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How Dubious Evidence Spurred Relentless Guantánamo Spy Hunt

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Capt. Theodore C. Polet Sr., an Army counterintelligence officer at the detention camp for terrorism suspects at Guantánamo Bay, Cuba, had just begun investigating a report of suspicious behavior by a Muslim chaplain at the prison last year when he received what he thought was alarming new information.

The F.B.I. had found that a car belonging to the chaplain, Capt. James J. Yee, had been spotted twice outside the home of a Muslim activist in the Seattle area who, years earlier, had been a host for a visit from Omar Abdel Rahman, the militant Egyptian cleric convicted in a 1993 plot to blow up various New York landmarks.

Although it was unclear what the activist had done or whether Captain Yee even knew him, Captain Polet took the report to the Guantánamo commander, Maj. Gen. Geoffrey D. Miller, and laid it out in stark terms.

"I said we had found something that connected Yee with a known terrorist supporter in Washington State, and at that point, he got very upset," Captain Polet said, noting that General Miller's ears turned red with anger. "This became far more serious than a basic security violation. The case was going to get bigger."

In fact, documents and interviews show that the case grew much bigger than has been publicly disclosed, spinning into a web of counterintelligence investigations that eventually involved more than a dozen suspects, a handful of military and civilian agencies and numerous agents in the United States and overseas.

Within less than a year, however, the investigations into espionage and aiding the enemy grew into a major source of embarrassment for the Pentagon, as the prosecutions of Captain Yee and another Muslim serviceman at the base, Airman Ahmad I. Al Halabi, unraveled dramatically.

Even now, Defense Department officials refuse to explain in detail how the investigations originated and what drove them forward in the face of questions about much of the evidence. Military officials involved in the case have defended their actions, emphasizing that some of the inquiries continue.

But confidential government documents, court files and interviews show that the investigations drew significantly on questionable evidence and disparate bits of information that, like the car report, linked Captain Yee tenuously to people suspected of being Muslim militants in the United States and abroad.

Officials familiar with the inquiries said they also fed on petty personal conflicts: antipathy between some Muslim and non-Muslim troops at Guantánamo, rivalries between Christian and Muslim translators, even the complaint of an old boss who saw Airman Al Halabi as a shirker.

The military's aggressive approach to the investigation was established at the outset by General Miller, the hard-charging Guantánamo commander. Along the way, some investigators and prosecutors suggested that the job of ferreting out spies at the base had put them, too, on the front lines of the fight against terrorism.

Perhaps the most aggressive was the lead Air Force investigator in the case of Airman Al Halabi, Lance R. Wega, a probationary agent who took over the inquiry after barely a month on the job. While he was later commended by superiors and rewarded with a \$1,986 bonus, testimony showed that Agent Wega had mishandled important evidence.

Ultimately, Air Force prosecutors could not substantiate a vast majority of the charges they brought against Airman Al Halabi, a translator at Guantánamo, who had faced the death penalty. He pleaded guilty in September to four relatively minor charges of mishandling classified documents, taking two forbidden photographs of a guard tower and lying to investigators about the snapshots. He was sentenced to the 10 months imprisonment he had already served, and is appealing a bad-conduct discharge.

Captain Yee, 36, a West Point graduate from Springfield, N.J., was held for 76 days in solitary confinement, charged with six criminal counts of mishandling classified information and suspected of leading a ring of subversive Muslim servicemen. He was found guilty only of noncriminal charges of adultery and downloading Internet pornography. That conviction was set aside in April, and his punishment was waived.

Another Guantánamo interpreter, and sometime interrogator, Ahmed F. Mehalba, has been jailed since September 2003 on federal charges that he lied to investigators who found that at least two classified documents on a compact disc he had taken with him on a trip to visit relatives in Egypt. He has pleaded not guilty.

Coloring much of the episode, interviews and documents indicate, were simmering tensions over the military's treatment of the roughly 660 foreign men who were then held at Guantánamo without charge.

"Lots of the guards saw us as some sort of sympathizers with the detainees," Airman Al Halabi recalled in one of several interviews. "We heard it many times: 'detainee-lovers,' or 'sympathizers.' They called us 'sand niggers.' "

Airman Al Halabi, who came to the United States at 16 after growing up in poverty in his native Syria, has emphasized his loyalty as a naturalized American citizen. While insisting that he was careful not to share his views with anyone but close friends at Guantánamo, he said he was one of many servicemen and translators there who were uncomfortable with the way the detainees were treated.

