outside. On August 8, 2002, Detainee 063 was moved into an "isolation facility," where he stayed for the next 160 days, his cell continually flooded with light, his only human contact with interrogators and guards. He was questioned for 18 to 20 hours a day for 48 out of 54 straight days; he was threatened with a menacing dog; he was forced to wear a bra while thong panties were placed upon his head; he was leashed and ordered to perform dog tricks; he was stripped naked in front of women; he was taunted that his sister and mother were whores and that he was gay. Most of these techniques would later show up in Iraq, at Abu Ghraib prison.

By late November 2002, an FBI agent wrote, Detainee 063, Mohamed al-Kahtani, was "evidencing behavior consistent with extreme psychological trauma (talking to nonexistent people, reporting hearing voices, cowering in a corner of his cell covered with a sheet for hours on end.)"

Think about it. Whether you know something or not, whether you did something or not, you know what the interrogators want you to say. You know what another has said about you, because that is the information being presented to you. Was it the truth? Was it a lie? Did you simply have the bad luck to be the mug shot under a finger when another inmate wanted to end the endless questions?

You've been told that the truth will set you free, but while interrogators come and go, you don't know anyone from your home country who has been released. Say one thing, and you might have a cigarette and a night's sleep. Say nothing, and you might spend the night shackled to the floor with Metallica ringing in your ears. Stay neutral, and it's more endless days of monotony, washing on command, exercising on command, eating on command, losing your mattress and blanket if you argue with the men in command.

What would you do?

Farouq's Review

On September 27, 2004, Detainee 032, Farouq Ali Ahmed, presented his case to Combatant Status Review Tribunal Number 8. He came alone except for a U.S. military officer, his designated "personal representative." Rules forbid detainees from having attorneys at the tribunal proceedings, although a practicing lawyer of the Judge Advocate General's Corps, the military's legal service, generally presents the government's case.

Farouq stood accused of being associated with the Taliban and of having been a member of Al Qaeda. The government's case cited the following:

- Detainee admitted to giving his passport to a person known by him to be a member of the Taliban.
- Detainee admitted to lodging at an official Taliban residence in Kabul, with a Taliban representative he met in Quetta, Pakistan.
- Detainee was observed carrying an AK-47 and wearing fatigues at Osama bin Laden's private airport in Kandahar, Afghanistan.
- Detainee was captured by Pakistani forces as part of an organized group of 30 mujahedeen after the fall of Tora Bora.

The first two assertions, pointing toward Farouq's association with the Taliban, came from his own interrogations, when he said he wasn't sure, but, yes, the man who took him to Kabul and the men in the house where he stayed were probably members of the Taliban. The last two charges, suggesting that he was associated with Al Qaeda, Farouq flatly denied. He insisted that he was never at an airport, that he never carried a gun, and that he was captured alone. It was hard for him to disprove the charges, however: The details of the accusations were classified. He wasn't allowed to see them, and he wasn't told where they had come from.

The vote by the three-member tribunal was unanimous. Detainee 032 was properly designated as an enemy combatant because "he supported both Al Qaeda and Taliban forces engaged in hostilities against the United States or its coalition partners."

How could the officers on the tribunal vote otherwise? Soldiers are soldiers, not judges. As soldiers, their lives are on the line, they make hard battlefield decisions, and they are trained to follow orders.

The orders given to the Combatant Status Review Tribunals were as follows: The men coming before them had been determined to be enemy combatants, "through multiple levels of review by military officers and Officials of the Department of Defense." The government's evidence in support of "a determination that the detainee is an enemy combatant" was subject to a rebuttable presumption that it was "genuine and accurate"—in other words, the government's case was presumed to be true unless the detainee could prove otherwise. The orders did not explain how a man could rebut evidence if he wasn't allowed to know the details or source of that evidence.

The officers serving on the tribunals were told that a handful of prisoners released long before the tribunals began had subsequently appeared in battle, one bragging of how he had convinced the Americans that he was a goat farmer. The officers' friends and colleagues in uniform were dying every week in Iraq, every month in Afghanistan.

And many, many prisoners had said they had gone to Afghanistan to teach the Koran. "That's part of the 'Big Lie,'" Gen. Dunlavy said, when a reporter outlined Farouq's case to him. How in the world, the general asked, can an Arabic speaker teach the Koran to people who don't speak Arabic? "That's like saying I'm going to memorize the Bible in Hebrew, and then I'm going to the U.S. to teach it to the common masses," Dunlavy said.

Many of the foreigners in Afghanistan said they came to teach the Koran, the general continued, a claim he could debunk by asking more questions, as any good commander mindful of his men's lives would do. "I would ask immediately, do you speak the language? No? How do you communicate?

Where was your supply of Korans? Where did you learn to teach? There was no purpose, nothing that could be verified, there was no backup on it."

But Muslims believe that the Koran is the direct word of God, as uttered in Arabic by Muhammad, according to Akbar Ahmed, chair of Islamic studies at American University. Islam, unlike Christianity, is not based on accounts written by disciples years after the prophet died. Muslims believe that every word in the Koran came from Allah's lips to Muhammad's ears. That's why every Muslim prays five times a day in the same haunting Arabic syllables. That's why Taliban textbooks, such as they were, were written in Dari and Pashto—except for the Koranic texts, which were in Arabic. That's why the Koran is taught through recitation. And that's why Muslims who don't understand another word of Arabic memorize, in their entirety, the sounds of God in Arabic.

