

The following text may be printed, copy/pasted, or downloaded and emailed.

## **Guantanamo Justice?**

Behind the Wires: Nobody in the detention center on the coast of Cuba has access to a lawyer. The Geneva Conventions don't apply. Nor does the U.S. Constitution. So what happens if someone is stuck there by mistake?

By Roy Gutman, Christopher Dickey and Sami Yousafzai  
NEWSWEEK  
July 28, 2002

July 8 issue — Deep in the treacherous mountains along the Afghanistan-Pakistan border, villagers remember the five Kuwaitis who showed up on Dec. 16. The men were hardly the first Arabs to come scrambling over the terrifying paths of snow-covered White Mountain, fleeing the American offensives around Tora Bora. They were just the softest. A witness says the Afghan guide who brought them was furious, swearing he'd never take Kuwaitis on that trail again.

UNLIKE THE HARDENED Arab fighters he'd dealt with before, these were weak, nervous, ill-clothed and inexperienced climbers. The guide grumbled that he and his friend practically had to carry them.

Unlike many "suspected members of Al Qaeda," a lot is known about who these guys were. We know their family backgrounds and their jobs. And we know where they are today: half a world away in the U.S. naval base at Guantanamo Bay, Cuba. NEWSWEEK has traced their strange odyssey from their affluent homeland to their isolated cells on "Gitmo." And what the investigations show are men—all zealous, some naive, some just foolish or unlucky—who don't fit the standard profile of terrorists held at Guantanamo. "These are among the most dangerous, best-trained, vicious killers on the face of the earth," Secretary of Defense Donald Rumsfeld declared soon after the facility was opened. Yet the five who stumbled off White Mountain last December, at least, may be little more than volunteers for their society's versions of faith-based charities.

Can we be sure? No. Al Qaeda has used charities as fronts, and thrives on the murkiness of its membership. There are now 564 prisoners of 39 nationalities at Guantanamo, and some are wanted for crimes, political and otherwise, in their homelands. Of 12 Kuwaitis held, four are suspected by their own government of extremist connections, and at least one of those four was part of an infamous gang of religious zealots who did jail time in Kuwait. But none of the five who crossed White Mountain is on Kuwait's suspect list. They left their country legally, saying they wanted to help Afghans suffering from drought and famine—and then from the war. They stayed in touch with their families as best they could. They planned to return within weeks but discovered, once the conflict began, that they could not get out. And as the war turned against the Taliban, the Afghan people turned against the Arabs, no matter what had brought them to the country. When the five Kuwaitis made their escape, they took some of the same trails as Al Qaeda, but they traveled as a separate group.

### **BAFFLING LEGALISMS**

So, are they guilty or innocent? And of what? The Defense Department says answering such questions is not what Guantanamo is about. Set up as a curiously high-profile interrogation center in January this year, it has since become a kind of warehouse for alleged "enemy combatants" whose information about Al Qaeda, in the best of cases, is now out of date. But outsiders' efforts to clarify the status of any detainee—simply to find out what crime he is supposed to have committed—run up against a wall of baffling legalisms. The military's normal penchant for Catch-22s is taken to an extreme that borders on the Kafkaesque: the prisoners are not charged because they're being "interrogated," not "investigated." The Geneva Conventions do not apply

because, by presidential decree, these men are not “prisoners of war.” But the U.S. Constitution does not protect them because the Pentagon shipped them to “foreign soil,” even if it is a U.S. naval base.

The Kuwaiti prisoners are a sampling of what one veteran U.S. intelligence officer calls the “flotsam and jetsam” of the war in Afghanistan. He suggests they’re lucky to be where they are: “Would you rather be in Club Med [Guantanamo] or in a mud hut in Mazar-e Sharif?” And some of the Kuwaitis, in rare letters home, would seem to agree. “They treat us well, better than any treatment of any government all over the world,” wrote the one who had previously been jailed in Kuwait. But for the families of the five, that’s little consolation. One of the detainees was a government auditor and father of five; another worked for the Kuwaiti Ministry of the Interior; a third is a young teacher of the Qur’an who, his family says, has spent his summers since 1996 doing charity work in Africa or Pakistan.

