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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SHAKER AAMER,)
)
Petitioner/Plaintiff,)
)
v.)
)
GEORGE W. BUSH, et al.,)
)
Respondents/Defendants.)
_____)

Civ. No. 04-cv-2215 (RMC)

**MOTION TO LIFT STAY AND FOR PRELIMINARY INJUNCTION ENFORCING
GENEVA CONVENTIONS**

Petitioner Shaker Aamer respectfully files this motion to lift the stay in this case and enter a preliminary injunction enforcing the Geneva Conventions.¹ Mr. Aamer has been held in complete isolation for the past 360 days. Guards have beaten Mr. Aamer, deprived him of sleep, subjected him to temperature extremes and cut off ventilation in his cell. He has not had any contact with any fellow prisoners for months. He has not seen the sun for many weeks. He is not being treated humanely. This is a clear violation of Common Article Three of the Geneva Conventions. Mr. Aamer must be removed from isolation.

Counsel has now had information about Mr. Aamer declassified, immediately brought it to the attention of the Guantánamo authorities in writing without response, and thus is bringing this motion urgently. In the interim, Counsel raised the matter on two occasions with base personnel. Yet, when Counsel for Mr. Aamer visited Guantánamo Bay on September 12, Mr.

¹ Petitioner believes the stay should be lifted entirely in this case. However, at minimum, the Court should lift the stay for the limited purpose of ordering the requested injunction.

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Aamer was apparently still living in the same isolated cell in Camp Echo; unfortunately, counsel was not able to meet with Mr. Aamer, and the authorities refused to allow counsel simply to enter the cell to check on Mr. Aamer's well-being. Counsel is extremely concerned for Mr. Aamer's mental and physical health.

Common Article Three of the Geneva Conventions clearly applies to prisoners held in Guantánamo Bay. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006). Mr. Aamer has been held prisoner in Guantánamo for over four and a half years. Therefore, Petitioner requests that this Court lift the stay in his case and order Respondents to remove Mr. Aamer from isolation immediately. Because of the urgency of this situation, Counsel requests expedited briefing and a hearing on the matter at the Court's earliest convenience.

BACKGROUND

On February 3, 2005, this Court stayed this habeas petition pending resolution of the appeals in *Boumediene v. Bush*. [Dkt. No. 7] Over 19 months have now passed, but the Circuit Court has yet to rule.

On June 28, 2006, the Supreme Court ruled that Common Article Three of the Geneva Conventions of 1949 applies to every prisoner in Guantánamo Bay, and indeed every prisoner caught up in the War on Terror. *See Hamdan*, 126 S.Ct. at 2793-2797.

Common Article Three guarantees that:

(1) Persons taking no active part in the hostilities, including ... those placed 'hors de combat' by ... detention ..., shall in all circumstances be treated humanely

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

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...

(c) outrages upon personal dignity, in particular humiliating and degrading treatment ...

See, e.g., Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, [1955] 6 U. S. T. 3316, T. I. A. S. No. 3364.²

Even before the Supreme Court ruling, President Bush had repeatedly stated that prisoners in Guantánamo were to be treated humanely. *See, e.g.*, Presidential Directive, “Humane Treatment of al-Qaeda and Taliban Detainees” (February 7, 2002) (requiring “detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva”), available at http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/dir_20020207_Bush_Det.pdf#search=%22february%20%202002%20presidential%20directive%20humane%20treatment%20detainee%22.

Mr. Aamer has been a prisoner in Guantanamo Bay since February 2002, the date of that Presidential directive. He is not being treated humanely.

Starting on or around July 26, 2005, Mr. Aamer, who was respected by the prisoners and able to act as intermediary because of his fluent English, worked extensively with Colonel Mike Bumgarner to put an end to a widespread hunger strike. The strike had reached a life-threatening stage for a number of men. *See* Exhibit 1, Declaration of Zachary Philip Katznelson, at ¶ 7. At Colonel Bumgarner’s request, Mr. Aamer personally persuaded many of the hunger strikers to end their fast. Mr. Aamer then attempted to help negotiate improved conditions in the camp, while also advocating that the prisoners be charged and tried or sent home. *Id.* Mr. Aamer helped to facilitate a settlement.

² Common Article Three is found in all four Geneva Conventions of 1949.

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However, various events then conspired to cause a breakdown between the prisoners and the authorities. The most significant event was the beating of Hisham Sliti, a Tunisian prisoner, by an interrogator who was later suspended. *See* Exhibit 2, Attachment B, *New York Times* Article by Tim Golden (Sept. 17, 2006), 16. Several other incidents took place, and unfortunately the settlement collapsed. *Id.* On August 9, 2005, the military decided to send Mr. Aamer to solitary confinement, because he had played such a significant role in the earlier negotiations. *See* Katznelson Declaration at ¶ 7; Exhibit 2 at 17.

On September 8, 2005, Mr. Aamer was briefly removed from isolation. *See* Katznelson Declaration at ¶ 8. However, on September 24, 2005, he was returned to Camp Echo and placed again in solitary confinement. *Id.* at ¶ 9. He has remained there ever since. *Id.* As of the date of this filing, he has been in isolation for 360 consecutive days. *Id.* Prison rules in Guantánamo permit isolation only for up to 30 days at a time. *Id.* at ¶ 8. Those rules have not been enforced in Mr. Aamer's case.