And that's why Farouq Ali Ahmed went to Afghanistan in the spring of 2001, according to two individuals who reviewed his entire file, including the classified sources and details of the evidence against him.

Farouq's personal representative, an Army officer, was disgusted with the tribunal's verdict. He took the unusual step of submitting a written protest, a redacted version of which was filed with Farouq's habeas proceedings.

The government's sole evidence that Farouq had been at bin Laden's airport in Kandahar was the statement of another detainee. The Army officer, a lieutenant colonel, had given the tribunal an FBI memo indicating that the other detainee had lied, not only about Farouq, but about other Yemeni detainees as well. The other detainee claimed he had seen the Yemenis at times and in places where they simply could not have been.

"I do feel with some certainty that [the accuser] has lied about other detainees to receive preferential treatment and to cause them

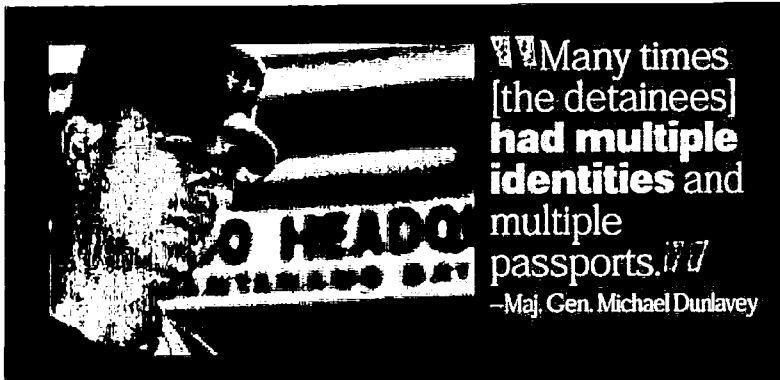
problems while in custody," the lieutenant colonel wrote. "Had the tribunal taken this evidence out as unreliable, then the position we have taken is that a teacher of the Koran (to the Taliban's children) is an enemy combatant (partially because he slept under a Taliban roof.)"

What Have We Done?

Farouq's habeas attorneys are Covington and Burling's David Remes and Marc Falkoff, a young associate who had abandoned pursuit of a Ph.D. in literature because he found academia "too political" but who brought 17 Guantanamo cases to the prestigious firm. The lawyers provided *National Journal* with the declassified versions of letters they wrote on behalf of 10 detainees, after viewing their classified files, to the Administrative



An interview room inside the long-term detention facility at the U.S. Naval Station, Guantanamo. A shackle is attached to the floor.



Many times
[the detainees]
had multiple
identities and
multiple
passports.

—Maj. Gen. Michael Durlavey

Review Board. After a Combatant Status Review Tribunal designates a Guantanamo prisoner as an enemy combatant, he goes before the review board, which decides whether he should be released because he is no longer a threat to America.

"Farouq is not now and never has been associated with Al Qaeda," the letter from his attorneys read. "The only evidence of such an association comes from a proven liar and from another detainee who was abused and coerced into making statements inculcating other men." The identity of the "proven liar," the man also referred to in Farouq's personal representative's memo, was redacted from the attorneys' letter, but that of the "abused and coerced" detainee was not: Detainee 063, Mohamed al-Kahtani. At some point after facing a snarling dog, donning women's underwear, and gibbering under a sheet, Kahtani had apparently pointed to a mug shot of Farouq and said he was one of the 30 mujahedeen intercepted at the border after the battle of Tora Bora.

The Covington and Burling lawyers flew to Yemen to meet with Farouq's family, a step the Defense Department had not taken. Farouq's account of how he came to Afghanistan, they wrote to the board, was the truth.

Farouq wasn't the only one of the lawyers' clients fingered by Kahtani. Remes and Falkoff cited Detainee 063 as a source of the allegations against two of their other clients, as well. In the cases of two clients, including Farouq, they cited the same snitch identified in Farouq's personal representative's memo as the source of allegations. On behalf of another detainee, the lawyers identified yet another snitch, who had reportedly told tales during physically severe questioning in Afghanistan.

Falkoff and Remes, who looked into all of their clients' stories in Yemen, maintain that none of them ever fought against America or ever thought to fight against America. The men's families, in contact with their loved ones only through Red Cross letters passed through U.S. military censors, had independently given the lawyers accounts of how the men came to be in Afghanistan that matched the stories later revealed in U.S. government files. There was the medical assistant who had previously worked in his brother's clinic in Yemen and went to Afghanistan to work in a civilian clinic; the boy who went to Afghanistan to get training to fight in Yemen's tribal wars; the four men who were told that the Taliban was building a good Islamic society and so went to defend their Muslim brothers against the murderous warlords of the Northern Alliance; the man who had imported medicine for a charity in Afghanistan whose local outposts—but not the one where he worked—were later linked to Al Qaeda. All the tales checked out, the two lawyers say.

