This American Life
"Habeas Schmabeas"
First Broadcast March 10, 2006

Produced by Chicago Public Radio
Distributed by Public Radio International

IRA GLASS: So here's how a lawyer meets with his client, when his client is a prisoner at Guantanamo**.** There's a little hut, with a metal table.

MARGULIES: He's brought out of the box, and shackled to an I-bolt in the floor, uh, with his back to the door. He is forbidden to face the natural light.

GLASS: Joe Margulies of the University of Chicago represents a few detainees at Guantanamo and he says that to understand that thing about the natural light, you have to understand that the detention facilities at Guantanamo were designed to be the perfect interrogation chambers. And so anything the prisoner wants, including sunlight, he's only going to get with the permission of his interrogators, as a reward for cooperating. And anything can be used that way.

MARGULIES: Uh, mail. Another lawyer discovered when he first got there that his client, a middle-aged gentleman with five children who is a London businessman, was picked up in the Gambia, and he wasn't getting any mail from his family. And he couldn't understand it because he felt abandoned and alone from his five children. And the lawyer had the presence of mind to ask what was the matter was and he discovered that 16 letters were in the military's possession (that) they had refused to deliver. And when they did finally deliver them, someone had actually taken the time to redact out the words from the children: "We miss you, Daddy. We love you, Daddy. We're thinking of you." That is apparently not right, because it disrupts the sense of isolation and despair that they are trying to cultivate.

GLASS: Prisoners who feel despair cooperate. They tell us all the dangerous things they know. That's the idea. Let's make them feel hopeless.

Ever since President Bush announced the global war on terror, we've been told that this is a different kind of war, with different rules. The battlefield isn't a jungle in Asia, or a beach in France. It's everywhere. Soldiers aren't guys in uniform, they could be anybody. And prisoners of war are different, too. So dangerous, we're told, that we keep them in an offshore facility, in as close to total secrecy as possible, to interrogate whenever we want, however long we want, using methods we have never approved for other wars.

And one thing that's just weird about Guantanamo is that in all of these years that it's been going, why haven't we seen more of these guys on radio or TV? Over 200 of them have been released, right? At our radio show this week we were talking about this, and we realized that NONE of us had ever heard or read any interview with any of these guys. And so today, you're going to hear from two of those Guantanamo detainees who have been released and I believe that you are going to be surprised at what they're like. And we're also going to explain, once and for all, how it is that under these brand new government rules and procedures in this new war, somebody can be locked away, basically forever, even when the government's own classified files say he is not a threat to America.

It's "This American Life", WBEZ Chicago, distributed by Public Radio International. Our guide for all of this is Jack Hitt. A few years ago, he tackled some of these issues for us on our radio show, and he's spent a few months digging deeper, trying to understand what's happening now. Here he is.

Act One. There's No U.S. in Habeas.

HITT: As best as we can tell, Badr Zaman Badr and his brother were imprisoned in Guantanamo for three years for telling a joke. Actually, for telling two jokes. They ran a satire magazine in Pakistan that poked fun

at corrupt clerics. Sort of the Pashtu edition of “The Onion.” The first joke that got them into trouble was when they published a poem about a politician called “I Am Glad to be a Leader.” Here’s Badr:

BADR: Let me translate a few lines for you.

HITT: Sure.

BADR: **“**Before, I was so thin and weak. Now, I have big stomach.” Uh, stuff like that. (Laughs)

HITT: So, the guy with the big stomach called up Badr and his brother. He threatened them, and, as best as they can tell, told authorities that they were linked to Al Qaeda, which landed them in Guantanamo, and which leads us to the second joke. This one was in an issue of Badr’s magazine that came out in the ‘90’s, after our government set a $5 million reward for Osama bin Laden. Badr’s magazine issued its own bounty for the capture of an American leader.

BADR: President Bill Clinton, giving the details of how to identify that he has blue eyes, and he’s clean-shaven, and the most important thing is the recent scandal going on between Clinton and Monica Lewinsky. (Laughs) Yeah. If someone finds that man, he will be rewarded 5 million Afghani, that’s Afghanistan currency, which was equal to $113 at that time. That’s impossible (unintelligible, laughing.)

HITT: In Guantanamo, were you interrogated about your Clinton satire?

BADR: Exactly. They were serious, if we really wanted to kill President Clinton, and we said “No” that it was only satire, and only a way of expression. It’s allowed, it’s protected, in your country, in American law.”

HITT: How many times were you interrogated…about the Clinton article?

BADR: Many times, many times. Me and my brother, each one of us, have been interrogated more than 150 times.

HITT: So after hearing the punch line explained 150 times, we finally got the joke, and sent Badr and his brother home. It had been three years since the Pakistani army surrounded their house in Peshawar, came into their living room which is lined with wall-to-wall bookcases, and arrested them. That’s Badr’s version of why we jailed him; here’s President Bush’s:

PRESIDENT GEORGE BUSH: These are people that got scooped off a battlefield, attempting to kill U.S. troops. And, uh, I want to make sure before they’re released that they don’t come back to kill again.

HITT: The administration has never wavered on this point. Here’s Dick Cheney on Guantanamo:

VICE PRESIDENT DICK CHENEY: The people that are there are people we picked up on a battlefield primarily in Afghanistan. They’re terrorists. They’re bomb makers, they’re facilitators of terror, they’re members of Al Qaeda, the Taliban.