Abdullah Kamel, 28, is an engineer who worked with Kuwait’s public electricity company. Family photos show him as a teenager in 1991, hospitalized after a piece of leftover gulf war ordnance exploded in his hand. They show him six years later in a T shirt flexing his muscles, joking with friends. Yet after Kamel got married, he cultivated a more serious image. Recent photos show that he’s grown a full beard and adopted the garb of a religious conservative.

#### ‘DON’T GO CLOSE TO THE DANGER ZONE’

Like many Kuwaitis, Kamel had a job that let him take paid leaves to do charity work. In 2001, just as his vacation began, the World Trade Center was attacked and the United States quickly prepared to wage war on the Taliban and Al Qaeda. The Arabic press was full of horror stories about the impending Afghan refugee crisis. “He said, ‘That’s a good place to help people right now,’” Abdullah’s brother, Mansour, recalls. “He gathered money from everybody in the family. I was in the States at the time. I said, ‘Don’t go close to the danger zone.’ He said, ‘No, no, I’ll be near the border’.” In October, he called his family to say that he was stuck in Afghanistan. The border was closed and he couldn’t get out. Now his four children, the oldest a 5-year-old boy named Suleiman, have been waiting nine months for their father to come home.

Kamel made a desperate effort to get there in December. Broken and sick after the journey across White Mountain, he and his four compatriots found shelter with a local tribal leader, Malak Munir Hussain, in the Pakistani village of Mandorai. At first, one of Malak’s relatives says, the Kuwaitis and their companions (including a handful of Saudis and Yemenis) were given water, food, cigarettes, blankets and a place to sleep. But the hospitality didn’t last long. Malak was looking to make a profit.

His chance came within days, when a Pakistani posse showed up in the village, hunting armed Qaeda who had escaped from a prisoner convoy. For a large but undisclosed sum of money, according to the relative, Malak sold the five Kuwaitis and their companions to the local “political agent” of the Pakistani government. Both Malak and the agent, locals say, knew these men were not those who escaped. But no matter. The agent could say he had rearrested 10 of the 15 fugitives. The Kuwaitis were thrown into the nearby Alizai jail, where 140 men were crammed in a space built for 20. Tainted food had given everyone diarrhea. According to Liqat Ali, one of the guards, the stench was overpowering.

Three days later the prisoners were hooded, shackled and thrown into the backs of two trucks for transfer to a larger prison in the town of Kohat. But just before the Kuwaitis were dragged out of jail they managed to write a two-page note in blue ink addressed to “His Excellency the Ambassador of Kuwait in Pakistan.” They passed the note to the sympathetic guard, Ali. Unfortunately for the Kuwaitis, however, neither Ali nor a local journalist with whom he shared the note had the courage to show it to their superiors.

In the note, a photocopy of which was obtained by NEWSWEEK, the Kuwaitis swore that they went to Afghanistan only for "charity work." They said they had tried but failed to contact the Kuwait Embassy in Pakistan while they were in Afghanistan. "We could not enter Pakistan because of the intense patrols and checkpoints on the Pakistan-Afghan border," they wrote. "So we were compelled to go to Tora Bora because there was no other safe place." The message ended with these words: "It is our third day in jail and [we] are living in subhuman conditions. We hope for sympathy from you and an inquiry about us."

#### \$2,000 UNDERWEAR

The Kuwaitis' families had no hint of their fate until January, when a list was published on AlNeda.com, a Web site often identified with Al Qaeda. It named most of the Kohat detainees, including the five Kuwaitis. "We were so happy to hear [he was alive]," says Mansour Kamel, brother of Abdullah. "But we were so upset by the source." The same Web site has been used as a platform for Osama bin Laden's "spokesman," another Kuwaiti named Suleiman Abu Ghaith. And on top of the apparent guilt by association, there was another problem. The list of Kohat detainees gave their home phone numbers. "We got calls from all over the world," says Mansour Kamel. "Some of them were trying to rip us off. One Syrian called and told me he wanted to get my brother some underwear. I said 'How much?' He said, '\$2,000.' I said, 'What kind of underwear is that?'"