Sure, the men and their families could have worked out these cover stories in advance. Or the stories could be true. It doesn't matter. Once in Guantanamo, by virtue of having been Arabs in Afghanistan (except for the man who was asleep at home in Pakistan), the men became enemy combatants and so found themselves beyond the reach of the American courts, and even beyond the law of war, with its Geneva Convention protections.

Four years later, they are still there. That's what happens when a man is presumed guilty until proven innocent; when associating with people who associate with bad people is sufficient grounds for guilt; when hearsay statements, whether offered from truth, coercion, or boredom, are taken as genuine until proven

otherwise; when being on the wrong side of a local war when America enters the picture is proof of fighting against America; when U.S. military commanders charged with keeping us safe from harm are asked to sit in judgment.

"Indeed, the evidence considered persuasive by the tribunal is made up almost entirely of hearsay evidence recorded by unidentified individuals with no firsthand knowledge of the events they describe," wrote Cmdr. James Crisfield, a Navy judge advocate general and the legal adviser to the Combatant Status Review Tribunals, in response to one tribunal decision. Crisfield scolded the tribunal for rejecting a detainee's request that a witness be allowed to present hearsay evidence. "There should not be a double standard for the government's ability to present hearsay and the detainee's ability to present hearsay evidence."

On October 21, 2005, Farouq went before the Administrative Review Board, whose officers are charged with assessing whether an enemy combatant still presents a threat to America. As it happened, Farouq's attorneys were in Guantanamo that day, but his request that they be allowed to accompany him was denied.

The board told Farouq that a new piece of evidence had turned up against him, he later told his lawyers. Somebody had said, at some point in the past four years, that they had heard the name "Farouq" over a walkie-talkie during the battle of Tora Bora.

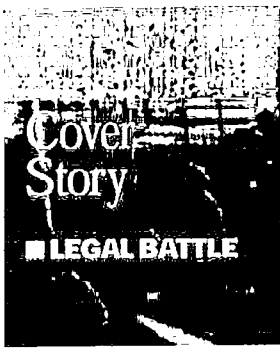
That may have happened. In fact, it probably did happen. The name "Farouq" is as common in the Arab world as "George" is in America. It's a first name, in fact, that is shared by the foreign minister of Syria, the culture minister of Egypt, the political director of the Palestinian Fatah party, the major general in charge of earthquake relief in Pakistan. And it is the last name of a top Qaeda operative who had escaped from the Bagram air base in July 2005.

The Defense Department, following orders and procedures, still considers Farouq Ali Ahmed, Detainee 032, a threat to America. Two months after his review board, on December 18, Farouq turned 22, passing his fourth straight birthday behind bars in Guantanamo.

Who would do differently? Who would raise their hand to release the man who might fly into the next skyscraper? ■

chegland@nationaljournal.com

nationaljournal.com Internet links and background information related to this article are available to all National Journal subscribers on our Web site.



Empty Evidence

The lawyers representing Guantanamo prisoners say the evidence against their clients is weak, indirect, and often based on lies from other detainees. Defense Department documents suggest they are right.

By Corine Hegland

"If you think of the people down there, these are people, all of whom were captured on a battlefield. They're terrorists, trainers, bomb makers, recruiters, financiers, [Osama bin Laden's] bodyguards, would-be suicide bombers, probably the 20th 9/11 hijacker."

—DEFENSE SECRETARY DONALD RUMSFELD, JUNE 27, 2005

Some of the men Rumsfeld described—

the terrorists, the trainers, the financiers, and the battlefield captures—are indeed at Guantanamo. But *National Journal's* detailed review of government files on 132 prisoners who have asked the courts for help, and a thorough reading of heavily censored transcripts from the Combatant Status Review Tribunals conducted in Guantanamo for 314 prisoners, didn't turn up very many of them. Most of the "enemy combatants" held at Guantanamo—for four years now—are simply not the worst of the worst of the terrorist world.

Many of them are not accused of hostilities against the United States or its allies. Most, when captured, were innocent of any terrorist activity, were Taliban foot soldiers at worst, and were often far less than that. And some, perhaps many, are guilty only of being foreigners in Afghanistan or Pakistan at the wrong time. And much of the evidence—even the classified evidence—gathered by the Defense Department against these men is flimsy, second-, third-, fourth- or 12th-hand. It's based largely on admissions by the detainees themselves or on coerced, or worse, interrogations of their fellow inmates, some of whom have been proved to be liars.

Thomas Wilner, a partner at the Washington law firm Shearman and Stearling who is representing six Kuwaitis at Guantanamo, summarized the evidence against them: "Bullshit hearsay.... The information in some cases is, at best, hearsay allegations [obtained] long after capture."

One thing about these detainees is very clear: Notwithstanding Rumsfeld's description, the majority of them were not caught by American soldiers on the battlefield. They came into American custody from third parties, mostly from Pakistan, some after targeted raids there, most after a dragnet for Arabs after 9/11.

Much of the evidence against the detainees is weak. One prisoner at Guantanamo, for example, has made accusations

against more than 60 of his fellow inmates; that's more than 10 percent of Guantanamo's entire prison population. The veracity of this prisoner's accusations is in doubt after a Syrian prisoner, Mohammed al-Tumani, 19, who was arrested in Pakistan, flatly denied to his Combatant Status Review Tribunal that he'd attended the jihadist training camp that the tribunal record said he did.