HITT: We’re told over and over that these prisoners are so terrible, that we need an offshore facility, away from U.S. laws, to hold them. But then there’s Badr, and every day more stories like his are coming out. And they raised the question: Is Guantanamo a campful of terrorists, or a campful of mistakes? In a new study by Seton Hall’s law school, researchers simply went to the trouble of reading the 517 Guantanamo case files released by the Pentagon. Here’s what they found:

Only 5% of our detainees at Guantanamo were “scooped up” by American troops, on the battlefield or anywhere else. Five percent. The rest? We never saw them fighting.

And here’s something else: Only 8% of the detainees in Guantanamo are classified by the Pentagon as Al Qaeda fighters. In fact, Michael Donleavy, head of interrogations at Guantanamo, complained in 2002 that he was receiving too many “Mickey Mouse” prisoners.

In 2004, the New York Times did a huge investigation, interviewing dozens of high level military intelligence and law enforcement officials in the US, Europe and the Middle East. There was a surprising consensus: that out of nearly 600 men at Guantanamo, the number who could give us useful information about Al Qaeda was “only a relative handful.” Some put the number at about a dozen. Others more than two dozen.

The Seton Hall study might help explain that; it revealed that 86% of the detainees were handed over to us by Pakistan or the Northern Alliance. And some were handed over to us by a new method – here's Badr.

BADR: Actually, in our interrogation, the American interrogators have been telling us they have paid a lot of money to those who handed over us to Americans.

HUTSON: The problem was, we were offering bounties, you know, $5,000 or $10,000 (Al Qaeda brought more than Taliban did) and so "ok, fine, here's your money" and they take them to Gitmo.

HITT: That's Rear Admiral John Hutson, the Navy's top lawyer. He was judge advocate general until 2000. He says, essentially we bought Badr, and a whole lot of other prisoners.

HUTSON: And when you look at the economy at that part of the world, you know, that really is kind of a king's ransom.

* * * * *

HITT: We all know this is a new war with new rules. But what were the old rules? Well, one had to do with POWs. The military has always known that all kinds of prisoners get picked up in the fog of war, so it was important to get those numbers down to just the real POWs, since troops on the move didn't want to be burdened with looking after lots and lots of captives. This problem had been more or less solved by the old Geneva Conventions, which required a "competent tribunal." It sounds crazy, a kind of impromptu court hearing right after a battle, but that is exactly what used to happen. And typically, some 75-90% of the people "scooped up" would be sent home.

In the Gulf War of 1991, we captured 982 people, released 750 of them right away, and the remainder were POWs. Like in the old war movies, they gave name, rank and serial number, and they got certain things: everything from a pledge they wouldn't be tortured, to a promise they'd be released once the war ended, and even the right to send letters home. But this is a new kind of war, after all, and the administration made the argument that the Geneva Conventions apply only when you're fighting another country – a country with a uniformed army. Not when you're fighting terrorists.

BOYLE: They do not apply where the individuals captured haven't deserved, haven't shown that they deserved those protections.

HITT: That's Brian Boyle. He was associate attorney general for President Bush when these decisions were made.

BOYLE: They did not legally qualify as prisoners of war because they were not fighting in uniform, because they try to blend in with the civilian population, because they try to take cover in civilian areas.

HITT: Hasn't that been a problem for war for most of the 20th century, or at least in the last couple of conflicts we've been in? I mean, is rooting out Al Qaeda any harder, or, how is it harder than rooting out Viet Cong in a local village?

BOYLE: Now, I take the point. I guess the point I was making earlier is that I don't think you can conclude, given the nature of the enemy we're facing, that how we treat Al Qaeda operatives that we're able to capture is going to make any difference at all in how they would treat American personnel in their custody. Wouldn't make a difference at all.

HUTSON: You know, that argument can really take you to some dark places, I think.

HITT: Here's Real Admiral Hutson.

HUTSON: If we pick and choose, other countries can pick and choose whether they're going to apply the Geneva Conventions. That is a slippery slope that Secretary Powell and others did not want us to go down, because they're looking over the horizon. They know that this isn't the last war we're going to fight. It's not even the next to last war we're going to fight.

HITT: This quarrel about the Geneva Conventions continued for three years and eventually got down to one very practical question: If you're a prisoner, and you're not protected by the Geneva Conventions, and you

might be held indefinitely, could you at least make an appeal in a U.S. court? Here's Attorney General Alberto Gonzales.

GONZALES: We really are, for all intents and purposes, at war. And so you need not provide access to counsel. You need not provide the ability to challenge their detention in a criminal court. It would be like saying that Germans that were captured in WWII would have been provided lawyers. The truth of the matter is the rules and procedures of the criminal justice system simply do not apply in this case.

HITT: And he's absolutely right … about the Germans, except the Germans were covered by the Geneva Conventions. Finally, in 2004, the United States Supreme Court stepped in. It said if prisoners aren't going to be covered by the Geneva Conventions, that's fine. But they couldn't be allowed to fall into a legal black hole, not protected by any law at all. They had to be given some way to challenge their detainment. It's one of the oldest rights in western civilization, known as habeas corpus.

