

Clive Stafford-Smith is a British lawyer based in New Orleans . . . [He quotes] UK judges calling Camp Delta a legal black hole. . . . "One of the problems the US faces is if they let people go, and if my hypothesis is correct that actually they didn't do much of anything down in Afghanistan or they were aid workers, humanitarian people, then the US is going to have a lot of egg on its face. So their obvious interest is not to let people go, because as long as they're caught up in Guantanamo Bay, no-one can know what the truth is."

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Guantanamo Bay
by Peter Marshall
BBC Newsnight
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A prisoner is carried on a stretcher by two US soldiers at Guantanamo Bay

In France a deranged man hijacks a plane in the name of al-Qaeda, in Germany a court hears Osama Bin Laden's former bodyguard say he boasted of plans to murder thousands, from Washington the CIA investigates links between Saudi Arabia and terrorism. It was a relatively uneventful day in the so-called war on terror.

In theory the Americans have a potentially invaluable intelligence base in the 650 prisoners, they've got locked away in Guantanamo Bay, Cuba.

The Pentagon calls them "unlawful combatants." Britain's appeal judges have labelled the camp a "legal black hole".

Now Newsnight has found the CIA believes many of those held without charge, trial or sentence, shouldn't be there at all.

Peter Marshall reported.

SHUHEL AHMED

My brother's not a terrorist. That's just ridiculous. The bottom line is that my brother is not a terrorist.

JED BABBIN

This is a different kind of war. We're taking different kinds of prisoners.

CLIVE STAFFORD-SMITH

The Americans say "might is right", and then they totally disrespect all international law.

SHUHEL AHMED

What we ask is just the role of law, due process. Otherwise release them.

PETER MARSHALL

Camp Delta, the military-run prison in Guantanamo Bay, Cuba. It's where the Americans are keeping their captives. Britain's judges and others have questioned its legality, but it's there to stay. How long is America going to hold these people in Camp Delta without charge, without trial, without sentence?

BABBIN

Until the war is over, and it may be ten years.

MARSHALL

So there will be no charge until the war is over? This is the war on terrorism?

BABBIN

Absolutely. The war on terrorism may not end in our lifetime or theirs. This is a global conflict. These people are prisoners in that conflict.

MARSHALL

Our story begins in the land of America's number-one Gulf ally, Kuwait. Khalid al Uдах has always loved America. As a colonel in Kuwait's Air Force, he spent what he calls the best year of his life training there. When Saddam's invaders put Kuwait's oil fields to the torch, Khalid became a hero of the resistance, spotting targets for US planes. When the American-led liberators rolled in, Khalid was joyful, so was his son.

KALID AL UDAH

He let go of my hand and went directly to these troops and shook hands with them. He was shouting, dancing. He was very happy. You know, you can imagine this boy, 14-year-old boy seeing this, the Americans with the other allies liberating his country. This is the most recent letter we received. Today his only contact with his son, is through Red Cross letters. His son, who is now 25, is one of more than 600 inmates of Camp Delta in Guantanamo Bay. The details are sketchy, but Khalid says his son and some other Kuwaitis were working for a charity on the Afghan-Pakistan border when they were snatched by bounty hunters who handed them to the Americans for cash.

AL UDAH

They are guilty of one thing only, to help people. This is the guilt they have in the eye of the United States Government. What we ask is just the role of law, due process. Trial them if they are guilty, otherwise release them.

MARSHALL

In the land of America's number one European ally, that's Britain, there's similar concern. Tipton has now been labelled the home of the Tipton Taliban. Three young men born and raised here are locked up in Guantanamo Bay. Again the only contact is the Red Cross letters.

SHUHEL AHMED

"Hi. How are you all? Hope that you're fine and well. I'm fine and well. I miss you all a lot. Say hello to big sister's family. Tell mum not to worry about me. I'm OK. Hope you all have my present for my 20th birthday as soon as I return. Love you all. Take care." While he was there, my brother passed his 20th birthday. He was 19. Now he's 20. So basically, he's only a young lad.

MARSHALL

Last October, Ruel Ahmed and his two friends all separately left Tipton for Pakistan. A wedding was mentioned. There was also vague talk of a holiday. The next the families knew was a report they were prisoners in Guantanamo Bay.

AHMED

I want him back here so he can tell us the story, what happened, what he went through, how he ended up there and what was he doing there? Did he go for aid work? Did he go for an adventure? What the hell was he doing in that place? That's what we need to know. Did he get involved with the wrong people? Did somebody capture him? Someone may have kidnapped him and took him.

MARSHALL

The Ahmeds neighbours, the Rassouls, were alarmed to see footage on Newsnight of what they took to be their son wheeled on a stretcher. They later heard he'd lost three stone in weight. Physically he's now recovered, but all the families are concerned.

AHMED

Even though until today he's not been proven guilty, not charged, and he's been living in a prison, a military prison and serving his sentence. For what reason?

MARSHALL

The sons of these few streets in Tipton, the same as the sons of Kuwait and hundreds of others, are now locked in what the appeal judges called a legal black hole. Whether they are terrorists or Taliban, reckless adventurers or the unluckiest of innocents, this raises serious concerns about their future and their health. It also raises questions about the future of international law and the health of American justice.

JED BABBIN

These are the kinds of people who will chew through the hydraulic lines of an aircraft. These are the Hannibal Lecters of south-west Asia.