Tumani's denial was bolstered by his American "personal representative," one of the U.S. military officers—not lawyers—who are tasked with helping prisoners navigate the tribunals. Tumani's enterprising representative looked at the classified evidence against the Syrian youth and found that just one man—the aforementioned accuser—had placed Tumani at the terrorist training camp. And he had placed Tumani there three months before the teenager had even entered Afghanistan. The curious U.S. officer pulled the classified file of the accuser, saw that he had accused 60 men, and, suddenly skeptical, pulled the files of every detainee the accuser had placed at the one training camp. None of the men had been in Afghanistan at the time the accuser said he saw them at the camp.

The tribunal declared Tumani an enemy combatant anyway.

Guilt by Wristwatch

"It's the Salem witchcraft trials," said Marc Falkoff of Covington and Burling's New York City office, who represents 17 Yemenis, several of them fingered—falsely, according to Falkoff—by different accusers. "You get one guy to start making accusations, and whether it's believable or not doesn't matter." Front-line military interrogators might know that the accusations are false, but their superiors reading the files later do not.



Wrong Place, Wrong Time



LEFT TO RIGHT: REUTERS/SAPORES LATIF; AP/WIDEWORLD

In December 2001, thousands of Afghan and non-Afghan refugees fled to the Pakistan border to escape the fighting between Taliban and U.S. forces. Many Guantanamo detainees were arrested at the border.

The government has given Falkoff access to the complete files for 16 of his clients. Of those men, he says, "you bring them into any court of law right now, and a judge is going to release them. It doesn't matter what the standard of review is going to be—I'm not even talking about guilt beyond a reasonable doubt."

At least eight prisoners at Guantanamo are there even though they are no longer designated as enemy combatants. One perplexed attorney, whose client does not want public attention, learned that the man was no longer considered an enemy combatant only by reading a footnote in a Justice Department motion asking a federal judge to put a slew of habeas corpus cases on hold. The attorney doesn't know why the man is still in Cuba.

"The people you've been going up against in court have been saying he's the worst of the worst, Osama's right-hand man," said Anant Raut, an attorney with the Washington firm of Weil, Gotshal, & Manges. "Then you go in there, and it's a guy who is as confused as you are as to why he is there." Raut has one client, a Saudi, who is classified as an enemy combatant largely because he spent a couple of weeks on a Taliban bean farm. The man says the Taliban imprisoned him there because they thought he was a Saudi government spy.

National Journal could review only the unclassified parts of detainee files, consisting of memos, a summary of the evidence, and a transcript of the Combatant Status Review Tribunal proceeding. But federal courts ordered the Defense Department to give the volunteer lawyers the classified evidence by which their clients were found to be enemy combatants. The lawyers cannot discuss specifics of that evidence, but they uniformly say that nothing additional is there, just details and sourcing relating to the unclassified evidence.

"There is no smoking gun," said John Chandler, a partner in the Atlanta office of Sutherland Asbill & Brennan. One of his

Guantanamo clients, picked up in Pakistan, is designated an enemy combatant in part because he once traveled on a bus with wounded Taliban soldiers in Afghanistan. The prisoner denies it, saying it was only a public bus. But then there's the prisoner's Casio watch. According to the Defense Department files, his watch is similar to another Casio model that has a circuit board that Al Qaeda has used for making bombs. The United States is using the Qaeda-favored Casio wristwatch as evidence against at least nine other detainees. But the offending model is sold in sidewalk stands around the world and is worn by one *National Journal* reporter. The primary difference between Chandler's client's watch and the Casio in question is that the detainee's model hasn't been manufactured for years, according to the U.S. military officer who was his personal representative at the tribunal.

Guilt by Association

Baher Azmy of Seton Hall Law School represents Murat Kurnaz, a Turk who is at Guantanamo. "The government has no case against him," Azmy says. Kurnaz was plucked off a bus in Pakistan and subsequently accused of being friends with a suicide bomber. The government did not tell Kurnaz's tribunal that his friend is alive and therefore could not be the referenced suicide bomber. In March, Kurnaz's file was accidentally, and briefly, declassified: According to *The Washington Post*, it consisted of memos from domestic and foreign intelligence sources stating that Kurnaz posed no threat. The file, however, contained one anonymous memo contradicting the rest and claiming he was connected to Al Qaeda. In January 2005, a federal judge singled out Kurnaz's case as evidence of the lack of due process in the Guantanamo tribunals. The judge said that his tribunal had ignored exculpatory evidence and relied instead on the single anonymous memo that was not credible.

Volunteer Attorney



ARNOLD ADLER

Marc Falkoff of Covington and Burling represents 17 Yemenis held in Cuba. "You bring them into any court of law now, and a judge is going to release them."

Julia Tarver Mason, a partner with Paul, Weiss, a firm based in New York City, represents a number of detainees, including a Saudi—an amputee—whom Afghanistan's Northern Alliance turned over to the Americans. The alliance had taken him from a hospital. She says that the classified evidence against the men she represents has "details, but no meat." The evidence might say, for example, that somebody said someone was a member of an aid group, and that aid group has been known to have some links to Al Qaeda, Mason says. "It's all 12 steps removed."