As counsel saw in person, Mr. Aamer lives in a 6' by 8' cell which contains a steel bunk, steel toilet, steel sink, a Qur'an and an isomat (an approximately inch-thin mattress). *Id.* at ¶ 20. As the bed, toilet and sink are built-in, the actual floor area of the cell is only about 3' by 4'. *Id.* The cell in which he lives and the adjoining shower cell are contained entirely within a wooden shack. *Id.* at ¶ 25. The shack also contains an interrogation area, roughly the same size as the two cells combined; however, Mr. Aamer is kept at all times in the cells, except when counsel or interrogators visit. *Id.* The inside of the shack is constantly monitored by a video camera, even when Mr. Aamer uses the bathroom. *Id.* The door to the shack is kept closed except for when guards enter and leave. *Id.* at ¶ 26.

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Mr. Aamer informed counsel that the florescent lights in the cell are never turned off or even dimmed. *Id.* at ¶ 21. Much of the time, even though Mr. Aamer is on video at all times, the guards come to his door every 15 minutes to check on him. *Id.* at ¶ 26. The bright lights and constant opening and closing of the door prevent him from sleeping. *Id.* at ¶¶ 21, 26.

Mr. Aamer wears thin cotton orange trousers, a thin cotton orange shirt and flip-flops. *Id.* at ¶ 22. Mr. Aamer is not permitted any other items whatsoever. *Id.* Mr. Aamer is denied a toothbrush or even a cup. *Id.* According to Muslim tradition, Mr. Aamer is meant to wash himself after using the toilet, rather than use toilet paper. *Id.* at ¶ 23. However, without a cup, he is forced to use his hand to wash his anus. *Id.*

Mr. Aamer informed counsel that the air conditioner is often turned off, leaving him sweltering in the Cuban heat. *Id.* at ¶ 27. At other times, the air conditioner is turned up full blast so the cell is freezing cold. *Id.* Mr. Aamer is deprived of a blanket. *Id.*

Mr. Aamer reports that he suffers from many medical problems, including: asthma, edema, arthritis in his knees and ankles, kidney pain, tinnitus, constant constipation, and stomach pains. *Id.* at ¶ 28. His living conditions greatly exacerbate these problems, causing extreme pain and discomfort. *Id.*

Counsel is also gravely concerned for Mr. Aamer's mental health; he appeared manic and verged on hysteria during undersigned counsel's recent visit.

ARGUMENT

The stay should be lifted and an injunction entered for legal and equitable reasons.

Mr. Aamer Meets All the Criteria for a Preliminary Injunction as He Is Being Held in Violation of the Geneva Conventions

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In considering Mr. Aamer's request for a preliminary injunction, the Court must consider four factors: (1) whether Mr. Aamer has a substantial likelihood of success on the merits; (2) whether Mr. Aamer would suffer irreparable injury were an injunction not granted; (3) whether an injunction would substantially injure other interested parties; and (4) whether the grant of an injunction would further the public interest. *See Al-Fayed v. CIA*, 254 F.3d 300, 303 (D.C. Cir. 2001). "These factors interrelate on a sliding scale and must be balanced against each other." *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1318 (D.C. Cir. 1998). "If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak." *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1995).

All four factors counsel in favor of the injunction for Mr. Aamer. His rights under the Geneva Conventions are clearly being violated – as are Guantánamo Bay's own internal rules. He is being harmed severely mentally and physically by those violations. Respondents have failed to respond to no less than three requests to end the violation of Mr. Aamer's rights; it is time for the Court to step in. Respondents would not suffer harm from an injunction enforcing Mr. Aamer's rights. Any supposed camp discipline concerns cannot override an international treaty and a United States Supreme Court ruling. They certainly cannot justify the treatment Mr. Aamer has received. Finally, it is surely in the public interest for Respondents to show the world that they are indeed honoring the Geneva Conventions, as they have very publicly promised to do. Any failure to adhere to such promises will be used as fuel for the propaganda machine of extremists. Every day that Common Article Three violations continue is a day that our troops – indeed all of us – are less safe.

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**The Court Should Act Immediately as the Decision in *Boumediene* Will Not Impact the
Rights at Issue Here**

The Court should no longer wait for a decision in *Boumediene* before going forward in this case. *Boumediene* will decide what constitutional rights, if any, Mr. Aamer has. See *Boumediene v. Bush* and *Khalid v. Bush*, Case Nos. 05-5062 & 05-5063, and *Al Odah v. U.S.*, Case Nos. 05-5064, 05-5095 through 05-5116. But regardless of the outcome in *Boumediene*, there can be no dispute that after *Hamdan* Mr. Aamer has rights under the Geneva Conventions. *Boumediene* simply will not bear on those rights at all.

Judge Kennedy has already recognized in several other cases that *Hamdan* warrants lifting the stays in pending *habeas* petitions, and this court should do the same. See Order Lifting the Stay, *Al-Asadi v. Bush*, Civil Action No. 05-2197-HHK (September 11, 2006) [Dkt. No. 35]; Order, *Zakirjan v. Bush*, Civil Action No. 05-2053-HHK (Aug. 18, 2006) [Dkt. No. 61].

