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Invisible Men

## **The Not-People we're Not Holding at Guantanamo Bay.**

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It's an immutable rule of journalism that when you unearth three instances of a phenomenon, you've got a story. So, you might think three major reports on Guantanamo Bay, all released within a span of two weeks, might constitute a big story. But somehow they do not.

Guantanamo Bay currently holds over 400 prisoners. The Bush administration has repeatedly described these men as "the worst of the worst." Ten have been formally charged with crimes and will someday face military tribunals. The rest wait to learn what they have done wrong. Two major studies conclude that most of them have done very little wrong. A third says they are being tortured while they wait.

No one disputes that the real criminals at Guantanamo should be brought to justice. But now we have proof that most of the prisoners are guilty only of bad luck and that we are casually destroying their lives. The first report was written by Corine Hegland and published two weeks ago in the National Journal. Hegland scrutinized the court documents of 132 prisoners—approximately one-quarter of the detainees—who have filed habeas corpus petitions, as well as the redacted transcripts of the hearings that 314 prisoners have received in appearing before military Combatant Status Review Tribunals—the preliminary screening process that is supposed to ascertain whether they are "enemy combatants," as the Bush administration claims. Hegland's exhaustive review concludes that most of the detainees are not Afghans and that most were not picked up on the battlefield in Afghanistan. The vast majority were instead captured in Pakistan. Seventy-five of the 132 men are not accused of taking part in hostilities against the United States. The data suggests that maybe 80 percent of these detainees were never al-Qaida members, and many were never even Taliban foot soldiers.

Most detainees are being held for the crime of having "associated" with the Taliban or al-Qaida—often in the most attenuated way, including having known or lived with people assumed to be Taliban, or worked for charities with some ties to al-Qaida. Some had "combat" experience that seems to have consisted solely of being hit by U.S. bombs. Most were not picked up by U.S. forces but handed over to our military by Afghan warlords in exchange for enormous bounties and political payback.

But weren't they all proved guilty of something at their status review hearings? Calling these proceedings "hearings" does violence to that word. Detainees are assumed guilty until proven innocent, provided no lawyers, and never told what the evidence against them consists of. That evidence, according to another report by Hegland, often consists of little beyond admissions or accusations by other detainees that follow hundreds of hours of interrogations. (A single prisoner at Guantanamo, following repeated interrogation, accused over 60 of his fellow inmates—or more than 10 percent of the prison's population. Some of his accounts are factual impossibilities.) Another detainee "confessed" following an interminable interrogation, shouting: "Fine, you got me; I'm a terrorist." When the government tried to list this as a confession, his own interrogators were forced to break the outrageous game of telephone and explain it as sarcasm. A Yemeni accused of being a Bin Laden bodyguard eventually "admitted" to having seen Bin Laden five times: "Three times on Al Jazeera and twice on Yemeni news." His file: "Detainee admitted to knowing Osama Bin Laden."

Mark Denbeaux, who teaches law at Seton Hall University in New Jersey, and attorney Joshua Denbeaux published a second report several days after Hegland. They represent two detainees. Their data on the evidence amassed against the entire detainee population jibes with Hegland's. They evaluated written determinations produced by the government for the Combatant Status Review Tribunals; in other words, the government's best case against the prisoners, in the government's own words.

The Seton Hall study found that 55 percent of the detainees are not suspected of having committed any hostile acts against the United States and that 40 percent of the detainees are not affiliated with al-Qaida. Eight percent are listed as having fought for a terrorist group, and 60 percent are merely accused of being "associated with" terrorists—the lowest categorization available. They confirm that 86 percent were captured either by the Northern Alliance or by Pakistan "at a time in which the United States offered large bounties for capture of suspected enemies." They quote a flier, distributed in Afghanistan at the time of the sweeps that reads: "Get wealth and power beyond your dreams ... You can receive millions of dollars helping the anti-Taliban forces catch Al Qaida and Taliban murderers. This is enough money to take care of your family, your tribe, your village for the rest of your life. Pay for livestock and doctors and school books."

While some of the evidence against the detainees appears damning—11 percent are said to have "met with Bin Laden" (I suppose that includes the guy who saw him on TV)—most are accused of "associating with terrorists" based on having met with unnamed individuals, used a guesthouse, owned a Casio watch, or wearing olive drab clothing. Thirty-nine percent possessed a Kalashnikov rifle—almost as fashionable in that part of the world as a Casio. Many were affiliated with groups not on the Department of Homeland Security's Terrorist watch list.

The third report was released today by the U.N. Commission on Human Rights. Five rapporteurs spent 18 months investigating conditions at Guantanamo, based on information provided by released detainees or family members, lawyers, and Defense Department documents. The investigators were not scrutinizing charges. They were assessing humanitarian conditions. They declined to visit the camp itself when they were told they'd be forbidden to meet with the prisoners. Their 41-page document concludes that the government is violating numerous human rights—including the ban on torture and arbitrary detention and the right to a fair trial. The investigators were particularly bothered by reports of violent force-feeding of hunger-strikers and interrogation techniques including prolonged solitary confinement; exposure to extreme temperatures, noise, and light; and forced shaving. It concludes: "The United States government should close the Guantanamo Bay detention facilities without further delay" and recommends the detainees be released or tried.

And why doesn't the government want to put these prisoners on trial? The administration has claimed that it needs these men for their intelligence value; to interrogate them about further 9/11-like plots. But as Hegland reports, by the fall of 2002 it was already common knowledge in the government 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 from 1999 until he resigned in 2004. Three years later, the government's own documents reveal that hundreds of hours of ruthless questioning have produced only the quasi-comic, quasi-tragic spectacle of weary prisoners beginning to finger one another.

The government's final argument is that we are keeping them from rejoining the war against us, a war that has no end. But that is the most disingenuous claim of all: If any hardened anti-American zealots leave Guantanamo, they will be of our own creation. Nothing will radicalize a man faster than years of imprisonment based on unfounded charges; that's why Abu Ghraib has become the world's foremost crime school. A random sweep of any 500 men in the Middle East right now might turn up dozens sporting olive drab and Casio watches, and dozens more who fiercely hate the United States. Do we propose to detain them all indefinitely and without charges?

The only real justification for the continued disgrace that is Guantanamo is that the government refuses to admit it's made a mistake. Releasing hundreds of prisoners after holding them for four years without charges would be big news. Better, a Guantanamo at which nothing has happened in four years. Better to drain the camp slowly, releasing handfuls of prisoners at a time. Last week, and with little fanfare, seven more detainees were let go. That brings the total number of releasees to 180, with 76 transferred to the custody of other countries. Are these men who are quietly released the "best of the worst"? No. According to the National Journal one detainee, an Australian fundamentalist Muslim, admitted to training several of the 9/11 hijackers and intended to hijack a plane himself. He was released to his home government last year. A Briton said to have targeted 33 Jewish organizations in New York City is similarly gone. Neither faces charges at home.

Guantanamo represents a spectacular failure of every branch of government. Congress is willing to pass a bill stripping courts of habeas-corpus jurisdiction for detainees but unwilling to probe what happens to them. The Supreme Court's decision in *Rasul v. Bush* conferred seemingly theoretical rights enforceable in theoretical courtrooms. The right to challenge a government detention is older than this country and yet Guantanamo grinds on.

It grinds on because the Bush administration gets exactly what it pays for in that lease: Guantanamo is a not-place. It's neither America nor Cuba. It is peopled by people without names who face no charges. Non-people facing non-trials to defend non-charges are not a story. They are a headache. No wonder the prisoners went on hunger strikes. Not-eating, ironically enough, is the only way they could try to become real to us.

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