George Brent Mickum, a partner with Washington law firm Keller and Heckman, represents two British residents held at Guantanamo. "I can tell you what's not there," Mickum said of the classified evidence against his clients. "What's not there is any evidence that any of my clients was associated with Al Qaeda in any way." The men were arrested on a business trip to Gambia. According to press reports, British intelligence suspected at the time that the two men intended to establish a terrorist training facility there. But today, the accusation against both men is only that they were associated with Abu Qatada, a radical but popular London cleric who is now in prison in Britain.

Neither man denies the friendship with Qatada: One of the detainees, Bisher al-Rawi, says he served as a liaison between Qatada and British intelligence at the request of the MI-5 domestic intelligence agency. The tribunal for the other man, Jamil el-Banna, met four times before deciding that he was an enemy combatant. Even so, el-Banna's personal representative, who had access to the classified files, objected. The British government was well aware of el-Banna's actions on British soil, the officer wrote, and the record is "insufficient to show [the detainee] should be classified as an enemy combatant for his actions in Gambia."

To Protect the Soldiers

If many of the men held at Guantanamo were not caught in battle, and have not been tied directly to hostilities against the United States, why are they there?

"I think the standards for sending someone to Guantanamo in 2002 and early 2003 were not as high as they should have been," said Mark Jacobson, who was an assistant for detainee policy in Rumsfeld's office from November 2002 through August 2003. When *National Journal* described some of the men in this story to Jacobson, he said he suspected that there was more information that was not referenced in the classified or the declassified files. But if the files were accurate, he said, "then it's reasonable and likely" that those men were in the batches taken to Guantanamo early on in 2002.

The filtering process for deciding who was sent to Guantanamo wasn't perfect, Jacobson said, nor should it have been. To protect U.S. soldiers still fighting in Afghanistan it was better to err on the side of caution and to send more, rather than fewer, men to Guantanamo. "If it's the other way around, then you're doing it wrong."

But nuance didn't exactly survive the air convoys to Cuba. The men in the orange jumpsuits, President Bush said, were terrorists. They were the most dangerous, best-trained, vicious killers on the face of the earth, Rumsfeld said. They were so vicious, if given the chance they would gnaw through the hydraulic lines of a C-17 while they were being flown to Cuba, said Air Force Gen. Richard Myers, chairman of the Joint Chiefs of Staff.

But the CIA didn't see it that way. By the fall of 2002, it was common knowledge around CIA circles that fewer than 10 percent of Guantanamo's prisoners were high-value terrorist operatives, according to Michael Scheuer who headed the agency's bin Laden unit through 1999 and resigned in 2004. Most of the men were probably foot soldiers at best, he said, who were "going to know absolutely nothing about terrorism." Guantanamo prisoners might be pumped for information about how they learned to fight, which could help American soldiers facing trained Islamic insurgencies. But the Defense Department and FBI interrogators at Guantanamo were interested more in catastrophic terrorism than in combat practicalities. They kept asking "every one of these guys about 9/11 and when was the next attack," questions most of these low-level prisoners couldn't answer, Scheuer said.

Even as the CIA was deciding that most of the prisoners at Guantanamo didn't have much to say, Pentagon officials were getting frustrated with how little the detainees were saying. So they ramped up the pressure and gave interrogators more license.

The questions to the detainees about 9/11 and Al Qaeda and about each other were so constant, so repetitive, so oppressive that some prisoners, out of exasperation or fatigue or fear, just gave in and said, sure, I'm a terrorist. False confessions and false accusations are rampant, according to the lawyers and the Defense Department records.

One man slammed his hands on the table during an especially long interrogation and yelled, "Fine, you got me; I'm a terrorist." The interrogators knew it was a sarcastic statement. But the government, sometime later, used it as evidence against him: "Detainee admitted he is a terrorist" reads his tribunal evidence. The interrogators were so outraged that they sought out the detainee's personal representative to explain it to him that the statement was not a confession.

A Yemeni, whom somebody fingered as a bin Laden body-

guard, finally said in exasperation during one long interrogation, "OK, I saw bin Laden five times: Three times on Al Jazeera and twice on Yemeni news." And now his "admission" appears in his enemy combatant's file: "Detainee admitted to knowing Osama bin Laden."

By June 2004 conditions were so bad at Guantanamo that the International Committee of the Red Cross, the only civilian group allowed to meet with detainees, sent a furious confidential report to the White House charging that the entire system in Cuba was "devised to break the will of prisoners at Guantanamo," making them "wholly dependent on their interrogators" through "humiliating acts, solitary confinement, temperature extremes, use of forced positions," according to a Defense report leaked to *The New York Times*. The report called the operations "tantamount to torture."

Pentagon officials, meanwhile, were citing the "safe, humane, and professional detention operation at Guantanamo that is providing valuable information in the war on terrorism."

Wrong Questions, Wrong People

The one question nobody seemed to ask at Guantanamo was whether they were asking the right questions of the right people in the first place. After all, despite the rhetoric, most of the men at Guantanamo, or at least the 132 with court records and the 314 with redacted transcripts, came into American custody by way of third parties who had their own motivations for turning people in, including paybacks and payoffs.

