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## **Guantánamo: Lies, Damned Lies and Statistics**

**by Andy Worthington**

On January 22, in an executive order relating to [the closure of Guantánamo](#), President Barack Obama established a comprehensive review of the cases of the remaining 242 prisoners, to work out who could be released and who should continue to be held. The executive order explained that the review was to be “conducted with the full cooperation and participation” of the attorney general, the secretaries of Defense, State and Homeland Security, the director of National Intelligence and the chairman of the Joint Chiefs of Staff, but in reality, it was expected that the lead would be taken by the Justice Department.

The most thoroughly discredited department in the Bush administration, the Justice Department is clearly in line for a major shake-up, as the new attorney general, Eric Holder, [explained in his acceptance speech](#) on February 3, when he proclaimed his commitment to “remake the Department of Justice into what it was and what it must always be,” and explained, “This may be a break from the immediate past but it is consistent with the long history of the Department of Justice. I call on every employee of this Department — from this moment on — to return to the practices that are the foundation of this entity. It is time once again to base our actions on policies that are rooted in fairness and in a desire to ensure a more just America.”

### **Propaganda regarding the Guantánamo evidence**

According to an article in the [Los Angeles Times](#) on Saturday, the Guantánamo review, led by Holder and the Justice Department, has now begun. “The review team is in the process of identifying all the information,” a senior official in the Obama administration said. As the article explained, the process would “not be simple,” as information on the prisoners is “scattered in multiple locations,” and the administration official admitted that “there is not, and may never be, a single file for each detainee.”

The *Los Angeles Times* article was clearly following up on an article published by the [Washington Post](#) on January 25, “Guantánamo Files in Disarray,” which first suggested that, when it came to reviewing the cases of the Guantánamo prisoners, “incoming legal and national security

officials — barred until the inauguration from examining classified material on the detainees — discovered that there were no comprehensive case files on many of them.”

According to the *Post*'s article, “a senior administration official” stated that information on individual prisoners was “scattered throughout the executive branch.” The article’s authors, Karen DeYoung and Peter Finn, also spoke to several former Bush administration officials, who agreed with this analysis, explaining that the files were “incomplete and that no single government entity was charged with pulling together all the facts” regarding each prisoner,” pointing out that “the CIA and other intelligence agencies were reluctant to share information,” and adding that “the Bush administration's focus on detention and interrogation made preparation of viable prosecutions a far lower priority.” As a result, the journalists speculated that the review board charged with reviewing the cases “will have to spend its initial weeks and perhaps months scouring the corners of the federal government in search of relevant material.”

Although the former Bush administration officials were correct to highlight major problems with the CIA's reluctance to share information and the administration's general lack of interest in prosecutions — as opposed to the “arbitrary detention” identified by Barack Obama, with its focus on endless isolation and interrogation — it was not strictly accurate to describe the “disarray” as something for which the incoming administration was unprepared. The very word “disarray” had been used by Lt. Col. Darrel Vandeveld, a former prosecutor in the military commissions, who [resigned last September](#), to describe the state of the prosecutors' department in the Office of Military Commissions. In a [detailed and highly critical declaration](#) a month ago in the habeas corpus review of the Afghan prisoner [Mohamed Jawad](#), Lt. Col Vandeveld explained how

the evidence, such as it was, remained scattered throughout an incomprehensible labyrinth of databases ... or strewn throughout the prosecution offices in desk drawers, bookcases packed with vaguely-labeled plastic containers, or even simply piled on the tops of desks vacated by prosecutors who had departed the Commissions for other assignments. I further discovered that most physical evidence that had been collected had either disappeared or had been stored in locations that no one with any tenure at, or institutional knowledge of, the Commissions could identify with any degree of specificity or certainty.

### **The damning evidence of Lt. Col. Stephen Abraham**

Moreover, Lt. Col. Vandeveld's opinions echo those of [Lt. Col. Stephen Abraham](#), a veteran of U.S. intelligence, who worked in 2004-05 on the tribunals at Guantánamo — the Combatant Status Review Tribunals — which were responsible for compiling the material that was used to establish that the prisoners were “enemy combatants.”

Lt. Col. Abraham's experiences demonstrated two uncomfortable truths: firstly, [he explained](#) that, because the body responsible for compiling the material — the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) — was not empowered to demand information from the intelligence agencies, “Most of the information collected ... consisted ... of information obtained during interrogations of other detainees” (and was often produced in circumstances that were not conducive to voluntary confessions). [He also pointed out](#) that other material consisted of intelligence “of a generalized nature — often outdated, often ‘generic,’ rarely specifically relating to the individual subjects of the CSRTs or to the circumstances related to those individuals’ status,” and that “what purported to be specific statements of fact lacked even the most fundamental earmarks of objectively credible evidence.”

This explanation alone was, of course, insufficient to establish that the whole of the evidence was worthless, as it did not necessarily include classified evidence that was also used to determine the prisoners' status, but Lt. Col. Abraham was just as scathing about the quality of the classified evidence, [explaining in July 2007](#) that there was, essentially, no difference between either types of evidence. “The classified evidence,” he told the [New York Times](#), “was stripped down, watered down, removed of context, incomplete, and missing essential information.” He also reiterated his complaints about evidence obtained from other prisoners, stating, “Many detainees implicated other detainees, and there was often no way to test whether they had provided false information to win favor with interrogators.”