Speedy relief from executive detention is the core purpose of habeas corpus; accordingly, petitioner respectfully submits that to require him to await the conclusion of *Boumediene* before arguing the habeas petition he submitted in December 2004 amounts to an effective suspension of the Great Writ. See Petition for Habeas Corpus [Dkt. No. 1] (filed Dec. 22, 2004).

It is an abuse of discretion to unreasonably maintaining a stay in a *habeas* petition, over petitioner's objection, while waiting for another petition to settle a rule of law that might govern both. In *Landis v. North American Co.*, 299 U.S. 248, 57 S. Ct. 163 (1936), the Supreme Court found that a stay issued while awaiting a parallel decision exceeded appropriate bounds because the length of the stay "was not kept within the bounds of moderation." *Id.* at 256. Significantly, though that case involved a securities dispute (and therefore lacked the urgency of a habeas petition), the Court disapproved of a stay of similar duration to the one contested here. The

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Court found it excessive that “already the proceedings in the District Court have continued more than a year.” *Id.* at 257. The Supreme Court also noted that, though district courts generally have discretion to grant stays to promote the efficient management of their docket, *see id.* at 254-55, courts must exercise caution when a stay presents “even a fair possibility ... of damage to someone else.” *Id.* at 255. The damage caused by further delay in this habeas petition—not only to petitioner’s case, but to his mental and physical health—is only underscored by this summer’s three suicides. Despair lurks dangerously in Guantánamo Bay.

Of equal significance, the *Landis* Court reasoned that the likelihood of further delay in the Court of Appeals was all the more reason to proceed at the district level: “With the possibility of an intermediate appeal to the Circuit Court of Appeals, a second year or even more may go by before this court will be able to pass upon the Act.” *Id.* at 256. The Court noted that even “in cases of extraordinary public moment,” as the Guantánamo cases undoubtedly are, a stay is only appropriate insofar as it is “not immoderate in extent and not oppressive in its consequences.” *Id.*

The current appeal in the D.C. Circuit raises precisely this specter: petitioner’s case has already been held for over 19 months awaiting guidance from one appellate decision. That decision, when at last it is issued, will undoubtedly be appealed (and quite likely argued) in the U.S. Supreme Court, adding the prospect of still further delay. Petitioner could potentially wait years for his habeas petition to be heard. Prolonging the stay for still more clarification than what *Hamdan* has already provided would exceed the bounds of moderation. *Landis*, 299 U.S. at 256. *Cf. Dellinger v. Mitchell*, 442 F.2d 782, 787, 143 U.S. App. D.C. 60 (D.C. Cir. 1970) (noting the “particular importance” of caution in granting and maintaining stays “where the claim being stayed involves a not insubstantial claim of present and continuing infringement of

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constitutional rights”); *McSurely v. McClellan*, 426 F. 2d 664, 672, 138 U.S. App. D.C. 187 (D.C. Cir. 1970) (vacating lower court’s stay in a civil case pending the resolution of appeals in the related criminal case because of the scope and potential length of such a stay).

Because of the critical liberty interests at stake, habeas cases “implicate special considerations that place unique limits on a district court’s authority to stay a case in the interests of judicial economy.” *Hoeun Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000). The *Yong* court lifted a stay of only five months on a habeas petition because its terms, like those of the stay in this case, were too “indefinite”—that is, because the stay only “terminat[ed] upon resolution of the [related] appeal.” *Id.* at 1119 (internal citation omitted). The core purpose of the Great Writ is to provide a “swift and imperative remedy in all cases of illegal restraint or confinement,” *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484 (citing *Secretary of State for Home Affairs v. O’Brien*, [1923] A. C. 603, 609 (H. L.)), and its protections are “reduced to a sham if . . . trial courts do not act within a reasonable time.” *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978) (footnote omitted) (requiring the district court to address the merits of a habeas petition it had functionally ignored for two years); *see also Ruby v. United States*, 341 F.2d 585, 587 (9th Cir. 1965) (dismissing habeas petition as an incorrect vehicle for the relief sought but noting that, when appropriate, a habeas petition “usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action”); *Yong*, 208 F.3d at 1120 (“A long stay also threatens to create the perception that courts are more concerned with efficient trial management than with the vindication of constitutional rights.”).

The federal habeas statute, recognizing the importance of expediency in such cases, requires that district courts “summarily hear and determine the facts, and dispose of [a habeas petition] as law and justice require,” mandating return of the writ within three days, absent good

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cause, and a hearing within five days thereafter. 28 U.S.C. § 2243. Mr. Aamer has awaited proceedings on his *habeas* case, as we have said, for over 19 months.

Judicial economy can no longer justify delaying action in this case. Mr. Aamer has no more time to wait. For just days short of a full year, longer than any other prisoner in Guantanamo Bay, Mr. Aamer has been sitting in solitary confinement. He is denied fresh air, subjected to sleep deprivation and temperature extremes and isolated from all his fellow prisoners. He is not permitted to have phone calls or visit with family. As Dr. James MacKeith, a forensic psychiatrist with 32-years experience as an expert witness in the field, states: “Mr Aamer’s mental and also perhaps his physical health is likely to be at risk, especially in the short term and perhaps in the longer term. This concern can only be satisfactorily resolved if a thorough medical examination and report on Mr Aamer is completed soon.” *See Exhibit 2, attachment A, Interim Medical Report of Dr. James MacKeith, September 6, 2006.*

Each day that passes without development in his case erodes petitioner’s belief that he will ever receive a fair hearing, and his faith in his lawyer, potentially damaging the attorney-client relationship beyond repair. On September 12, 2006, Mr. Aamer refused to see counsel for the first time in a dozen visits.