In Afghanistan, from late 2001 through the early months of 2003, local and tribal informers played on America's naiveté by reporting their enemies as Qaeda members, according to a former intelligence operative there. The Americans, upon investigating, would find that a man did have weapons and assume that he was, indeed, Al Qaeda. "They wouldn't know the factions," the operative said, "and they wouldn't think, 'This is Afghanistan. Of course he has weapons.'"

Ignorance of local politics might explain how, for example, an Arabic-speaking Iraqi Shiite ended up at Guantanamo accused of serving as the regional intelligence director for the Pashto-speaking Sunni Taliban.

Some of the men at Guantanamo came from targeted, U.S.-guided raids in Pakistani cities, and the cases against those men tend to be fairly strong. But the largest single group at Guantanamo Bay today consists of men caught in indiscriminate sweeps for Arabs in Pakistan. Once arrested, these men passed through several captors before being given to the U.S. military. Some of the men say they were arrested after asking for help getting to their embassies; a few say the Pakistanis asked them for bribes to avoid being turned over to America.

Others assert that they were sold for bounties, a charge substantiated in 2004 when Sami Yousafzai, a *Newsweek* reporter then stringing for ABC's *20/20*, visited the Pakistani village where five Kuwaiti detainees were captured. The locals remembered the men. They had arrived with a larger group of a hundred refugees a few weeks after Qaeda fighters had passed through. The villagers said they had offered the group shelter and food, but somebody in the village sold out the guests. Pretty soon, bright lights came swooping down from the skies. "Helicopters ... were announcing through loud speakers: 'Where is Arab? Where is Arab?' And, 'Please, you get \$1,000 for one Arab,'" one resident told Yousafzai.

"The one thing we were never clear of was where they came



from," Scheuer said of the Guantanamo detainees. "DOD picked them up somewhere." When *National Journal* told Scheuer that the largest group came from Pakistani custody, he chuckled. "Then they were probably people the Pakistanis thought were dangerous to Pakistan," he said. "We absolutely got the wrong people."

The sweeps in Pakistan did pick up a few Qaeda members, but most of them were low level. People familiar with Pakistani politics agree that in the chaos of the war, simple foot soldiers or innocent bystanders were more likely to wind up in American custody than were senior operatives. "It was helter-skelter, and it was perfectly possible innocents were arrested, while a lot of guilty guys knew how to evade [capture] and had the means to do so," said Husain Haqqani, an adviser to three former Pakistani prime ministers who now teaches international relations at Boston University.

Tribes in the border region and operatives in Pakistan's intelligence service were historically sympathetic to Al Qaeda and the Taliban. Almost certainly, they aided senior Qaeda and Taliban members fleeing Afghanistan. At the same time, Islamabad was eager to strengthen its new alliance with Washington. The Americans wanted prisoners, and nobody was looking too closely at who those prisoners were.

Add a healthy dollop of cash spread around by both hunters and prey, and a U.S. military bureaucracy dedicated to protecting Americans against a threat from an unfamiliar corner of the world, and you have an unsettling formula for determining who got caught and who got away. It was "win-win," Haqqani said. "The Americans get their prisoners, Pakistanis get their praise, the guy who captures the prisoners gets his reward, and Al Qaeda gets its escape." ■



Who Is at Guantanamo Bay

As a result of the habeas corpus petitions filed by attorneys representing Guantanamo detainees, the Defense Department has had to file court documents on 132 of the enemy combatants, or just under a quarter of the prison's population. *National Journal* undertook a detailed review of the unclassified files to develop profiles of the 132 men. *NJ* separately reviewed transcripts for 314 prisoners who pleaded their cases before Combatant Status Review Tribunals at Guantanamo. Taken together, the information provides a picture of who, exactly, has been taken prisoner in the war on terror and is being held in an anomalous U.S. military prison on an island belonging to one of America's bitterest enemies.

The Defense Department declined a request to release comparable statistics for all of the detainees held at Guantanamo Bay.

The first thing that jumps out of the statistics is that a majority of the detainees in both groups are not Afghans—nor were they picked up in Afghanistan as U.S. troops fought the Taliban and Al Qaeda, nor were they picked up by American troops at all. Most are from Arab countries, and most were arrested in Pakistan by Pakistani authorities.

Seventy-five of the 132 men, or more than half the group, are—like Farouq Ali Ahmed, the subject of *National Journal's* accompanying story—not accused of taking part in hostilities against the United States or its coalition partners. (The 75 include 10 detainees whom the U.S. government "no longer" considers enemy combatants, although at least eight of the 10 are still being held at Guantanamo.) Typically, documents describe these men as "associated" with the Taliban or with Al Qaeda—sometimes directly so, and sometimes through only weak or distant connections. Several men worked for charities

that had some ties to Al Qaeda; Farouq lived in a house associated with the Taliban.

Some of the "associated" men are said to have attended jihadist training camps before September 11, an accusation admitted by some and denied by others. The U.S. government says that some of the suspected jihadists trained in Afghanistan, even though other records show that they had not yet entered the country at the time of the training camps. Just 57 of the 132 men, or 43 percent, are accused of being on a battlefield in post-9/11 Afghanistan.