In February, four of the five were flown to Guantanamo and the makeshift cages at Camp X-Ray. In May, the fifth arrived, by which time detainees had been moved to a more permanent facility at the new "Camp Delta." One of the five Kuwaitis, Abdulaziz Sayer al Shammari, had joined a hunger strike in March. In a letter dated the 23rd of that month, but received through the Red Cross in Kuwait only on the 23rd of June, al Shammari told his father he had not eaten for 27 days and not taken water for four days. "I cannot stand life in this place," reads the letter. "Some persons in America want to achieve electoral gains on our account." He asked his father to take care of his children and to "take this message to the Kuwaiti press so that they know the reality as it is."

What is the reality? Khaled Al-Odah, a former fighter pilot who is the father of detainee Fawzi Al-Odah, has organized the families of all the Kuwaiti detainees at Guantanamo—the five who crossed White Mountain and seven others—to fight for their freedom. The Washington law firm of Shearman&Sterling has been retained, and a public-relations consultant has been contracted. One of the "messages" in the consultant's "media relation plan" is that all the Kuwaitis being detained "are good people, as far we know." In fact, Kuwaiti detainee Adil Zamil Al Zamil, born in 1963, was part of a radical Islamic gang in Kuwait that stalked, videotaped and savagely beat "adulterers." He was sentenced to a year in prison in 2000 for attacking a Kuwaiti coed in her car.

According to other Kuwaiti sources, however, the only detailed U.S. inquiry about any of the 12 has concerned Omar Rajab, who worked with a charitable organization in the Bosnian town of Zenica during the war there. His family said they welcome such inquiries. Indeed, most of the relatives said they would like the detainees investigated thoroughly, hoping that will establish their alibis. But, again, the Pentagon says that's not the purpose of Guantanamo. "We're quite comfortable at least for the moment that everyone we've got [at Guantanamo] is appropriately there," a senior Defense Department official told NEWSWEEK. "It may be over time that our views will become more defined. [But for now] we view these people as dangerous people who are combatants in the war." Why not conduct investigations in the home countries of the detainees to determine the truth? "Your question suggests that there is something akin to a criminal investigation at work. That is not what we're doing."

But this evident lack of investigation outside Guantanamo isn't just a problem when it comes to establishing alibis. The lack of detailed background dossiers also makes it harder to extract useful intelligence. That's partly why, according to several sources in the intelligence community, prisoners from the very top echelons of Al Qaeda never make it to the southern coast of Cuba.

They are turned over (or “rendered,” in counterterrorism parlance) to interrogators in Egypt or Pakistan, even Syria, where they can be questioned by local intelligence officers who have thick background files and use whatever methods are necessary to help get the job done.

Only recently have representatives of some foreign services been allowed into Guantanamo to interrogate their nationals. Kuwaiti authorities have asked to visit, but without success. (They want to be able to bring home those they presume innocent as well as to help grill the ones they think are dangerous.) “I don’t blame anybody,” says Mansour Kamel, the American-educated brother of detainee Abdullah Kamel. Mansour has lived most of the last seven years in Louisiana and says he loves the United States. He was there on September 11, and he says he understands the way people felt about Arabs and Muslims. “We have a saying: if you’ve been bitten by a snake you’ll be afraid of a rope. But it’s time to get some sense. We always saw the United States as a great example. But the Statue of Liberty now, instead of holding a torch, is holding a sword.” The longer the war on Al Qaeda lasts, the more critical it will become to find the proper balance between the torch and the sword.

With Ron Moreau in Islamabad

© 2002 Newsweek, Inc.