Under *Hamdan* and the Geneva Conventions, petitioner has a colorable claim for a reprieve from the conditions he faces. He should be permitted to seek that relief.

The DTA is no Bar to Ruling on This (or any other) Motion

Since the Court entered its stay, there have been two major intervening legal developments—namely, the passage of the 2005 Detainee Treatment Act (“DTA”) and the subsequent confirmation by the Supreme Court in *Hamdan*, that even after the DTA: 1) federal courts retain jurisdiction over pending habeas petitions and 2) prisoners in Guantánamo enjoy

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enforceable rights under the Geneva Conventions. As Judge Kennedy has recognized, the *Hamdan* decision makes clear that this court has the power to proceed and consider the merits of this motion. The demands of justice make clear that Respondents must be ordered to adhere to the Geneva Conventions and remove Mr. Aamer from isolation.

The Supreme Court held in relevant part in *Hamdan* that “§1005(e)(1) [of the DTA] does not strip federal courts’ jurisdiction over cases pending on the date of the DTA’s enactment.” 126 S.Ct. at 2769 n. 15.

In so doing, the Court rejected respondents’ argument that, notwithstanding the absence of any statutory language dictating retroactive application of §1005(e)(1), the DTA stripped jurisdiction over all existing habeas petitions and allowed only highly restricted judicial review in the D.C. Circuit. *See id.* at 2763. Instead, the Supreme Court determined that the DTA’s statutory text and legislative history clearly mandated the opposite conclusion: that because Congress *had* provided explicitly for retroactive application of sections (e)(2) and (3), its failure to so provide for section (e)(1) meant that exercising jurisdiction over pending habeas petitions, like Salim Hamdan’s and the one at bar here, was appropriate. *See id.* at 2764 (citing *Lindh v. Murphy*, 521 U.S. 320, 326 (1997)).

The Supreme Court also explicitly rejected the government’s alternative contention: that the exclusive review provisions of §1005(e)(2) and (3) prevented the court from retaining jurisdiction over pending habeas petitions. *See id.* at 2768 (finding that exercising *habeas* jurisdiction over Hamdan’s challenge to the legitimacy of the commission presented no “dual jurisdiction” problem). Drawing a clear distinction between cases challenging final decisions of a military commission or a CSRT and those attacking the legitimacy of the procedures themselves, the court stated that “there is nothing absurd about a scheme under which pending

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habeas actions—particularly those, like this one, that challenge the very legitimacy of the tribunals whose judgments Congress would like to have reviewed—are preserved, and more routine challenges to final decisions rendered by those tribunals are carefully channelled to a particular court and through a particular lens of review.” *Id.* at 2769.

This Court Should Lift the Stay Because Petitioner Is Not Challenging the “Final Determination” of his CSRT but Rather the Very Legitimacy of the CSRT

Having unequivocally lost the argument that (e)(1) stripped jurisdiction of all pending habeas cases, the Government in *Boumediene* (and, we anticipate, here) has, somewhat perplexingly, returned to its alternative argument—that Congress implicitly divested jurisdiction of pending petitions via the exclusive review provisions of §1005(e)(2) and (e)(3). *See* Respondents’ Supplemental Brief Addressing *Hamdan v. Rumsfeld* filed in *Boumediene v. Bush*, Case Nos. 05-5062-05-5064; 05-5095-05-5116 (filed Aug. 1, 2006) 2, 7. That contention failed in *Hamdan*, 126 S.Ct. at 2769, and it is similarly unavailing here.

While the *Hamdan* court left open the narrow question of whether exclusive jurisdiction would lie in the D.C. Circuit for pending habeas petitions, if any, “that do qualify as challenges to ‘final decisions’ within the meaning of subsection (e)(2) or (e)(3),” 126 S. Ct. at 2761 n. 14, this is not such a case. Like *Hamdan*, Mr. Aamer is not contesting the fact of his designation as an enemy combatant by the CSRT. *See Hamdan*, 126 S. Ct. at 2761, 2769 (noting *Hamdan* was determined to be an enemy combatant but was not challenging a “final decision” of his CSRT). Rather, Mr. Aamer denies the lawfulness of the CSRTs themselves. This squares cleanly with the Supreme Court’s holding that habeas petitions “that challenge the very legitimacy” of the government’s alternative review procedures must be allowed to proceed. *Id.* at 2769. The Supreme Court has already once rejected the Government’s strained attempt to conjure a habeas

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repeal from the exclusive review language of sections 1005(e)(2) and (3). Respondents should not be permitted to use the very same argument to prolong Mr. Aamer's petition still further.