"I did disagree with what was going on," he said. "These people had been there forever and were blocked from the legal system. This country stands for justice and human rights, and there we were at Guantánamo doing none of that."

Chaplains Under Scrutiny

The conflicts between Muslim and non-Muslim servicemen and the suspicions of improper relationships with the detainees by Muslim chaplains had taken root at Guantánamo well before Captain Yee arrived there in November 2002, officials said.

"Every one of the chaplains was accused of something while I was there," said Brig. Gen. Rick Baccus, a former military police commander at the base, dismissing the suspicions as unfounded.

"They were always under suspicion by the interrogators, because they were interacting with the detainees and giving them Korans," General Baccus said in an interview. "The M.P.'s suspected them all the time, too. They just didn't like the chaplains going around talking to the detainees."

One chaplain who served under General Baccus, Lt. Abuhena Saiful Islam of the Navy, was accused by interrogators of sending messages from several detainees back to their families overseas. The allegations prompted a formal investigation by the Naval Criminal Intelligence Service.

According to three officials familiar with the inquiry, it turned up no evidence of any wrongdoing by the chaplain. Rather, they said, the case reflected the depth of suspicion among the guards and the need for a clearer understanding of the chaplains' role in dealing with the detainees. (A spokeswoman for the Norfolk Naval Station, where Lieutenant Saiful Islam is now based, said the chaplain had no comment.)

General Miller, who assumed command on Nov. 4, 2002, placed a premium on clarifying the responsibilities of those serving beneath him.

Captain Yee, a Muslim convert who had studied Islam in Syria in the late 1990's, arrived a short time later. He was assigned to advise senior officers on religious questions regarding the detainees, provide detainees with Korans and prayer beads and oversee the distribution of reading materials as part of an effort to limit the radicalization of the prisoners. Officers said Captain Yee was shunned as a traitor by some of the detainees, but cultivated relationships with others in what he described as an attempt to reduce tensions.

Soon, however, the chaplain's presence became a source of discomfort for some of his colleagues, most notably Capt. Jason B. Orlich, a 33-year-old former schoolteacher who had taken over as the intelligence officer for the guard force at Camp Delta, the main Guantánamo detention center.

In one of several sworn statements of his filed in the Al Halabi investigation, Captain Orlich complained that Muslim soldiers and contract linguists would come into the building where he worked each day to pray, often loudly, "while non-Muslims were performing their duties."

"They were fervent in their beliefs and encouraged other Muslims to participate in their religious activities," he said in another statement, referring to Captain Yee, Airman Al Halabi and two of their friends, Capt. Tariq O. Hashim and Petty Officer Samir Hejab. "A lot of their religious beliefs mirrored those of the detainees."

The tensions reached a climax in late March or early April 2003, several officers said, after Captain Yee questioned assertions made by Captain Orlich during a briefing for interrogators and others about the behavior of the Camp Delta prisoners.

According to one investigator involved in the case, Captain Orlich filed a sworn statement to the counterintelligence group on what he considered the chaplain's improper participation at the briefing. Based on Captain Orlich's complaint, officers said, Captain Yee was barred from attending further intelligence briefings. The half-dozen officers of the counterintelligence group also began to more closely scrutinize the chaplain's activities and take note of the grumbling against him.

"I was very methodical in making sure this was not just a personality conflict," Captain Polet said in an interview. "From a counterintelligence standpoint, there was nothing to act on. But we made a conscious decision to monitor it."

According to investigators and prosecutors, some of the primary accusations against Captain Yee echoed those that had been made earlier against Lieutenant Saiful Islam: that he spent an inordinate amount of time speaking with the detainees, took frequent notes during those conversations and seemed to some guards overly sympathetic with the prisoners' plight.

There was also an argument - often made by Captain Orlich - that Captain Yee and some members of his small Muslim prayer group at Guantánamo constituted a suspicious fellowship of servicemen who appeared to sympathize with the detainees and question some of the government's counterterrorism policies.