Habeas corpus – it's a phrase we all know, but let's be honest. Can anyone really remember what it means? It's not a trial, or anything like one. It's more, well, primal. It's a hearing that commands the executive, in this case the president, to explain why he has jailed somebody. The idea dates back to 1215 England when the nobles forced King John to sign the Magna Carta and agree to the Great Writ, later known as habeas corpus. In Latin, it means "show me the body." In other words, a neutral judge would have to see the prisoner in person to check if he'd been tortured. And then the judge had the power to require the king to explain "Why is this guy jailed?" All the executive had to do was answer with a convincing story, and then the guy went back to the dungeon. It's a right so elemental that it's in Article One of the U.S. Constitution. It's one of the reasons we fought the Revolutionary War.

And after the Supreme Court granted the detainees access to the courts, right away President Bush started talking like habeas-loving King John.

BUSH: Yeah, look, um, we are a nation of laws and, and, to the extent that people say, well, America's no longer a nation of laws, that does hurt our reputation. But I think it's an unfair criticism. You might remember our courts made a ruling, they looked at the jurisdiction, the right of people in Guantanamo to have habeas review, and so we're now complying with the court's decisions.

HITT: The administration quickly put together a kind of hearing based, in part, on the old Geneva Conventions hearing they'd abandoned. They called this hearing a Combatant Status Review Tribunal or, in the elegant shorthand of the Pentagon, a CSRT. These new hearings have one oddity to them: the tribunal assumes all the evidence against the detainee is correct. If the detainee wants to prove them wrong, it'll be difficult -- because he's not allowed to see the evidence. It's classified. As a result, these hearings make strange reading. In many of them, there comes a moment in the dialog like this one between detainee Abdul Malik and the judging panel.

> MALIK: Regarding the charge that I worked at several guest houses and offices, what was the work?
>
> JUDGE: I cannot answer that. This is the first time we've seen the evidence. I know nothing more than what is written here.
>
> MALIK: Same with me. I don't know anything about this. Regarding the charge that I was frequently seen at Osama bin Laden's side -- who saw me?
>
> JUDGE: I don't know.
>
> MALIK: If it says "was frequently seen," you have to prove that.

The Supreme Court had said the detainees did not deserve a full criminal trial, of course, only the basics of a fair hearing, which came down to three things: a lawyer, an impartial judge, and the chance to see the evidence against them. In practice, though, they get none of these.

Baher Azmy is a lawyer who represents one of the detainees, but he couldn't attend his client's CSRT -- because actual lawyers aren't allowed.

AZMY: They were each appointed a personal representative who's a military officer, um, who in my case met with my client the day before for 15 minutes, sat silent and failed to present all of the exculpatory evidence in his file, which, of course, any lawyer would have done. Not the personal representative.

HITT: And as for confronting the evidence, consider the case of Azmy's client, Murat Kurnaz, a Turkish citizen raised in Germany. The Pentagon accidentally declassified the file with all the secret evidence against him. And here's what's in it: nothing.

AZMY: The classified file contains – the Washington Post wrote about it – six statements from military intelligence. That's really what the classified file is. Memos saying "this person was here" or "so-and-so witnessed him…" In Kurnaz's case, there are five or six statements saying, "There's no evidence of any connection to Al Qaeda, the Taliban or a threat to the United States. The Germans have concluded he has got no connection to Al Qaeda. There's no evidence linking him to the Taliban." Over and over and over again.

HITT: But here's the thing: At the hearing, nobody talks about any of that. His personal representative doesn't bring it up. The tribunal doesn't consider it. And Kurnaz himself doesn't even know about it. He's declared an enemy combatant; he's still at Guantanamo today.

But wait. There's more. The reason they give for holding him? A friend of his named Selcuk Bilgin blew himself up as a suicide bomber in Turkey in 2003. That's 2 years after Kurnaz got picked up.

AZMY: So, setting aside the sort of remarkable legal proposition that one could be detained indefinitely for what one's friend does, it's actually preposterous in that a simple Google search or a call to the Germans would have revealed that his friend is alive and well, and under no suspicion of any such thing.

HITT: You heard that right. Kurnaz is in Guantanamo because two year after he got picked up, a guy he knows became a suicide bomber. Except that he didn't become a suicide bomber and is currently living in Germany.

AZMY: Yeah, he's walking around in Germany; I've met him.

HITT: Then there's a bunch of Chinese Muslims we accidentally picked up during our sweep in Afghanistan. They're an ethnic minority known as the Uighurs, and they've been battling the communist Chinese since WWII. Conservatives love the Uighurs, which is why they've been passionately defended by the National Review and the Weekly Standard.

After a corporate lawyer named Sabin Willett heard about them, he volunteered to represent a Uighur named Adel Adbu al-Hakim and some others. And he flew to Guantanamo to meet them.

WILLETT: The main thing they wanted to talk about that was so puzzling to them was that the previous May, the military had told them that they were, in their words, innocent. And why were they still here? They were innocent.

HITT: So what you're saying is that Adel and the other Uighurs are, in your opinion, have never been members of any kind of Al Qaeda, or jihad, or anything like that.

WILLETT: Yeah, it's not just my opinion, the Defense Department has determined that. That means they were never Al Qaeda, never Taliban, never any of that.

