

Introduction

Saber Lahmar, ISN 100002, has been held at Guantanamo Bay since January 20, 2002. He is a religious scholar and Arabic language teacher who was living with his wife in Sarajevo, Bosnia, he was arrested by the Bosnia government until in October 2001 at the demand of the United States. The U.S. told the Bosnians that he and several others (including ISN's 10001, and 10003-6) were planning to attack the U.S. and British Embassies in Sarajevo. All six were arrested and jailed for ninety days while the claims were investigated by Bosnian authorities working with U.S. authorities. When no evidence was found support their arrest, he and the other five were ordered released by the Bosnian Supreme Court. The Chief Prosecutor of Bosnia, who was involved in the investigation, agreed with this result. However, none of the men were released because the U.S. then demanded that the Bosnian government hand them over to be flown to Guantanamo.

We were scheduled to meet with Mr. Lahmar on March 21, 2007. We had conferred with him on each of our previous nine visits, beginning in December 2004. We visited with him in August 2006 in his cell at Camp Echo and in November 2006 in an interview cell at Camp Echo. The August meeting was notable because JTF personnel told us several times no one was living at Camp Echo until the day of our meeting – the last day of our visit. [Other clients knew and told us where he was] Our unsuccessful efforts to see him on the March 2007 visit are well known to Captain McCarthy and Captain Smith and are the subject of various formal requests for action we filed with the SJA office on March 21 and 22.

Since arriving at Guantanamo, Mr. Lahmar has spent more than two of his five and one-quarter years in restricted and isolated confinement. Since June 2006, he has been in a heavily restricted and isolated confinement at Camp Echo where he has virtually no communication with anyone save guards and occasional medical staff. Mr. Lahmar does not understand why he has been placed in restricted confinement and the authorities at Guantanamo have declined to provide any explanation. We do know that he was chosen by Colonel Bumgarner to be a member of the short-lived prisoner group discussing camp confinement conditions with the Colonel and we understand he may have been originally sent to Camp Echo in June 2006 because of confusion in carrying out Colonel Bumgarner's instruction that Mr. Lahmar be returned to his former location in Echo Block, Camp 1. However, even after we expressed serious concerns over his confinement conditions during and after our August and November 2006 visits, Mr. Lahmar has continued to be kept closely confined in Camp Echo, notwithstanding the serious effects on his health and violations and the apparent violations of applicable provisions of the Army Field Manual and Common Article III of the Geneva Conventions.

Mr. Lahmar's continued heavily isolated confinement is having a serious, adverse impact on his physical and mental health. Under the current conditions of his confinement, based on our conversations with him in August and November 2006, Mr. Lahmar lives in an 8' by 6' cell. A fluorescent light in his cell is kept on twenty-four hours a day and the only window in his cell has been painted over, limiting the natural light in his cell. Mr. Lahmar receives no family mail, is not allowed to keep the legal mail that he does receive, and, despite repeated requests, has been denied a pen to write us as his counsel. Denying him access to writing materials is interfering with our ability to represent him. It appears that his reading material is limited to the

Koran. He was only sometimes offered opportunities to exercise. We believe he has not been out of his cell in months except to see us – once – and for medical visits. In addition to the added emotional stress that the lack of exercise induces, Mr. Lahmar is denied most elements of personal comfort, and is only given a sheet to sleep with at 10:00 p.m. each night that is then taken away at 5:00 a.m. the next morning.

Mr. Lahmar's physical health has deteriorated significantly and noticeably. In November 2006, Mr. Lahmar had lost approximately 38 pounds since our August visit. He described a sharp, tight pain in his chest and severe pain in his legs. He has suffered from the pain in his chest for more than a year and a half with no improvement as of November. JTF doctors who visited Mr. Lahmar earlier in 2006 informed him that the pain in his legs is a "major problem" as the nerves and muscles behind his knees and calves were almost dead. In fact, shortly before he was moved to camp Echo, JTF medical staff told him he should be attending physical therapy and that he should be in Camp IV because he could walk regularly there. He had not been visited for therapy as of November. On previous occasions, Mr. Lahmar also complained of severe and constant jaw pain, kidney stones, and eye irritation and sensitivity from lack of natural light.

On our most recent visit to see Mr. Lahmar, on March 19-21, we were told Mr. Lahmar declined to be moved from his cell to visit with us. Our requests to interview him in his cell, or even to go to his cell to see if he would feel comfortable leaving the cell to visit with us after seeing us, were denied despite Mr. Lahmar's declining physical and mental health. We were told that when he was informed we were there, he did not move – but continued to lay motionless staring at the wall behind his steel bunk. We are concerned that his restricted confinement has served to exacerbate the psychological damage he previously suffered at Guantanamo. Furthermore, we are concerned that his inability and/or refusal to exercise, which is likely a result of the continuing psychological trauma caused by his heavily restricted confinement, will ultimately leave him unable ever again to use his legs.