Mr. Aamer's case could not be a clearer challenge to the "legitimacy" of his imprisonment: he asserts that his ongoing detention and the conditions of his confinement, including the lack of any legally recognizable trial, violate numerous provisions of domestic and international law. His claims invoke, *inter alia*, the Eighth, Sixth, and Fifth Amendments, the Uniform Code of Military Justice, the common law of due process, the Geneva Conventions, the International Covenant on Civil and Political Rights, and the Alien Tort Statute. *See* Habeas Petition for Omar Deghayes, et al., *Deghayes v. Bush*, Case No. 04-2215 at 15-17 (filed Dec. 22, 2004). Mr. Aamer asserts that the President cannot, within the bounds of Article II, detain prisoners indefinitely, particularly under the terrible conditions of current confinement.

The Supreme Court has repeatedly recognized that *habeas* is the appropriate vehicle for Guantanamo prisoners to issue these challenges. *See, e.g., Rasul v. Bush*, 542 U.S. 466 (2004) (recognizing the habeas petitions filed by Guantanamo prisoners). In *Hamdan*, it determined that habeas challenges pending when the DTA was passed must be allowed to continue. 126 S.Ct. at 2769 n. 15. Mr. Aamer's petition must proceed.

CONCLUSION

Respondents should not be permitted to reargue *Hamdan* in a thousand minute permutations in every prisoner's habeas case, trotting out every conceivable section of the DTA in an attempt to find an alternative repeal of habeas jurisdiction. *See Kurnaz v. Bush*, 2005 U.S. Dist. LEXIS 6560 (D.D.C. 2005) ("the Court must also have authority to preserve this jurisdiction if it can be shown that respondents are acting to circumvent it," citing All Writs Act, 28 U.S.C. § 1651(a)); *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 54 (D.D.C. 2004) (federal courts

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“may and should take such action as will defeat attempts to wrongfully deprive parties” of their right to sue) (internal citation omitted). After *Hamdan*, the law is now sufficiently settled—and petitioner’s situation sufficiently dire—to make further delay on the merits of his case unwarranted. The fundamental importance of the Great Writ mandates that he be allowed to proceed.

The interests of judicial economy must, after a time, yield to a litigant’s right to have his day in court. The equities at play in a habeas case are especially sensitive in this regard. In light of *Hamdan*, of the deteriorated conditions for Mr. Aamer, and of the exceptional length of time petitioner has already been required to wait, this Court should lift the stay to avoid any further prejudice to petitioner’s ability to present his case.

Common Article Three clearly applies here and after *Hamdan*, is clearly actionable by individuals. See also, *Application of Yamashita*, 327 U.S. 1, 24, 66 S.Ct. 340 (1946) (denying habeas relief but finding Geneva Convention can be raised by “persons who are subjected to judicial proceedings for offenses committed while prisoners of war”). Respondents are violating Common Article Three in their treatment of Mr. Aamer. They have not responded to counsel’s attempts at an informal resolution. The Court should intervene and issue an injunction.

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Accordingly, and for the foregoing reasons, this court should lift the stay in petitioner's case and order Mr. Aamer released from isolation.

Respectfully submitted,

Date: September 19, 2006



Zachary Philip Katznelson
California Bar No. 209489
Reprieve
PO Box 52742
London EC4P 4WS
United Kingdom
011 44 207 353 4640 (ph)
011 44 207 353 4641 (fax)
zachary@reprieve.org.uk

Clive Stafford Smith
Louisiana Bar No. 14444
Justice in Exile/Reprieve
PO Box 52742
London EC4P 4WS
United Kingdom
011 44 207 353 4640 (ph)
011 44 207 353 4641 (fax)
clivess@mac.com

Counsel for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that I have filed this pleading electronically with the Court via ECF. The ECF system automatically serves a copy on counsel for Respondents.

Done this 19th day of September, 2006.

_____/s_____
Zachary Philip Katznelson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHAKER AAMER,)	
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<i>Petitioner/Plaintiff,</i>)	
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v.)	Civ. No. 04-cv-2215 (RMC)
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GEORGE W. BUSH, et al.,)	
)	
<i>Respondents/Defendants.</i>)	
_____)	

[PROPOSED] ORDER

After considering the parties' submissions and arguments regarding Petitioner's Motion for a Preliminary Injunction, the Court hereby grants the motion.

The Court orders that:

1. Respondents shall immediately release Mr. Aamer from solitary confinement, end any and all abuse of Mr. Aamer, including but not limited to subjecting him to temperature extremes, subjecting him to excessive physical force, subjecting him to 24-hour lighting, subjecting him to excessive noise, subjecting him to sleep deprivation, denying him access to fresh air, and denying him contact with his fellow prisoners.
2. At no time whatsoever may Respondents act in violation of Common Article Three of the Geneva Conventions toward Mr. Aamer.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

Date: _____

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September 19, 2006
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DECLARATION OF ZACHARY PHILIP KATZNELSON