HITT: The government says that they would release Adel and the other Uighurs, if only it could find another country to send them to. I have an idea. Adel could go 90 miles north to Miami where's there's an entire city of anti-Communists. Or he could be sent to one of the largest Uighur ex-pat communities: in Washington D.C. So, why aren't we going to be seeing Adel anytime soon? Here's Willett:

WILLETT: I'll tell you what I think the answer is, although no one from the government would admit this. I think the answer is that if anybody actually met these guys, actually looked at them, and took their pictures and, you know, had them on TV shows or the radio, they'd be shocked. Because they've been told for four years that the people at Guantanamo are terrorists, that they're the worst of the worst. And you take a look at Adel, you're gonna suddenly realize you've been lied to for a long time. He struck me when I first met him like the kind of kid your college age kid would bring home – his roommate, his buddy from college, home for the weekend. People who meet Adel for the first time, they walk out of the meeting and, and, their jaws are

a little unsprung. And they don't say much, because it's hitting them like a ton of bricks. You know, "This guy's in Guantanamo?"

HITT: If Willett's right, this gets to the heart of habeas. The whole point is that the king shouldn't have the right to just detain somebody because it would be an embarrassment to have the guy free. The Pentagon has an acronym for people like the Uighurs. It's pronounced "N-LEC". It means No Longer Enemy Combatant. But, as Willett notes, it should be Never Was Enemy Combatant.

The problem with creating an offshore legal limbo, where there's no habeas proceeding to separate the Al Qaeda fighter from the comedy writer, comes during interrogation. If we've labeled them as terrorists, then that's how they get treated. Joshua Colangelo-Bryan is a lawyer at Dorsey & Whitney in New York who volunteered at Guantanamo. He represents Jumah Al Dossari. For a while, the government thought Al Dossari was a recruiter in American for Al Qaeda, possibly involved in the case known as the "Lackawanna Seven." But this is never brought up at his CSRT hearing. Instead the government simply states that he's Al Qaeda, and as proof lists various places he's been: Afghanistan, Bosnia, Azerbaijan, the Pakistan border. Supposedly he was fighting in some of those places, but the government provides no evidence of that. They don't quote witnesses. Nobody's on record saying he's Al Qaeda. Here's Colangelo-Bryan.

COLANGELO-BRYAN: What's interesting to me when we talk about what he was doing in that part of the world is the allegation that the U.S. military makes against him that he was -- quote -- present at Tora Bora – close quote. The military offers no allegations as to when Jumah was supposedly in Tora Bora. It says nothing about what supposedly he was doing. Simply that at some point in history, he was present in that place. Now, Jumah says that he has never been to Tora Bora. And again, even if that allegation is true, frankly it doesn't prove anything. Absent some evidence of some involvement in terrorist activity, I simply don't know how you can call someone a terrorist.

HITT: We tried out many of our new interrogation techniques on Jumah Al Dossari. Colangelo-Bryan met with him many times and catalogued what was done to him. Al Dossari said that Americans forced him to the ground and urinated on him. We put out our cigarettes on him. We shocked him with an electric device. We spat on him. We poured a hot cup of tea on his head. We told him "We brought you here to kill you." We beat him until he vomited blood. We threatened to have him raped. We dressed him in shorts and left him in a frigid, air conditioned room. We abandoned him in another room with no water. We invited him to drink from his toilet bowl, which he did. We wrapped him in an Israeli flag. We told him that we would hold him forever, and that we would send him to Egypt to be tortured. On a different day, we chained him to the floor and cut off his clothes while a female MP entered the room. We dripped what we said was menstrual blood on his body. When he spat at us, we smeared this blood on his face. We kissed the cross around our neck and said "This is a gift from Christ for you Muslims." We videotaped the entire episode.

There's no way to confirm that all this happened to Al Dossari. But other prisoners and officials at Guantanamo have described variations of every technique on the list, including the menstrual blood, the Israeli flag, the references to Christianity, the beatings, the sexual humiliation. Al Dossari is interrogated still, about once a month. During one visit last winter, he asked Colangelo-Bryan, "What can I do to keep myself from going crazy?" A few months later, during a meeting, Al Dossari asked to go to the bathroom. Colangelo-Bryan and the MP stepped outside the hut and waited. After five minutes, Colangelo-Bryan got concerned. He cracked the door open.

COLANGELO-BRYAN: When I opened the door, the first thing I saw was a pool of blood on the floor in front of me. I then looked up and saw a figure – hanging. I yelled to the MPs for help. They then began to cut down the noose around Jumah's neck.

HITT: It wasn't Al Dossari's first suicide attempt.

COLANGELO-BRYAN: About three weeks later, I was back in Guantanamo. Jumah said to me that he didn't want to kill himself without an outside witness. His fear was that if he died, and only the military knew, nobody would've known what happened.

HITT: Of course, as we're so often told, this war is different. Who wants to be the one who lets somebody go who then turns out to be the next 9/11 hijacker? So for the military, there's also this other new thing. A terrifying calculation that there can be no margin of error. Joe Margulies of the University of Chicago represents a few detainees, and has been trying to make sense out of what has been happening at Guantanamo.