"There was a concern that there was, like, a clique of people who would go off and spend time away from the unit and were not as supportive of the mission as they ought to be," said the chief Air Force prosecutor in the Al Halabi case, Lt. Col. Bryan T. Wheeler. "If people want to have a prayer group, that's great. If, on the other hand, you have people complaining about the treatment people are receiving, there are ways to do that. Subverting the mission is not the way to do it."

Over the course of 2002, the handling of the Guantánamo detainees had been criticized in briefings and memorandums by many of those who served there: General Baccus, his counterpart for intelligence, Maj. Gen. Michael E. Dunlavey, a chief of the C.I.A. field group on the base, the military's criminal investigators, senior F.B.I. agents and others.

But according to many officers, General Miller ran a tighter operation. Morale improved, they said, but with that came an atmosphere in which criticism of the detainees' treatment was tacitly discouraged.

"People were definitely careful about expressing their opinions," said one Guantánamo veteran who knew Captain Yee and Airman Al Halabi. "But a lot of us felt some sympathy for some of the detainees. A lot of those guys were low-level or no-level. They were not terrorists."

Developing a Case

The case against Captain Yee turned, several officers said, after Captain Orlich returned to the counterintelligence office at the base in April 2003 with one of the contract Arabic interpreters who had what several people described as a frosty relationship with Captain Yee and his friends.

The officers said the interpreter reported overhearing the chaplain speaking in Arabic to a detainee at the base hospital, mocking a psychological-operations posters intended to encourage the detainees' cooperation with interrogators.

This time, the counterintelligence unit responded more quickly, filing a basic report of suspected espionage or subversion to the 470th Military Intelligence Group in Puerto Rico.

The intelligence officials in Puerto Rico responded in early May, two officers said, dismissing the allegation and instructing the Guantánamo office to drop the matter. But Captain Polet, then the head of Guantánamo's counterintelligence unit, remained concerned. He rewrote what was basically the same report, officials said, and forwarded it to a higher-level authority, the Army Central Control Office.

While Captain Polet's unit awaited a response, one of its agents sent the Social Security numbers for Captains Yee and Hashim, Airman Al Halabi and Petty Officer Hejab to a friend at the F.B.I., two military officers said. The friend called back to report that a computer search turned up the report of the chaplain's car having been observed at the home of the activist in the Seattle area - once while Captain Yee was at Guantánamo, and once while he was believed to be stationed at Fort Lewis, just south of Tacoma.

By the time the Army control office authorized a preliminary investigation, General Miller had been briefed on the F.B.I. information and had ordered Captain Polet to investigate thoroughly. "Exonerate this man or bring him to justice," two officers quoted him as saying of Captain Yee. "Whatever support you need to conduct this investigation, you will have." A spokesman said General Miller would not comment.

In mid-June, General Miller was also briefed on the Al Halabi case by Agent Wega, who had been sent to Guantánamo from Travis Air Force Base in northern California to investigate.

As with Captain Yee, the initial conduit for accusations of wrongdoing was Captain Orlich. He had discovered the disposable camera with which Airman Al Halabi had photographed the guard tower, and he learned that Airman Al Halabi had come under investigation at Travis for supposedly plugging his laptop into a government network. Captain Orlich had also sent two subordinates to confiscate a box of photocopied documents from the library where Airman Al Halabi worked under Captain Yee, on the suspicion that the two men were distributing radical literature to the detainees.

"Who's to say what it was," Second Lt. Victor Ray Wheeler, one of the people who retrieved the documents, said in an interview. "But it could have been reinforcing fanatical beliefs of the detainees."

The concerns about the documents later proved unfounded. But two searches of Airman Al Halabi's Guantánamo dorm room by Agent Wega turned up some the letters from detainees that the airman routinely translated in his primary job as a linguist. Agent Wega also surreptitiously copied the hard drive of Airman Al Halabi's laptop, and later found a letter from the Syrian Embassy authorizing him to enter the country.

For months, Airman Al Halabi had been telling co-workers he was preparing to travel to Damascus to marry his Syrian fiancée, a family friend. But the investigators suspected something more ominous.