Psychological effects of restricted confinement

It is well documented that restricted confinement of an individual, regardless of mental state prior to confinement, will lead to permanent psychological damage.¹ When individuals who are already suffering from psychological disorders are placed in a restricted confinement situation, the restricted confinement causes further psychological damage.²

Studies on the psychiatric effects of solitary confinement support the frequent observation by prison experts that placing an individual in restricted confinement ultimately will lead to serious psychological damage. As one study states, the "evidence appears overwhelming that solitary confinement alone, even in the absence of physical brutality or unhygienic

¹ See Jones 'El v. Berge, 164 F. Supp. 2d 1096, 1101-02 (W.D. Wis. 2001) (finding that that even individuals who have no history of mental illness and are not subject to a psychological breakdown often develop symptoms that include paranoid delusional disorder, dissociative disorder, schizophrenia and panic disorder); Ruiz v. Johnson, 37 F. Supp. 2d 855, 907 (S.D. Tex. 1999) (finding that Texas administrative segregation units were "virtual incubators of psychoses—seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities."); Thomas B. Benjamin & Kenneth Lux, *Solitary Confinement as Psychological Punishment*, 13 CAL. W.L. REV. 265, 268 (1977); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 132 (2003).

² See Ruiz, 37 F. Supp. 2d at 907.

conditions, can produce emotional damage, declines in mental functioning, and even the most extreme forms of psychopathology such as depersonalization, hallucination and delusions.”³ These symptoms ultimately become more pronounced as the time of restricted confinement is increased, and *continue to last even after the end of the restricted confinement*.⁴

Additionally, the studies note that the circumstances surrounding the confinement can have a significant impact on the degree of psychological damage suffered by an inmate. When an inmate views his or her restricted confinement as threatening, that individual is much more likely to suffer psychological damage from the confinement than an individual who believes the confinement is more benign.⁵ Similarly, when an individual does not understand the basis of the restricted confinement, or views it as an “arbitrary exercise of power and intimidation,” he or she will likely suffer severe psychological pain.⁶ Regardless of the circumstances, however, “there is not a single published study of solitary or supermax-like confinement lasting for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to find negative psychological effects.”⁷

Although JTF-GTMO considers that Mr. Lahmar’s is not being kept in isolated or solitary confinement under its definitions, his confinement conditions in fact closely mirror those of supermax prisons and can reasonably be expected to result in similar psychological injury.

The Army Field Manual

Mr. Lahmar’s conditions of confinement fall outside the guidelines established for segregation or separation as set out in the Army Field Manual (AFM) for Human Intelligence Collection Operations. Although the AFM allows for the use of segregation in certain circumstances, and for separation as an interrogation technique, Mr. Lahmar’s restricted confinement does not meet the standards required for either segregation or separation.

The AFM defines segregation as, “removing a detainee from other detainees and their environment for legitimate purposes unrelated to interrogation, such as when necessary for the movement, health, safety and/or security of the detainee, or the detention facility or its personnel.”⁸ Given the definition of segregation as removing a detainee for *legitimate* purposes, the implication is that DOD considers that segregation is a permissible action, within the guidelines established by the AFM. In this instance, however, Mr. Lahmar’s segregation does not meet any of the four criteria established by the AFM. There is no evidence that Mr. Lahmar has been segregated for purposes of his movement or for his own security. And while we recognize that JTF will have a perspective different from ours with respect to camp safety, we are not aware of any conduct by Mr. Lahmar that would objectively support any reasonable conclusion that he poses a safety risk to the guards or other detainees. Given the toll that his restricted confinement has taken on him psychologically and physically, it cannot be said that he has been moved for health purposes. Indeed, he apparently was sent to Camp Echo in June 2006 by accident, in connection with an apparent act by Colonel Bumgarner that only could be

³ Benjamin & Lux, *supra* note 4, at 268.

⁴ *Id.* at 271.

⁵ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325, 347 (2006).

⁶ *Id.* at 354.

⁷ Haney, *supra* note 4, at 132.

⁸ Dep’t of the Army, Field Manual No. 2-22.3, Human Intelligence Collector Operations para. M-2 (2006).

understood as one of kindness or a reward. Therefore, Mr. Lahmar's restricted confinement cannot be said to meet the AFM's standards for segregation

If Mr. Lahmar is not properly being segregated as of April 2007, as permitted under the AFM for limited purposes, the question becomes whether he is being separated for the purpose of interrogation. According to the AFM, separation may be used "to deny the detainee the opportunity to communicate with other detainees in order to keep him from learning counter-resistance techniques or gathering new information to support a cover story; decreasing the detainee's resistance to interrogation."⁹ At this point, there is no credible argument that Mr. Lahmar's restricted confinement is being used to prevent him from gaining new information or decreasing his resistance to interrogation. As of November, he had not been interrogated since he was placed in restricted confinement approximately six months earlier. Moreover, after more than five years in Guantanamo, it is very doubtful that Mr. Lahmar would have any intelligence value in any event.