1. My name is Zachary Katznelson. I am a member of the Bar of the State of California, Bar Number 209489.
2. I have represented prisoners on death row and in other maximum security facilities since 1999.
3. I represent habeas petitioner Shaker Aamer in Deghayes v. Bush, 04-cv-2215-RMC.
4. Mr. Aamer has been a prisoner in Guantanamo Bay since February 2002, more than four and a half years. Apparently because he speaks fluent English, is outspoken, and has therefore been an interlocutor between the U.S. military and the prisoners, he has been treated incredibly poorly.
5. Mr. Aamer's situation also has the appearance of hopelessness: He has no prospect either of a trial or of a date certain when he might be released. He has not been charged with any crime.
6. All the information in this declaration is unclassified and comes from discussions I personally had with Mr. Aamer.
7. On August 9, 2005, Mr. Aamer was brought to isolation for punishment based on his role in a widespread hunger strike. Since roughly July 26, 2005, Mr. Aamer had been working extensively with Colonel Mike Bumgarner to put an end to the hunger strike, which had reached a life-threatening stage for a number of men. At Colonel Bumgarner's request, Mr. Aamer, a leader among the prisoners, personally persuaded many of the hunger strikers to end their fast. Mr. Aamer then brought together a six-man prisoners' council that attempted to negotiate improved conditions in the camp, while also advocating that the prisoners be charged and tried or sent home. A settlement was reached to better conditions; however, when the settlement collapsed,

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Mr. Aamer was sent to solitary confinement. He and Colonel Bumgarner never spoke again.

8. On September 8, 2005, Mr. Aamer was removed from isolation. This is consistent with my understanding of camp rules, which permit isolation only for a period of up to 30 days.
9. On September 24, 2005, Mr. Aamer was returned to isolation in Camp Echo. Despite the 30-day rule, Mr. Aamer has remained there ever since. As of the date of this declaration, he has been in Camp Echo for 360 consecutive days.
10. Mr. Aamer informed me that on June 9th, 2006, he was beaten for two and a half hours straight. Seven naval military police participated in his beating. Mr. Aamer stated he had refused to provide a retina scan and fingerprints. He reported to me that he was strapped to a chair, fully restrained at the head, arms and legs. The MPs inflicted so much pain, Mr. Aamer said he thought he was going to die. The MPs pressed on pressure points all over his body: his temples, just under his jawline, in the hollow beneath his ears. They choked him. They bent his nose repeatedly so hard to the side he thought it would break. They pinched his thighs and feet constantly. They gouged his eyes. They held his eyes open and shined a mag-lite in them for minutes on end, generating intense heat. They bent his fingers until he screamed. When he screamed, they cut off his airway, then put a mask on him so he could not cry out. This whole time the officer in charge of the camp was outside the cell, but did not intervene.
11. Mr. Aamer stated that on June 10, 2005, a 5-person riot squad, also known as an Emergency Reaction Force ("ERF team"), arrived at Mr. Aamer's cell. Mr. Aamer was beaten and forceably moved to a different cell.

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12. Mr. Aamer reported that for the next three days, he was kept only in his shorts, a t-shirt and a pair of socks. There was absolutely nothing else in his 6 foot by 8 foot cell but a steel bunk, steel toilet, steel sink, and the-Qur'an. The air conditioning was kept on at all times, at full blast. The exhaust fan was run constantly, exacerbating the ringing Mr. Aamer suffers in his ears. Mr. Aamer had to sleep on the steel bunk. They took his flip-flops.
13. The next day, Mr. Aamer reported, the guards came for his socks. He refused to give them up, as he has rheumatism and arthritis. The ERF team was called. Mr. Aamer was beaten and his socks taken.
14. Mr. Aamer reported that on the night of June 11th, he was given a sheet. As he tried to sleep that night, he was constantly woken; guards stated not enough of his body was showing outside the sheet. At 5 AM he was woken again. The guards demanded the sheet back. Mr. Aamer, freezing, refused. The ERF team was called again and again Mr. Aamer was beaten.
15. Over these days, Mr. Aamer's door was kept closed, preventing the flow of fresh air. A generator right outside the door was kept running 24 hours a day, making a very loud noise and disrupting his sleep.
16. On June 13th, Mr. Aamer was brought to his current cell. It was filthy. The ceiling was moldy, the walls stained. It took him 5 hours to scrub the cell.
17. For a few days after June 13th, Mr. Aamer was given a blue foam mattress, several inches thick. While he had the mattress, the International Red Cross visited. A couple of days later, the guards came and beat Mr. Aamer until he relinquished the mattress. He states he has not had a proper mattress ever since.
18. Mr. Aamer reported that since the beginning of June, he has not had any contact with fellow prisoners. He is not permitted phone calls or visits with family. His only

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contact has been with guards and with me, when I visited him on August 8 and August 16.

19. Mr. Aamer stated he has not been outside since June 13, 2006, a total of 64 days as of the date of my latter August visit.

20. Mr. Aamer lives in a 6' by 8' cell which contains a steel bunk, steel toilet, steel sink, a Qur'an and an isomat (an approximately inch-thin mattress). As the bed, toilet and sink are built-in, the actual floor area of the cell is only about 3' by 4'.

21. Mr. Aamer stated the florescent lights in the cell are never turned off or even dimmed, preventing him from sleeping properly.

22. Mr. Aamer wears thin cotton orange trousers, a thin cotton orange shirt and flip-flops. Mr. Aamer stated he is not permitted any other items whatsoever. Mr. Aamer is denied a toothbrush or even a cup.

23. According to Muslim tradition, Mr. Aamer is meant to wash himself after using the toilet, rather than use toilet paper. However, without a cup, he is forced to use his hand to wash his anus.