The government's documents tie only eight of the 132 men directly to plans for terrorist attacks outside of Afghanistan. One of the eight, an Australian fundamentalist Muslim, admitted that he trained several of the 9/11 hijackers and intended to hijack a plane himself; another of the eight, a Briton, is said to have targeted 33 Jewish organizations in New York City. Both men were released to their home governments in January 2005. Neither one is facing charges at home.

The Australian says he falsely confessed while undergoing torture in Egypt; the Australian government, which was watching him well before 9/11, has revoked his passport but has said it lacks sufficient information to press terrorism charges against him. The British man was cleared after a few hours of questioning in London.

The remaining six of the eight were arrested in Sarajevo, Bosnia, after being accused of planning to attack the American Embassy there; the charge was investigated and dismissed by a judge. The country's human-rights chamber issued an order prohibiting the men from being taken out of the country. The Americans seized them anyway.

The Defense Department accusations fall into only two categories—those who participated in hostilities and those who did not. But the boundaries between the two categories can be fuzzy. In the nonhostile category, for example, is a suspected

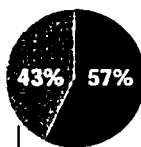
Prisoners'



The court files of 132 detainees provide a glimpse through the closed doors of Guantanamo. Most of the men were not picked up in Afghanistan, and most are not accused of fighting on the battlefield.

The charges

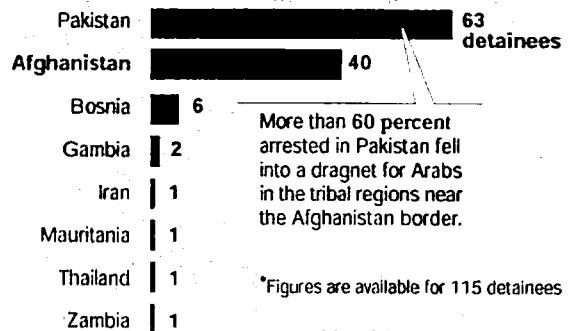
More than half of the group are not accused of taking part in hostilities against the United States or its coalition partners.



Accused of hostilities

Accused of associating with the Taliban or Al Qaeda

Where they were captured*



SOURCE: Defense Department documents filed in court

PHOTO: REUTERS/CORBISMARK WILSON. GRAPHIC: CORINE HEGLAND, RYAN MORRIS

Qaeda financier picked up in Pakistan. In the hostile group, on the other hand, are a few men whose most direct link to hostilities appears to be getting wounded by one of the thousands of American bombs dropped on Afghanistan.

One hundred and fifteen of the files also note where the detainees were captured. Only 35 percent of the 115 were arrested in Afghanistan; 55 percent were captured by Pakistani forces in Pakistan.

At least 39 of the arrests made in Pakistan came in the border

region, where Qaeda fighters, along with civilian Afghan refugees and nonfighting Arabs, were stampeding out of the country in the fall of 2001, desperate to escape the war. Many of the enemy combatants arrested in that region say they fled the sudden chaos of Afghanistan without retrieving their passports and identification papers and that when they asked to be taken to their embassies, they were taken to prison instead. Many of the men who detailed their capture described being taken through one, two, or three Pakistani prisons before they were delivered to the Americans.

Lawyers have filed a slew of habeas corpus petitions on behalf of Guantanamo prisoners asking . . .

PHOTO: CORBIS/BROOKS DRAFT; GRAPHIC: CORINE HEGLAND, RYAN MORRIS



A detainee is moved at Camp X-Ray at Guantanamo in January 2002.

Shortly after the September 11, 2001, terrorist attacks,

President Bush issued a military order that authorized the Defense Department to detain noncitizens suspected of having ties with Al Qaeda or other terrorists. As a result, hundreds of so-called "enemy combatants" were rounded up and taken to prisons in Guantanamo Bay, Cuba. Since early 2002, lawyers working on a volunteer basis have filed papers with U.S. courts asking the government to explain why it is holding individual prisoners. These habeas corpus petitions have forced disclosures by the Defense Department that shed light on some of the details surrounding the estimated 500 prisoners currently in U.S. captivity.

Habeas court papers and rulings

February 19, 2002: The Center for Constitutional Rights files *Rasul v. Bush*, the first habeas claim brought by Guantanamo detainees' families. Government asks the court to dismiss the case.

May 1, 2002: Thomas Wilner of Shearman and Sterling files habeas petitions in *Al Odah v. United States*, on behalf of Kuwaitis at Guantanamo.

July 30, 2002: Federal judge in D.C. dismisses both *Rasul* and *Al Odah* habeas claims. Both cases appealed under one title, *Rasul*.

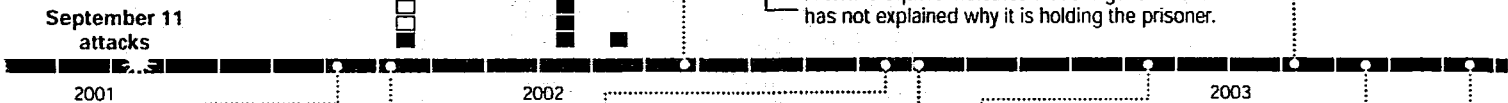
July 3, 2003: Bush designates six detainees for trial in front of the first military commissions since World War II.