Finally, and importantly, even if Mr. Lahmar's confinement could credibly be said to be an interrogation technique, he still may not be held indefinitely. The Army Field Manual specifically requires that even for interrogation purposes, physical separation of an individual may only last for an initial period of 30 days.¹⁰ Any extension of that initial period must be reviewed by the staff judge advocate and approved by the General Officer/Flag Officer who initially approved the use of separation.¹¹ We believe that it is very doubtful that these steps have been regularly followed since late July 2006, especially given what the Camp medical knows about Mr. Lahmar's physical and psychological condition.

Additionally, the AFM acknowledges the applicability of the Detainee Treatment Act of 2005 and Common Article III of the Geneva Convention to any use of separation.¹²

England Memorandum and the Humane Treatment Requirement of Common Article 3

Following the United States Supreme Court's June 2006 decision in *Hamdan v. Rumsfeld*, which held that Common Article 3 of the Geneva Conventions applies to Guantanamo detainees, the Department of Defense chose to clarify its position that it has always treated detainees in compliance with Common Article 3.¹³ On July 7, 2006, Deputy Secretary of Defense Gordon R. England issued a memorandum summarizing DOD policy that Common Article 3 of the Geneva Convention, "applies as a matter of law" to the treatment of detainees held by the Department of Defense.¹⁴ Specifically, Deputy Secretary Gordon stated that the application of Common Article 3 to detainees meant that the detainees must be treated humanely,

⁹ *Id.* at para. M-1.

¹⁰ *Id.* at para. M-29.

¹¹ *Id.* at para. M-30.

¹² *Id.* at para. M-2, M-4.

¹³ *Hamdan v. Rumsfeld*, 126 S.Ct. 2749, 2798 (2006); Memorandum from Gordon R. England on the Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (July 7, 2006); Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

¹⁴ Memorandum from Gordon R. England on the Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (July 7, 2006).

as “humane treatment [is] the overarching *requirement* of Common Article 3.”¹⁵ Furthermore, the memorandum *ordered* commanders to review their existing practices to ensure that prisoners were being treated consistently with Common Article 3.¹⁶ According to the Deputy Secretary’s interpretation of Common Article 3, which is binding, official DOD policy, this means ensuring that all detainees are being treated humanely.

Mr. Lahmar’s current confinement circumstances cannot be said to be humane and therefore his confinement circumstances do not comply with Common Article 3. By restricting Mr. Lahmar to his cell, without contact with other detainees or individuals other than the guards, in the light of his existing physical and emotional conditions, the Department of Defense is causing him severe, irreversible psychological damage and lasting physical harm. His confinement is therefore not consistent with the humane treatment standard established by Common Article 3, a requirement expressly reinforced by Deputy Secretary England’s 2006 Memo. The DOD policy specified in the England Memo is still binding and effective.¹⁷ *Therefore, we respectfully reiterate our written request of March 21, 2007 that JTF-GTMO immediately review the conditions of Mr. Lahmar’s confinement, move Mr. Lahmar from restricted confinement, and place him with others in the detainee population so that he can have some non-guard contact and recreation/physical therapy.*

Finally, under the Military Commissions Act of 2006, cruel or inhuman treatment is defined as, “[t]he act of a person who commits, or conspires, or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering...upon another within his custody or control.”¹⁸ Mental pain and suffering is defined by 18 U.S.C. § 2340(2) as, “the administration or application, of...procedures calculated to disrupt profoundly the senses or the personality.”¹⁹ The International Criminal Tribunal for Yugoslavia has used a similar definition stating that, “cruel treatment constitutes an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.”²⁰ Regardless of the definition used, as a result of the severe mental pain being suffered by Mr. Lahmar, his continued restricted confinement in this fashion is a violation of Common Article 3.

Conclusion

Mr. Lahmar is not a threat to himself, the members of the military serving at Guantanamo, or the other inmates. After five years at Guantanamo, his separation cannot possibly be related to interrogation, as it cannot realistically be said that he has any meaningful information to provide to interrogators. There is no claim that Mr. Lahmar can be or is being

¹⁵ *Id.* (emphasis added); see Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

¹⁶ See Memorandum from Gordon R. England on the Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (July 7, 2006); Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

¹⁷ Defense Department Update, July 11, 2006 – England Detainee Treatment Memo, <http://www.defenselink.mil/home/dodupdate/For-the-record/documents/20060711.html>.

¹⁸ Military Commissions Act of 2006, Pub.L. 109-366, Oct. 17, 2006, 120 Stat. 2632 (codified at 18 U.S.C. § 2441(d)(1)(B) (2007)).

¹⁹ 18 U.S.C. § 2340(2) (2007).

²⁰ *Prosecutor v. Delali*, Case No. IT-96-21-T, Judgment, ¶ 552 (Nov. 16, 1998).

punished in this fashion, much less that his segregation is necessary for his own health or safety or that of others. His confinement for over nine months in this fashion cannot reasonably be justified in light of the procedures required by the AMF. Therefore, his continuing confinement circumstances, especially in view of the damage he has already experienced after five years in Guantanamo, cannot be seen at this time other than as cruel and inhumane treatment of a psychologically damaged individual, which directly violates Common Article III of the Geneva Conventions as it is binding in Guantanamo.