MARGULIES: If we give them the benefit of the doubt, it is possible – and there is a lot of evidence to support this – they had no idea who they were going to be capturing. And they thought they might get more, uh, serious people, people who were more seriously involved. The reality is, those people never came to Guantanamo. The most serious folks are those in CIA custody, of which there are approximately 30; 27 to 30, something like that. Those are the people in black sites that we don't even know where they are. The people who are of any significance never arrived at Guantanamo, but they didn't know that when the base opened. And they said, at the time, that these were the worst of the worst, they were trained killers, they would gnaw through hydraulic lines to bring down the plane that was flying them to Guantanamo… I mean, they used the most inflammatory rhetoric, and it very quickly became apparent that they were just mistaken. And then they were stuck with this PR nightmare. And at the same time, there was this sense, this nagging sense,that maybe they are really bad and we just can't find out. Maybe they're not Afghan dirt farmers as all appearances seem to be. How do we really know? Maybe we need to use more aggressive techniques to find out. So they kept turning up the heat and using more and more coercive techniques on people who were less and less significant.

HITT: In this new war, the plan was to build a prison so bleak that the detainees would give up hope and talk. The military was given a mission, and they did a good job. But many prisoners are now moving into year five. If they're Al Qaeda, detainment is perfectly justified. No one argues that. But think about what these incarcerations are for men wrongfully and indefinitely detained. It's like being buried alive in a coffin. Nobody knows how many of the prisoners are, in fact, the "worst of the worst" and how many are innocent. But there is a way to find out. It's called habeas corpus.

* * * * *

BREAK

Act Two. September 11th, 1660.

GLASS: So where things stand now, in 2005, the president signed into law a bill that had solid bipartisan support that would end habeas rights forever for Guantanamo detainees. Where that law is going to stand and whether detainees are going to get fair hearings in the military CRST's is actually still up in the air and it's going to be resolved by the courts in the coming months and years.

This actually brings us to Act Two of our show. Act Two. September 11th, 1660. Habeas rights were originally created in England, and in one of the Supreme Court cases on this issue, 175 members of the British Parliament filed a Friend of the Court Brief, an amicus brief, the first time in Supreme Court history this has happened. And they argued, first of all, that British citizens being held at Guantanamo deserved better than what they were getting under these rights. And they also said, essentially, "Are you guys nuts?"

This is from their brief:

> "As members of Parliament of Westminster, amici have a duty to protect human rights and fundamental freedoms against the misuse of public power. The due process of law is deeply rooted in Anglo-American legal and political heritage. The exercise of executive power without possibility of judicial review jeopardizes the keystone of our existence as nations, namely the rule of law, as well as the effective protection of human rights."

You know, it also pointed out the history of habeas -- how after WWII, Winston Churchill wanted to suspend habeas rights for Nazi leaders and just shoot them, and it was the United States who argued for habeas and for trials, which resulted in the Nuremburg trials. They also finally pointed out how badly it had gone the last time that they, England, tried to suspend habeas, like in the 1600s.

They write, "during the British civil war, the British created their own version of Guantanamo Bay, and dispatched undesirable prisoners to garrisons off the mainland, beyond the reach of habeas corpus relief." The guy who did that was named Lord Clarendon and in England, one of our regular contributors, Jon Ronson, decided to look into it.

RONSON: So it turns out that the last person to come up with this same exact way to sidestep habeas corpus is a lord I have never heard of. A not household name lord called Clarendon. Who was he? I went to a professional, Tony McDonald, who said he'd take me to Clarendon's grave in Westminster Abbey.

MCDONALD: Yes, we're here in the south aisle of Westminster Abbey. Notice we just passed Charles Darwin's grave.

RONSON: And you were showing an American party around and somebody spat at Charles Darwin's grave?

MCDONALD: Yes, and wanted to know why he was buried here.

RONSON: And we just passed the spot where Elton John sang "Candle in the Wind" at Princess Diana's funeral.

MCDONALD: Yes, in front of Lord Stanhope's memorial in the nave.

RONSON: You have to be famous, or a great royalist, or at least someone who worked here, like an organist, to be buried here. Tony is an historian and a Blue Patch guide, an official Westminster Abbey tour guide. He took me down corridors and through chambers until we came to a flagstone on the floor. Lord Clarendon's grave. He's in vaulted company. Henry V is buried just to his left, and Elizabeth I lies a couple of yards in front of him. Tony explains who Lord Clarendon was.

MCDONALD: He was, for want of a better word nowadays, what would probably be called today the Prime Minister, and he was the main advisor to the king.

RONSON: So Clarendon had this job: he was the king's advisor in the middle of the civil war in which the king was killed.

There were two sides. You've got the monarchists, and then you've got the Puritans, who murdered the king because they saw the kingdom as debauched and decadent. Now, I know you Americans see Puritans as kindly settlers constantly sitting down to Thanksgiving dinner. We see them as bastards. They were religious fundamentalists. In other words, they were…

MCDONALD: …men who believed that all they had to do was to overthrow the government, and the reign of Jesus Christ would come once more among them.

RONSON: So this was a battle of civilization, it was a battle of religious ideologies…

MCDONALD: It certainly was.

RONSON: So as Puritans, they seemed to be kind of crazy religious fundamentalists.

MCDONALD: Some of the people were, and they were among the most persecuted after the Restoration.

RONSON: The Restoration. This is when the whole "sending people away to offshore islands for dubious sovereignty business" took place.

MCDONALD: It was the period after the war. The Puritans had been defeated. The king, Charles II, was restored to power along with his main advisor, Lord Clarendon.

RONSON: Consider what it was like for Clarendon and the monarchists. They'd been in exile for years. Many of their friends and supporters had been locked up or killed. The Puritans had been vicious; they had killed the king. And many of the men who had done it were still at large, plotting out there. It was a 9/11-style trauma, and Clarendon behaved in a traumatized way.