When Agent Wega detained Airman Al Halabi as he returned from Guantánamo on July 23, 2003, he found computer files containing 186 detainee letters he had translated - all of which, he said, Captain Orlich had told him were classified. Rather than keep him at Travis while the investigation continued, Air Force commanders ordered Airman Al Halabi's immediate arrest and Air Force prosecutors got to work.

Airman Al Halabi soon faced 30 different charges, including attempted espionage, aiding the enemy and bank fraud. But many of the accusations began to dissolve almost as quickly.

The Prosecution Unravels

One charge of aiding the enemy was based on the second-hand claim that Airman Al Halabi had boasted of distributing baklava pastries to the detainees. It was soon determined, however, that he had been on a mission in Afghanistan when the sweets arrived at Guantánamo by mail, and that they had been consumed by other translators before he returned.

Another accusation, that he distributed radical literature to the detainees, was based on an erroneous translation of an Islamic symbol in Ottoman-style calligraphy. The bank-fraud charge collapsed after the government found that bank and credit card companies had simply misspelled Airman Al Halabi's name on some of his cards.

But defense lawyers also protested that the prosecutors withheld some crucial evidence that undermined their case.

One of the prosecutors' most important assertions was that a computer analysis showed that some detainee letters had been e-mailed from Airman Al Halabi's laptop, possibly overseas. Months after that claim was quietly dropped, the defense learned that early on, a computer expert had told the government that it was not clear the documents had been e-mailed at all.

Airman Al Halabi's lawyers also made a charge of misconduct after a government translator contacted them to say that one of the prosecutors, Capt. Dennis Kaw, had discouraged her from

alerting the court when she found a mistake in her translation of the Syrian government's letter. Captain Kaw had insisted, rather improbably, that the Syrian government had given Airman Al Halabi permission in the letter to travel not only to Syria but also to Qatar; instead, the relevant word meant "the homeland."

The translator, Staff Sgt. Suzan Sultan, also disclosed that Agent Wega and other investigators had celebrated with beer as they examined a package that Airman Al Halabi had sent home with the documents later used to convict him on minor charges. The agents later taped up the box, put on gloves and photographed their steps as they reopened it, she testified.

"This is not the way our system of justice is set up," said one of the defense lawyers, Maj. James E. Key III. "You are supposed to investigate, and then charge. The system is premised on the idea that men and women who serve should not be subjected to these kinds of baseless allegations."

In the case of Captain Yee, Army investigators also operated on the mistaken belief that the names and identity numbers of Guantánamo detainees, which were found in notebooks that the chaplain carried with him when he went on leave, were classified.

But their suspicions were also raised by information from the F.B.I. and other sources that suggested possible connections between Captain Yee and Islamic militants.

A Dec. 30, 2003, memo by the F.B.I. counterterrorism analysis section asserted that the Abu Nour Institute in Syria, where Captain Yee had studied Islam, "may be an international center of Islamic terrorism," according to a document reviewed by The New York Times.

But the memorandum based that claim primarily on the activities of a few unrelated persons and it noted that "the exact nature of terrorist activity or training" at the center was "currently unclear." (Officials of the institute, which is known for teaching a moderate brand of Sufi Islam and is affiliated with the Syrian government, have denied that it supports terrorism.)

According to another F.B.I. document, a search of Captain Yee's home in Seattle also turned up notations linking him to two men already in the bureau's sights: the assistant imam of an Islamic center in Baltimore and another Baltimore man Captain Yee knew who belonged to the Nation of Islam. Military investigators said the F.B.I. also raised questions about some Muslims whom Captain Yee had met in Germany around the time he converted to Islam in 1991.

One F.B.I. official familiar with the Yee and Al Halabi cases suggested that the agency had merely assisted military investigators but had not endorsed their approach. But two military investigators said that the F.B.I. played a far greater role, and that information it provided had bolstered the notion that the two servicemen might be involved in subversive activities.

A lawyer for Captain Yee, Eugene R. Fidell, had no comment on the F.B.I. information. But he sharply criticized the prosecution of his client.

"What happened to Chaplain Yee was a grave miscarriage of justice," he said. "The career and personal life of a loyal American officer has been turned inside out, and he's not the only victim. This case has proven to be a self-inflicted wound for the military justice system."

Captain Yee declined a request to be interviewed. He is to leave the military on Jan. 7, with an honorable discharge.