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Stephen M. Truitt
Attorney at Law
Hamilton Square, Suite 500
600 Fourteenth Street, N.W.
Washington, D.C. 20005-2004
202-220-1452 (office)
202-494-1329 (mobile)
202-220-1665 (fax)
stephmac@earthlink.net

January 26, 2009

Dr. Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Re: Executive Order -- Review And Disposition Of Individuals Detained At The
Guantánamo Bay Naval Base And Closure Of Detention Facilities

Dear Dr. Gates:

I write regarding Paragraph 6 of the above order, which directs you to review conditions of detention at Guantanamo within thirty days and further to correct immediately any conditions found to be not in conformity with applicable law, including Common Article 3 of the Geneva Conventions. Such review will necessarily include the operations of Camps V and VI where two of my clients are held and have been held for over a year.¹ The purpose of this letter is to request that you find and declare that the operation of these two Camps violates both Common Article 3 and the Army Field Manual (an applicable law). Let me explain why.

Operations of the Camps

I append hereto the January 20, 2007 Declaration of Sabin Willet, counsel for prisoners held in Camp VI, concerning the operations there. You can readily verify that what he describes continues today. The upshot is that at Camp VI prisoners are held in isolation from other humans twenty-two hours of every day. During these twenty-two hours the prisoners have no contact with other humans,² they eat and pray alone and have no access to daylight.

¹ These are Maher El Falesteny (ISN 519) and Hani Abdullah (ISN 841.) El Falesteny has been cleared for transfer; Abdullah has not been so cleared. Both have *habeas* actions pending in the District of Columbia.

² Prisoners can sometimes shout to each other through the cracks at the bottom of the cells to their doors. This is no substitute for ordinary contact between men.

The two hours of "recreation" alternately occurring in day or late night when the prisoner may be asleep do not suffice to lessen this profound isolation. This time is spent in a small sub-area approximately three by four meters. The sub-areas are surrounded by two-story high concrete walls. Only during this period can a prisoner converse with another human.

This isolation, more properly considered solitary confinement, is well known to have profoundly adverse effects on prisoners. Psychological damage includes hallucinations, extreme anxiety, hostility, confusion and concentration problems. Physical symptoms of solitary confinement can include impaired eyesight, weight loss, and muscular atrophy. Stuart Grassian, Psychological Effects of Solitary Confinement, *AMERICAN J. OF PSYCHIATRY*, 140:1450-1454, 1984; Terry A. Kupers, The SHU Syndrome and Community Mental Health, *COMMUNITY PSYCHIATRIST*, Summer 1998; Craig Haney, Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement, *CRIME AND DELINQUENCY*, vol. 49, no. 1, January 2003; Amnesty Int'l, UK Special Security Units - Cruel, Inhuman and Degrading Treatment, 1997 (AI Index: EUR 45/06/97.)

Judicial authority has noted much the same. *Candin v. Conner*, 515 U.S. 472, 475 n.1; *In Re Medley*, 134 U.S. 160, 168-70 (1890) (solitary confinement an "infamous punishment" at common law); *Hatch v. District of Columbia*, 184 F. 3d 846, 848 (D.C. Cir. 1999).³

While Mr. Willet confines his testimony to Camp VI, Camp V is operated in substantially the same fashion.

Common Article 3

This article bars "cruel treatment and torture" by the detaining power as well as "outrages upon personal dignity, in particular, humiliating and degrading treatment."⁴ While the ultimate

² See also *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).

⁴ On January 22, 2009 the President also issued his Executive Order "Ensuring Lawful Interrogations" revoking all prior executive interpretations of this Article and Army Field Manuals which had emanated between September 11, 2001 and January 20, 2009. By reason of their crabbed
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reach of the concepts of “torture” and “cruel treatment” may present debatable issues, the collective, gratuitous imposition of complete isolation, not as punishment for conduct, but simply to accommodate the jailer’s wishes can only be considered as squarely within the proscription against “cruel treatment and torture.” Such a reading is also compelled by the Vienna Convention of the Law of Treaties, Article 31, “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” The object of the Third Geneva Convention is, of course, to provide for the humane treatment of prisoners.