24. For ten minutes per day, Mr. Aamer is allowed into an adjoining 6' by 8' cell, where he is permitted to shower.

25. The cell in which he lives and the adjoining shower cell are contained entirely within a wooden shack. The living and shower cells are the only cells in the shack. The shack also contains an interrogation area roughly the same size as the two cells combine; however, Mr. Aamer is kept at all times in the cells, except when counsel or interrogators visit. The inside of the shack is constantly monitored by a video camera, even when Mr. Aamer uses the bathroom.

26. The door to the shack is kept closed except for when guards enter and leave. Mr. Aamer reported that on many days, even though Mr. Aamer is on video at all times,

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the guards open and close the door to his shack every 15 minutes to check on Mr. Aamer. This prevents him from sleeping.

27. Mr. Aamer stated that the air conditioner is often turned off, leaving the cell sweltering in the Cuban heat. At other times, it is kept on maximum so the cell is freezing cold. Mr. Aamer is not permitted a blanket.
28. Mr. Aamer reported that he suffers from a multitude of medical problems, including: asthma, edema, arthritis in his knees and ankles, kidney pain, tinnitus, constant constipation, stomach pains. Since the beating he received on June 9th, the ringing in his ears is worse than ever.
29. As of August 16, 2006, Mr. Aamer had not seen the sun for 79 days.
30. Mr. Aamer believes that the US military is attempting to break him down physically and mentally. Mr. Aamer stated that: "at any moment, they can strip you naked. They will put your head in the toilet in the name of security. It is all about humiliation. They are trying to break me."
31. Mr. Aamer stated he will never do anything to harm anyone. He has no desire for revenge at all for the injustices he has suffered. He will never fight anyone. When he leaves GTMO, he will do nothing but care for his family.
32. Mr. Aamer has repeatedly undertaken hunger strikes, as he stated "this is the only language they [the prison authorities] understand." In July 2005, he did not eat for 27 days. The last 10 days of the hunger strike, he refused to drink either.
33. When I visited on August 8, 2006, Mr. Aamer had been on hunger strike for 8 days. He stopped his strike that day, but it is quite likely Mr. Aamer has resumed his hunger strike.
34. Mr. Aamer reported that his only consistent contact with living beings beside his captors is with the ants in his cell. He feeds them and considers them his friends.

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35. Based on everything I have learned about Mr. Aamer, I am very impressed with his efforts to hold himself together under extraordinarily harsh and intolerable conditions. However, in my opinion, his extended isolation is causing him severe mental distress and may have a lasting negative psychological impact.

36. Immediately after I met with Mr. Aamer on both August 8 and August 16, 2006, I raised the situation with Lt. Colonel [REDACTED] one of the commanders on the base. I provided him with full details as I knew them, and requested that Mr. Aamer be removed from isolation immediately.

37. I declare under penalty of perjury under the laws of the United States that the foregoing is true to the best of my knowledge and belief.

Austin, Texas

DATE: September 19, 2006



ZACHARY PHILIP KATZNELSON

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DECLARATION OF CLIVE A. STAFFORD SMITH

1. My name is Clive A. Stafford Smith. I am a member of the Bar of Louisiana, Bar Number 14444. I am also a member of the Bars of Georgia and Mississippi, but I am currently inactive. I am a member of the Bar of the Supreme Court of the United States and various of the lower federal courts.
2. I have spent more than twenty years working with prisoners on Death Row, doing periodic work on prison conditions litigation. I have extensive training and experience with prisoners held in high security institutions, particularly those suffering from mental disorders.
3. Of particular relevance here, I have significant experience with what has become known as Secure Housing Unit (SHU) psychosis, where adverse conditions of confinement can lead to serious deterioration of the client's mental health. *See, generally, Romano, If the SHU fits: Cruel and Unusual Punishment at California's Pelican Bay State Prison*, 45 Emory L.J. 1089 (1996).
4. I have represented habeas petitioner Shaker Aamer in Deghayes v. Bush, 04-cv-2215-RMC, since December 2004.
5. I have seen Mr. Aamer over many months, sometimes visiting him for several hours at a time. While Mr. Aamer tries very hard to hold up in the face of terrible conditions, there have been occasions when the pressure has clearly got through to him, and he has been overtly psychotic.
6. His situation has been increasingly harsh, and as of this writing he has been held in solitary isolation in Camp Echo for just a week short of a year. He is, to the best of my knowledge, the only prisoner in Guantánamo to have been held under these conditions for so long.

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7. In a capital case where the issue of SHU psychosis has recently been a significant issue, our expert has identified the following factors that may contribute to the deterioration of the client's mental health:
- A. *Level of Illumination (i.e. was it constantly bright, constantly dark, any natural light)*
 - B. *Absence of Human Contact (anything from interaction with correctional officers, guards, ministers, healthcare workers, family, mail received)*
 - C. *Sanitariness of Cell (overflowing of toilet, vermin, etc)*
 - D. *Amenities (television, radio, reading material, writing material etc.)*
 - E. *Mental Healthcare Screening (At any time was there an assessment made of the prisoner's mental health)*
 - F. *Duration (i.e. how long was he confined to the cell)*
 - G. *How many hours a day were spent in the cell (i.e. how long did he have in the exercise pen or library)*
 - H. *How was he removed from the cell (any violence?)*
 - I. *Exercise facilities (what were the conditions of the facilities/area like?)*
 - J. *Temperature*
 - K. *Recreation/Work (was he able to take classes, do work, smoke)*
 - L. *Personal Hygiene (how often was he able to shower, bathe, shave, brush his teeth)*
 - M. *Threat of Physical Violence (e.g., intimidation from guards)*
8. My co-counsel, Zachary Katznelson, details many of the underlying facts in the case that demonstrate how all of these factors apply in Mr. Aamer's case. I will not repeat the contents of his declaration, but I have read it and it is accurate, to the best of my information and belief.