MCDONALD: He probably was paranoid to some extent. The whole of the new establishment were paranoid. They saw plots everywhere, and there was a feeling of retribution in the air. Some people said they had good reason to be paranoid.

RONSON: Well, these people had done the most unimaginably horrific acts…

MCDONALD: They killed the king! They had killed the king, they had views that would have led to anarchy, and they were capable of anything. That's why they were put where they were, and it was for the safety of all of us, doing you all a favor. Heaven knows what would have happened. They were wicked people, and those were the people who were then shipped off by Clarendon.

RONSON: The exact location of Lord Clarendon's Guantanamo is lost to history. It was probably in Jersey or Guernsey, which today are nice seaside tax havens for the rich. But suspending habeas corpus didn't work out well for Lord Clarendon. He was impeached. At his impeachment trial, he was accused of sending people away to "remote islands, garrisons and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning of any other of his majesty's subjects in like manner." And remember, democracy as we know it is still centuries away. Innocent until proven guilty, one man one vote -- only the most extreme radicals held these views**.**

These were dark times. There were heads on spikes all over London and still, the people were shocked by Clarendon's disregard for habeas corpus.

MCDONALD: People took it seriously, and they would have bandied it about with each other. This idea that you had to produce somebody and accuse them in law in front of their own peers. And the parallels are so obvious when you read the history of habeas corpus and the amount of times it's just been suspended… that is what they always, always do. They say that these people are capable of anything, these people do not hold the same values as we do, they are out to destroy our way of life. It's more or less the same situation.

RONSON: The one outcome of all of this was the Habeas Corpus Act of 1679, which specifically forbade what Clarendon had done, and made it illegal to send a prisoner into "Scotland, Ireland, Jersey, Guernsey, Tangier or into parts, garrisons, islands or places beyond the seas which are, or at any time hereafter shall be within or without the dominions of His Majesty." And forbade it has remained for 330 years – in England, anyway.

* * * * *

BREAK

Act Three. We Interrogate the Detainees.

GLASS: Yes, the U.S. military had their chance with them. In this act, Jack Hitt talks to two former detainees from Guantanamo. One of these guys you've a little bit from earlier in our show, Badr Zaman Badr, the guy who ran the satirical magazine in Pashtu with his brother in Pakistan. The other guy was 19 when he was picked up, Abdullah al Noaimi, a kid from a well-to-do family in Bahrain. Here's Jack.

HITT: Abdullah wound up in American custody the way a lot of the men at Guantanamo did. He was a foreigner in Pakistan, and we were offering bounties for guys like that. Remember Murat Kurnaz? The guy whose friend was supposedly a suicide bomber? And Jumah Al Dossari? Same thing happened to them. In Abdullah's case, he was first taken to Kandahar, to a makeshift prison the U.S. had set up at an airbase, with about 20 men to a tent.

ABDULLAH: When we first got to Kandahar, I was surprised. I had never seen those pictures, those views, only in the ancient movies, like Dark Ages. We were chained by the legs, like shackled, and they ordered us to pick up rocks. (Chuckles) Can you imagine this? They said you should pick up the rocks on the ground, like put it all together in a pile.

BADR: There was no water to make ablution or to take a shower**.**

HITT: Badr, the satirist, was taken to the same airbase, in Kandahar.

BADR: And the MPs were treating us very harshly. We had to be on our knees for long hours, and to put our hands on our heads. And mostly they used the work "f---ing," and they used to tell us to put our "f---ing hands on our f---ing heads", and we didn't like that.

HITT: In the camps, Badr got separated from his brother, the poet, so he devised a way to find him. The detainees didn't have toilets; instead, they got a bucket, which got filled up with what Badr modestly calls "dirt." Every day, some detainee got chosen to empty the buckets. Badr volunteered.

BADR: Because I wanted to meet my brother, to go from tent to tent. Then my brother, when I saw my brother, and he was giving me his bucket to empty. That was the first time he said, "What a spring it is when there are no flowers and instead of the smell of the flowers, we have this dirt smell." I can't translate it actually; in Pashtu, these are really beautiful lines.

HITT: The sanitary conditions were just as bad, if not worse, for Abdullah. The tent he shared with other detainees was open on all sides and located at the end of the military airstrip. Every takeoff and landing, a tornado of dirt, the literal kind, blasted through. In the first few days, he heard the other prisoners in the tent talking about their interrogations.

ABDULLAH: They told me that they had electric shocks from them, and one of them was threatened to be raped. And they took off his pants. And I was like, uh, like thinking "What am I going to do?" They took me at night. There was two interrogators. They wanted me to say that I was a terrorist. I told them "No, I'm not," and everything. Then they started like, uh, pushing me and everything. And then they brought a cigarette. The interrogator was smoking. He blew the smoke in my face. Then he came very close, very, very close to my face, and brought the cigarette between my eyes and he said "I swear to God I'm going to put it in your forehead if you don't tell me what I want to hear."

I thought about it… I felt like, this is a jungle, and only the strong lived in it. But still, there is a small creature that can live, but not by facing the lions, or facing big animals. No. But by maybe hiding, or changing their colors as the trees. So I just said, "Whatever you want to hear from me, I'm going to tell you. What do you want me to say?" He said, "Say that you are a terrorist." "You want me to say I'm a terrorist? Are you going to let me go? Are you going to let me go sleep?" Because a way of torture is not to let me sleep, like keep me awake all the time. So I said, "Okay. I'm gonna tell you whatever you want. Yeah, I'm a terrorist, now go to your bosses." And they left me.