Quite apart from the recognition by academics of the corrosive effects of isolation on the mental and physical health of the prisoner and solely as a matter of textual analysis, other Articles of the Third Convention make clear that prolonged isolation is “cruel treatment and torture.” Articles 89 and 90 clarify that “confinement” is the most severe punishment for misconduct and that it cannot be imposed for no longer than a period of thirty days. And “in no event shall disciplinary punishments be inhuman, brutal, or dangerous to the health of prisoners of war.” Both Mr. El Falesteny and Abdullah have been in the Camps for over a year.

These provisions powerfully indicate what the terms in Common Article 3 “cruel treatment and torture” mean. The drafters and signatories of the Convention have given a clear picture of what isolation and solitary confinement is permissible and then only in regards to punishment for misconduct. It is only natural then that measures far outside these limits are subject to the more general protections of Common Article 3. Although the Executive Order takes no position on the general applicability of the Third Convention, Common Article 3 simply cannot be read in isolation from other parts of the Agreement in which it is found. Article 31 of the Vienna Convention, *supra*, requires the same approach. Put differently even if Articles 89 and 90 do not directly bind the United States, they must be taken account of in interpreting Common Article 3’s ban of “cruel treatment and torture.”

Thus, the wholly gratuitous imposition of isolation in the form of solitary confinement adds a chilling dimension which can properly be described as cruel. The detaining power does

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and illegal construction such orders had impaired the vitality of these protections. More particularly the Order notes in reference to "Common Article 3, and other laws regulating the treatment...of individuals detained in any armed conflict" that "such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment)"

not need so to imprison these men. What legitimate purpose can such isolation possibly then serve? Only the wishes of the jailer.

The Army Field Manual

The Army Field Manuals are also violated by the Camps operations. As noted the erroneous restrictions previously issued by the Executive on the protections of the Manuals have now been swept away. The Manuals mean what they say, not another thing. Army Regulation 190-8, Enemy Prisoner, Retained Personnel, Civilian Internees and Other Detainees (1997), Section §3-2a flatly states “The operation of all EPW internment facilities is governed by the provisions of the Geneva Conventions.”

Further, a well-developed body of law regulates the imprisonment of prisoners of war (known as EPWs⁵) is spelled out under this Regulation and the Military Police Internment/Resettlement Operations (the “Field Manual”) No. FM 3-19.40. Affording EPWs social interaction is *required*. “Except in extreme circumstances, in the best interests of the individual, EPW/RP will not be interned in correctional facilities housing military or civilian prisoners.” AR 190-8 § 3-2(b). “EPW will be interned in camps according to their nationality and language. *They will not be separated from other prisoners belonging to the Armed Forces with which they were serving at the time of their capture*, except with their consent.” Id. 3-4(b) (emphasis added). The lot of the enemy prisoner of war abounds with social activity: he eats communally, FM 3-19.40 Ch. 4-66, he may have a job, he may pursue social leisure activities; he may plant gardens, play musical instruments, read newspapers.⁵ The Field Manual even contains a POW camp layout that makes graphically clear that prisoners are to live communally and not to be isolated. FM 6-8, fig. 6-1. One example among many in the Field Manual illustrates how far gone Camp 6 is. “When practical, EPWs should raise vegetables for their use; the labor is classified as paid work. Do not overlook the importance of developing an agriculture program. Agriculture and gardening projects are particularly de because they provide gainful employment for several individuals.” FM 3-19.40 Ch. 4-86.

⁵ See AR 109-8 §§ 3-4, 3-5, 4-1.

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CONCLUSION

It follows that Camps V and VI operate in gross violation of Treaty and purely domestic law. I urge you should so to find at the earliest opportunity. The Camps must be closed and the men in them moved to facilities in which the operations comply with applicable law.

Sincerely

Stephen M. Truitt