April 6, 2004: Navy Lt. Cmdr. Charles Swift, appointed to defend a Yemeni detainee before a military commission, files *Hamdan v. Bush*, asking a federal judge to stop the proceeding as an "unprecedented, unconstitutional, and dangerously unchecked expansion of executive authority."

KEY

Each square represents one petition filed for one detainee.

A white square indicates that the government has not explained why it is holding the prisoner.



Other key events

September 11 attacks
January 11, 2002: First detainees arrive at Guantanamo Bay.

February 7, 2002: President Bush announces that none of the detainees are prisoners of war.

February 28, 2002: 194 detainees are on hunger strike.

November 2002: Intelligence and detention operations merge at Guantanamo.

December 2, 2002: Rumsfeld approves advanced "counter-resistance" interrogation strategies at Guantanamo; he rescinds order six weeks later.

April 16, 2003: Rumsfeld approves revised interrogation techniques for Guantanamo, including temperature extremes, sleep adjustment, isolation, and stress positions.

August 18-26, 2003: Twenty-three detainees try to hang or strangle themselves in what Defense officials call "a coordinated effort to disrupt camp operations."

October 2003: The International Committee for the Red Cross privately tells Defense officials that interrogators have too much control over prisoners' lives.

Many, though not all, of the remaining 24 arrests made in Pakistan came in targeted raids on senior Qaeda leaders between January and September 2002. The senior suspects captured in these raids immediately disappeared into CIA custody—they are not at Guantanamo. But their lesser companions, or others arrested in the same town on the same night, were delivered to Cuba.

Also in this group are at least three men who were picked off Pakistani buses in apparently random sweeps for foreigners,

and one man who says he answered a knock on the door of the apartment next to his.

The 314 transcripts released to the Associated Press under a Freedom of Information Act lawsuit give similar results. The 314 men described there included 97 Afghans who were arrested in Afghanistan. But they also included 211 foreigners, 152 of whom—or more than 70 percent—were arrested outside of Afghanistan. And 145 of those men were captured in Pakistan.

—C.H.

Rush to file

Following the Supreme Court's decision, a slew of petitions are filed on behalf of detainees.

June 28, 2004: U.S. Supreme Court overrules lower courts in *Rasul*, says detainees have the right to challenge their detention. Lawyers immediately volunteer to represent the men at Guantanamo.

July 7, 2004: Defense Department announces Combatant Status Review Tribunals. Detainees may contest, without lawyers or knowledge of classified evidence, the accusations against them.

October 4, 2004: Justice Department asks courts to dismiss all habeas petitions, arguing that the Combatant Status Review Tribunals fulfill the Supreme Court's mandate.

January 19, 2005: U.S. District Court Judge Richard Leon of D.C. dismisses eight habeas petitions, saying the tribunals fulfilled any rights the detainees might have. Detainee lawyers appeal.

January 31, 2005: U.S. District Court Judge Joyce Hens Green, with 60 habeas petitions before her, says Guantanamo detainees have a right to present their cases in federal court. The tribunals fail "to comport with the requirements of due process." Justice Department appeals.

November 8, 2004: Lawyers begin regular visits to Guantanamo. They are the first civilians, other than the International Red Cross, to meet the detainees.

U.S. District Court Judge James Robertson of D.C. rules in *Hamdan v. Bush* that the proposed military commission is illegal. Justice Department appeals.

November 7, 2005: U.S. Supreme Court agrees to hear *Hamdan v. Bush*, challenging the legality of the military commissions planned for some detainees. Sen. Lindsey Graham, R-S.C., says he will introduce legislation to stop the flood of habeas litigation from detainees at Guantanamo Bay.

November 15, 2005: Graham-Levin amendment passes the Senate, stripping the courts of their jurisdiction to hear habeas claims from Guantanamo. Detainees may instead challenge their enemy combatant status once before the U.S. Court of Appeals for D.C. When the amendment emerges from conference, it will also explicitly allow evidence gained from coercion.

January 4, 2006: Justice Department informs the courts of the Graham-Levin amendment, followed by formal requests that the courts dismiss all of the habeas cases. Decisions are pending in multiple courts.

November 30, 2004: *New York Times* divulges confidential International Committee for the Red Cross report stating that the systems at Guantanamo were devised to break prisoners' will and produce intelligence through "humiliating acts, solitary confinement, temperature extremes, use of forced positions." Defense officials respond that Guantanamo is a "safe, humane, and professional" operation providing valuable intelligence in the war on terror.

June 9, 2005: Defense Department releases investigations into FBI allegations of abuse at Guantanamo, saying it "found no evidence of torture or inhumane treatment." Most of the interrogation tactics confirmed by the report, such as playing loud music, yelling, strobe lights, temperature extremes, and sleep deprivation, were within department guidelines at the time they were used.

September 12, 2005: More than 100 detainees are on hunger strike, or "fasting."

December 30, 2005: 84 detainees are on hunger strike.

NOTE: Does not include petitions filed after December 8, 2005
SOURCES: Defense Department documents, court records, and media reports