HITT: This is not how he thought things would go with the Americans. In fact, back when he was being held in a Pakistan jail, when he found out Americans would be taking them, he was relieved. He told the other prisoners it was good news. He knew America. He knew how the people were.

ABDULLAH: I lived in so many places, like Europe and England and Germany and France, but the difference was in the States, everywhere you go, they welcome you. Like, when you go into supermarkets, everybody goes like, "How you doing?" and everything. That's the thing that was in my mind. I was like, please, oh, everything's going to be fine. They're gonna understand.

HITT: So how did he know so much about American supermarkets? Well, in 1994, he came to America for the World Cup finals. In fact, Abdullah's been here a lot. He's been downhill skiing in the Midwest. He attended Old Dominion University in Virginia for a while, and has taken other trips, too.

ABDULLAH: And in '96, I was in Disneyland in Orlando. (Hitt chuckles) And for spring break, I was in Daytona Beach with some of my friends.

HITT: You were in Daytona Beach for spring break?

ABDULLAH: Yeah it was year 2000. Bikers Week. (Hitt laughs) I remember the guys, some guys, standing by the sidewalk holding up the signs for the cars passing.

HITT: Right.

ABDULLAH: Some expressions, "Show us…"

HITT: Oh! "Show us…" Right. Yeah, that expression. The "show us your.."

ABDULLAH: Yeah, that expression. That's the most I remember about Daytona Beach.

HITT: So, a year after seeing the sights at Daytona Beach, Abdullah found himself facing an American interrogator in Kandahar.

ABDULLAH: I got shocked. I got shocked when the first interviewer, like, cursing me up and down, cursing my father, cursing my family, cursing my country, cursing my government, everything. Why? That was the question I wanted to know. Like, uh, "What's going on? Do I know you? What do you have against me? What did I do to you?"

HITT: Badr had learned the West from more scholarly sources. He's a big fan of "The Canterbury Tales" and "Gulliver's Travels." And he also knew about the Geneva Conventions, and spoke up when he realized they weren't going to apply.

BADR: Actually, our complaint was they were not accepting us as prisoners of war. They were not giving us those rights. And they were just, actually, just running away from American legal system. I mean, I have told my interrogators many times: If we are really guilty, why don't they put us on trial? In American courts?

HITT: Finally, Badr and Abdullah were each taken out of the camps at Kandahar and put on a plane to Guantanamo. Remember, this is an international flight, from Afghanistan to Cuba, over 20 hours long.

ABDULLAH: We were handcuffed, and the handcuffs were tied to our stomachs. And there is a chain connected to our legs. All the detainees next to you were like, stuck to you.

BADR: They used to put goggles on our head, and we had masks that we can hardly breathe. We could not hear, we could not see, we can even not touch. So they had to stop all our senses completely.

ABDULLAH: To have hearing, seeing, tasting, smelling, those things only a human can have.

* * * * *

HITT: Once they got to Guantanamo, both Badr and Abdullah described being stripped naked, medically examined, and then put into cages until a new round of interrogations began.

BADR: Mostly they used to ask questions about the religious organizations, and how they get money, and why people hate Americans… And there had been even stupid questions.

HITT: Like?

BADR: Yeah, there were stupid questions like if we had seen Osama bin Laden or Mullah Omar, if we intend to attack Americans…

ABDULLAH: As if I know Osama bin Laden. I was like shocked, nineteen years old.

HITT: Abdullah and Badr, by the way, arrived at different times at the base and never knew each other. But they both described meeting lots of ordinary people: farmers, teachers, cab drivers, who were also sold to the Americans. Abdullah talked to one guy who was sold by his own father-in-law. Badr met men who never even heard of Osama bin Laden. After awhile, some of them couldn't help but showcase the absurdity of the situation.

ABDULLAH: Like for example, one guy, he's a very funny guy, they took him to interrogation. Every day they take him there for more than 20 hours. Keep him awake, and have very loud disco music, the lights, like, circling all over his eyes and all over the place. And then, after so many days, under those circumstances, that person just stood up, held the interrogator's hand and kept dancing with him. (Both laugh) Yes, seriously! He kept moving his body all around and the interrogator was going to have a nervous breakdown.

* * * * *

HITT: Abdullah was originally arrested traveling in Pakistan. A man offered him a meal and a place to rest, and later turned him over to the army for the bounty. Abdullah says he saw the money change hands at the jail. Once in American custody, he was accused of traveling to Afghanistan and proclaiming his desire to carry out jihad.

ABDULLAH: Sometimes, to get us, to put the stress on us, they come and ask me, like, "Do you want to go home?" They don't want to take me home, they're just asking to make you like, angry, and nervous that

you'll never go home, and they keep telling you this thing. But, in response, I tell them the same thing: "No, thanks, I don't want to go home. I'm okay here. I like you so much, I don't want to leave you." (Both laugh)

HITT: Now, did they just, did they think you were a smartass? How did they react to that?

ABDULLAH: (Chuckling) They were surprised the first time, but then they got used to it, 'cause everybody's saying it. Even if they, for example, stop you from food, stop you from sleeping, stop you from talking, I don't know why, you just keep smiling.