In addition, Lt. Col. Abraham had direct experience of the classified evidence, when he served on one of the tribunals — that of a Libyan, Abdul Hamid al-Ghizzawi, who had settled in Afghanistan, where he ran a shop and had a wife and child, but who was captured by bounty hunters and sold to U.S. forces.

After reviewing all the evidence, Lt. Abraham and his colleagues “found the information presented to lack substance,” noting that supposedly specific factual statements “lacked even the most fundamental earmarks of objectively credible evidence,” that statements made by alleged witnesses “lacked detail,” and that generalized statements were presented “in indirect and passive forms without stating the source of the information or providing a basis for establishing the reliability or the credibility of the source.”

However, although they concluded that there was “no factual basis” for holding al-Ghizzawi as an “enemy combatant,” the Defense Department attempted to bully them into changing their mind, and, when they refused, prevented them from taking part in any more tribunals, and duly held another tribunal — in secret — which reversed their opinion and concluded that al-Ghizzawi was indeed an “enemy combatant.”

Al-Ghizzawi remains in Guantánamo to this day, and when [I interviewed Lt. Col. Abraham recently](#), and asked him to talk about the quality of the evidence against him, he gave me an analogy which captured perfectly the problems with a system in which rumor, innuendo, and

false confessions masquerade as evidence. Speaking of an allegation that al-Ghizzawi was involved with the Libyan Islamic Fighting Group, an organization opposed to the dictatorship of Colonel Gaddafi, Lt. Col. Abraham explained,

There was absolutely nothing in the information to suggest that he had in any way been closely associated with, or had acted in any way that facilitated or contributed to terrorist activities. Nor was there any information that was linked to him directly, or that linked him to al-Qaeda, to the Taliban, or to anything else.

When I pressed him further, to confirm that there was no hint of a connection, he said, “Let me give you an extraordinary connection, the very nature of which I think is irrefutable. I was in Paris in 1975. So was Ayatollah Khomeini. Do I need to go any further?”

### **Dismissing the propaganda**

The problem, therefore, is not so much that “the complexity and dangers of the issue” of reviewing the prisoners’ cases have emerged — as the *Post* described the opinion of several “former officials” — but rather, as the conservative judge and George W. Bush appointee Richard Leon discovered in the habeas corpus reviews of [five Bosnian Algerians](#) (last November) and Chadian national [Mohammed El-Gharani](#) (last month), in many cases “the complexity and dangers” are nothing more than unsubstantiated rumors, and the evidence itself cannot be substantiated.

With this in mind, it was, frankly, negligent of the *Washington Post* to cite the opinion of a “former senior official,” who accused the Obama administration of “backpedaling and trying to buy time,” and who claimed, “All but about 60 who have been approved for release are either high-level al-Qaeda people responsible for 9/11 or bombings, or were high-level Taliban or al-Qaeda facilitators or money people.”

The problem with this official’s statement is that it is demonstrably false. Of the 182 other prisoners tarred as terrorists by the official, it has [long been established](#) that only between 35 and 50 are regarded by intelligence officials as connected in any meaningful way with al-Qaeda or other terrorist groups.

A startling example of a prisoner who does not correspond to the opinion of the “former senior official” was revealed just three days after the article was published in the *Post*, when [Judge Leon ruled](#) that a Yemeni prisoner, Ghaleb al-Bihani, could continue to be held as an “enemy combatant,” not because he was a high-level al-Qaeda operative responsible for 9/11 or bombings, or a high-level Taliban or al-Qaeda facilitator or money person, but because he had been an assistant cook for the Taliban and the Arab recruits serving alongside them in the Taliban’s long-running war with the Northern Alliance.

Judge Leon's ruling raises some other uncomfortable questions, of course; primarily, if it is at all reasonable for men involved in a conflict that preceded the U.S.-led invasion of Afghanistan in October 2001 to be held as "enemy combatants" because they were still there when that conflict morphed into a war against the United States, but what it proves beyond a shadow of a doubt is that you do not necessarily have to be a terrorist to be imprisoned as an "enemy combatant" in Guantánamo.

The *Post*, of course, did not know that Judge Leon would make this ruling when the article was published, but his previous rulings should have set off some alarms, as should another statement by the "former senior official," who "acknowledged that he relied on Pentagon assurances that the files were comprehensive and in order rather than reading them himself."

The cause of justice, which has been suspended in Guantánamo for seven long years, is not served by allowing unsubstantiated rumors by former Bush administration officials to disguise the fact that the main reason that the evidence against the prisoners is "in disarray" is not because it is scattered to the four winds, but because it either doesn't exist at all, or because it was extracted from other prisoners under duress, or because it serves only to prove that the prisoners in question had traveled to Afghanistan to help the Taliban fight the Northern Alliance in a long-running civil war that, in most cases, had nothing whatsoever to do with al-Qaeda, the 9/11 attacks, or any other form of terrorist activity.

*Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press). Visit his website at: [www.andyworthington.co.uk](http://www.andyworthington.co.uk).*

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