MARSHALL

During the Gulf War, Jed Babbin was a senior figure in the US Defence Department. He remains a close political ally of the man now running the Pentagon and Guantanamo Bay. He

doesn't waste a moment worrying about the detainees at Camp Delta.

BABBIN

The only right they have is to be kept in a humane manner.

MARSHALL

Until the war is over?

BABBIN

Exactly.

MARSHALL

But there's a feeling that this is too fluid a concept, this war on terrorism. It's not a conventional war. It may go on forever.

BABBIN

Well, it may, but that's the choice of the terrorists, not our choice. We have a situation here that is new. We're adapting to it. We're doing something differently because we have a different threat and enemy that we're fighting. It's not a legal matter. This is a matter of security. It's a matter of war.

MARSHALL

A British lawyer based in New Orleans says that's nonsense. Next week he takes the matter to America's Appeal Court, quoting the UK judges, calling Camp Delta a legal black hole.

STAFFORD-SMITH

What you have to wonder about, unfortunately, and I've dealt with the Feds over here for a long time, is just how naive they are. It would be silly to suggest that the US gets it wrong all the time. But I'm afraid even when we look at our experience in what I normally do, which is death penalty work, they get it wrong a substantial amount of the time when they give everyone their legal rights and when they do it all publicly. I think it's naive to assume that they don't make some mistakes when they're doing it without anyone questioning them.

MARSHALL

The US Defence Secretary's insisted since his trip to Guantanamo Bay that these men are no ordinary prisoners.

DONALD RUMSFELD

The characteristics of the individuals captured is that they are unlawful combatants, not lawful combatants. That is why they're characterised as detainees and not prisoners of war. They went around like terrorists.

MARSHALL

In fact, the Red Cross has said that unlawful combatant category is an American concept unrecognised in the Geneva Conventions.

They note: The Red Cross has repeatedly asked the US to determine properly each prisoner's status.

Back at the Pentagon, Mr Rumsfeld has said Guantanamo Bay holds the most highly trained killers, the hardest of the hard core. Some of his colleagues elsewhere in the administration are sceptical.

At the Pentagon they've suggested one of the chief functions of Guantanamo Bay is to provide vital intelligence through the interrogation of the detainees a boom then surely for the CIA. Well, curiously, that's not how the head of the CIA seems to see it. Indeed, he's believed to doubt whether many of the detainees are master terrorists at all, leaving their intelligence value non-existent.

The CIA director, George Tenet, is just one of the President's trusted lieutenants, but he's already at odds with the Pentagon over invading Iraq. He's been against it.

Newsnight has found that Guantanamo Bay and Camp Delta has opened up a second rift. The al-Udahs are among 12 Kuwaiti families campaigning to bring their sons home. They say Kuwait's Interior Minister met with the CIA boss Tenet in August and came back with good news. Mr Tenet believed at least nine of the 12 were innocent. He told the minister:

AL UDAH

"We want just to hold these three names. The rest of the nine Kuwaitis are totally cleared. If I am", that's what he said, "if I am in charge or I have the authority on the Guantanamo Bay, I will immediately release the nine Kuwaitis. But I don't have the authority to do so. The Pentagon has the authority to do so. But I can promise you", this is still Tenet talking to our minister, "I will raise this matter with the administration, the US administration, especially with our President, Mr George Bush."

MARSHALL

While Kuwait's Interior Minister won't comment, separate sources have confirmed the story. Back in Washington, though, the Pentagon's defenders barely blink.

BABBIN

Well, I think Mr Tenet and others have very different views. That's part of the problem that we have in the US. I think Britain and Europe mistake us for being far better organised than we really are. I think Mr Tenet would have one view. I would suspect Mr Rumsfeld would have another, and I would suspect the FBI director would have a third. Somewhere in a blending of the three we will come out with, I hope, the right answer.

MARSHALL

Whether it's co-ordinated or not, Mr Tenet is saying what he thinks presumably?

BABBIN

I assume he is.

MARSHALL

He doesn't think this intelligence you're getting is worth a candle a lot of the time.

BABBIN

Well, I think he is contradicting much of what we're hearing from the rest of the Government.

MARSHALL

People like Colin Powell are also understood to be concerned about Mr Rumsfeld's Camp Delta. In part it's because of damage to America's reputation, but also because any evidence gleaned from Camp Delta can't be used in court, the prisoners having been denied lawyers.

STAFFORD-SMITH

One of the problems the US faces is if they let people go, and if my hypothesis is correct that actually they didn't do much of anything down in Afghanistan or they were aid workers, humanitarian people, then the US is going to have a lot of egg on its face. So their obvious interest is not to let people go, because as long as they're caught up in Guantanamo Bay, no-one can know what the truth is.

MARSHALL

In Kuwait City, they've heard reports that the Pentagon may be ready at last to hold military tribunals for prisoners against whom there is specific evidence. Others may be released or they may be held indefinitely. The al-Udahs have been marking Ramadan, but there's an empty place at the meal table for their son in prison so far away. In Tipton, in the English Midlands, there's the same sense of loss.

AHMED

My mum, every day she cries. Every time we have dinner she's crying, saying, "What's happened to my son?" We just want our brother back, because he's not in Al-Qaeda or whatever they class him as. For the families of Tipton and the families of Kuwait, their sons remain in a legal limbo, a place of uncertainty that doesn't seem to end.

This transcript was produced from the teletext subtitles that are generated live for Newsnight. It has been checked against the programme as broadcast, however Newsnight can accept no responsibility for any factual inaccuracies. We will be happy to correct serious errors.

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