* * * * *

HITT: So much of what we hear about Guantanamo is about the harsh treatment there. But, of course, like anyplace, the days mostly pass in boredom. The interrogators might be rough, but the MPs and guards who had to spend time with the detainees sometimes would get comfortable and start talking to the prisoners.

ABDULLAH: They asked me "Tell me the truth. Are you a terrorist or not?" They were told that I am a terrorist, but they still ask me. Why? Because of doubt in their hearts. They still have doubts. Those people are not, they don't seem like as we've heard. And then we start talking and talking and talking. Most of the guards, they told me like, um, when they first came here "I was trained that everybody here is, like, monsters. They're gonna jump from the cages and gonna like, tear you up and everything." They said, "We thought it was different. We thought the American forces captured you in a battle or something." So some people, they are forced to treat us bad, but you can see, you can tell from their eyes and some, they feel like this is not the right thing to do. They feel this is wrong. They told me themselves. Some of them told me, like, "If I don't follow orders, I'm going to be in your place." I really miss them now.

HITT: To pass the time, the prisoners would sing together, or try out new poems they'd written. They developed a secret postal system, passing notes and photos, and figured out how to talk to each other through the air conditioning vents. Sometimes, the guards and the prisoners would hold little competitions. Like the Styrofoam cup challenge. The object was to turn the cup inside out without cracking it. The guards went first.

ABDULLAH: They spent hours and hours and hours and they came back with, uh, they couldn't do it. They said, "Okay, let's try to flip the cup under water." They tried and it didn't work. Then the detainees said "Okay, we're going to do it for you." The detainees did it; they flipped the cup inside out, like totally inside out. You could read the brand of the cup inside the cup instead of outside.

HITT: What was the brand?

ABDULLAH: It was Dart.

HITT: Dart?

ABDULLAH: Yeah, one was Dart and the other was Oklahoma, yeah, Community of Oklahoma for the Blind.

HITT: Since pen and paper are forbidden, Badr's brother wrote his poetry by scratching the words into Styrofoam cups with his fingernails. After a year, they were allowed to use pens, and to read books. Abdullah read "David Copperfield." Badr and his brother composed some 25,000 lines of verse. The other inmates memorized the best of them. The most popular couplet went like this:

BADR: It says (long phrase in Pashtu) These are the first two lines. It means "They bring good and bad people to the same jail, and there's no oil or salt in the rice."

HITT: Get that? There's no oil or salt In the rice.

BADR: It's really funny in Pashtu. If you just tell it to any Pashtu speaker in your country, he'll really love that. (Long phrase in Pashtu)

HITT: Finally, one day, four years after he left Pakistan, Abdullah was pulled aside by a military officer who had news. Abdullah was going home. Abdullah says he was asked by a government lawyer, a major, to sign a contract promising not to join a terrorist group, and giving the U.S. permission to re-arrest him at any

time. He refused to sign. Other detainees say they were shown similar letters, and also refused to sign, believing this was just another trick.

(To Abdullah) Did they ever explain why they were letting you go?

ABDULLAH: No.

HITT: So, but they told you they had made a mistake in the end?

ABDULLAH: The government lawyer, he didn't say a mistake, like the vocabulary for mistake. Like, he said, "We picked you up as an enemy combatant, but it turned out that you're not one, we don't say you're an enemy combatant." He just gave me an example of a mistake, but he didn't say "We made a mistake."

HITT: And just as suddenly, Abdullah was on an airplane and back in Bahrain. He was quickly ushered past the news media, and into a room where he saw his family.

ABDULLAH: They greeted me, they welcomed me. They hugged me and everything. Then they took me home. I didn't tell them anything. Everybody's crying. I left my sister, she's like very, very young, about 5-6 years old. I didn't know her when I saw her. She was like a lady.

HITT: When you saw your brothers, and your father, what was that like?

ABDULLAH: Mmm. Have you ever heard the expression "Home Sweet Home?"

HITT: (chuckling) Yes, I have, actually.

ABDULLAH: Yeah, of course. It's exactly, uh, that's the best time to say "Home, Sweet Home."

HITT: Americans are going to think that because you were at Guantanamo Bay, that you were a terrorist, and that everybody was.

ABDULLAH: Yeah.

HITT: What would you say to them?

ABDULLAH: Uh… I would say, even if I were an angel, I would still be a terrorist to them, because it's the thing that they wanted. People don't want to take responsibility for their mistakes, that's it. They want to put it on others. It's like slaughtering a sheep, for example, and when the sheep keeps shaking and the blood's spilling all over the place, they'd scream at it and say, "You're a bad sheep! Bad, bad sheep, because your blood came on my clothes, or my dress." You know what I'm saying? They would take you, maybe torture you, or maybe kill you, or maybe put you under so much stress, and then they would say, "You're a bad person," 'cause you'd been through those things. Why did you put me through those things in the first place?

HITT: In the years Abdullah was gone, his parents moved to a new house. A big house, with lots of rooms. But there was no bedroom for him; his old clothes were gone. They thought he would never come home. He says it's like he's come back from the dead.

GLASS: Jack Hitt in New Haven.

Please note: There may be small differences between
this transcript and the original program.

For quotation purposes, check the original broadcast
at www.thisamericanlife.org, where you can listen for free.