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9. I have just completed a visit to the prison in Guantanamo from September 10-17, 2006. During this visit, I had been scheduled to see Mr. Aamer on September 12, 2006. He did not agree to a visit.
10. Due to his treatment, he has frequently expressed concerns that I (and, more recently, Mr. Katznelson) might be agents of the CIA or the military. Indeed, the U.S. military has taken various actions that seem obviously designed to induce paranoia in Mr. Aamer, adding to the burden of his harsh confinement. For example, the U.S. interrogator told Mr. Aamer that I am Jewish in an effort to make him mistrust me.
11. Mr. Katznelson and I had met in the wake of his visit with Mr. Aamer in August, and determined that Mr. Aamer's situation had reached a critical stage where we needed to seek judicial intervention if the authorities in Guantanamo would not take action.
12. As soon as I arrived at the Base and met one of the military escorts, I delivered a letter to Admiral Harris concerning Mr. Aamer's situation, requesting that immediate steps be taken to alleviate his situation. A copy of this letter is appended as *Attachment A* to this declaration.
13. I have not received a response to my letter to Admiral Harris, and while I requested a meeting to discuss Mr. Aamer's situation at any time up to my departure, I am concluding this affidavit at the airport as I leave the island, with no meeting having taken place.
14. The fact that I was unable to see Mr. Aamer is of particular concern. He has never refused to have a legal meeting before. I was at Camp Echo anyway for the visit, and I asked the SJA officer to allow me to go into his cell (which is in Camp Echo, so it would have been no inconvenience) and check on his welfare. This request was denied.

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15. As I mention in my letter to Admiral Harris, I am aware of the statements made by Colonel Mike Bumgarner in the media that were apparently being made about Mr. Aamer. The military apparently believes that Mr. Aamer is a significant figure with terrorist links. Although a passing comment on a Fox Television show is hardly a substitute for formal charges, I have done extensive investigation into Mr. Aamer's background, and I am convinced that such suggestions are false.
16. I have no idea where this misinformation comes from. I am aware that Mr. Aamer was very harshly treated ('tortured' is the only reasonable word for it) while in custody in Afghanistan. It seems highly likely that the misinformation that the U.S. has on Mr. Aamer is derived from abuse of him, or of others making false statements against him. We have never been provided with a factual return in his case. Mr. Aamer has never been permitted to contest the military's secretly held beliefs about him in a fair forum.
17. There is an extensive article about the Guantánamo prison and the efforts that Mr. Aamer made to help resolve the hunger strike that appears in the *New York Times Magazine*, dated September 17, 2006, which I attach as *Attachment B*. I am familiar with the author, Tim Golden, and it is my informed opinion that the article is basically accurate (albeit, predictably, with certain exceptions and omissions). The general thrust of the article is that Mr. Aamer helped Colonel Bumgarner resolve the July 2005 hunger strike. It is no doubt true that Mr. Aamer has been influential among the prisoners, as he is a very educated and eloquent man. He is, in my experience, also a man devoted to peaceful resolution of problems, who was willing to trust Colonel Bumgarner's good intentions despite all the problems and harsh treatment at the prison. To punish him because of these efforts seems perverse.

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18. Mr. Aamer has never been charged with any crime. He has a wife and four minor children in London, one of whom he has never met. Regardless of the allegations against him, or the prison's desire to isolate him, he has the right to humane treatment.

19. I declare under penalty of perjury under the laws of the United States that the foregoing is true to the best of my knowledge and belief.

DATE: September 19, 2006

A handwritten signature in black ink, appearing to be 'Clive A. Stafford Smith', written over a horizontal line.

CLIVE A. STAFFORD SMITH

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Attachment A

REPRIEVE

P.O. Box 52742,
London, EC4P 4WS
020 7353 4640; fax: 020 7353 4641
clivess@mac.com

September 11th, 2006

Rear Admiral Harry Harris
Guantanamo Bay Naval Base

Re: Shaker Aamer (239)

Dear Admiral Harris:

I am writing to express my urgent concern about the state of my client, Shaker Aamer. As I imagine you know, Mr. Aamer has now been held in solitary isolation for two weeks short of a year in Camp Echo. My colleague, Zachary Katznelson, returned from a visit recently and had various information unclassified that is deeply disturbing. I am scheduled to see Mr. Aamer tomorrow, September 12th.

I am aware of the reasons given for Mr. Aamer's isolation – at least insofar as Colonel Mike Bumgarner ill-advisedly stated them to Bill O'Reilly of *The O'Reilly Factor*, on Fox Television. I am confident that Colonel Bumgarner's view of Mr. Aamer is erroneous. In any event, this is no reason to hold Mr. Aamer, who has never been charged with any offense, in isolation in such a way as to jeopardize his mental and physical health.

We have consulted with a highly respected forensic psychiatrist in the United Kingdom, Dr. James McKeith. It is Dr. McKeith's opinion that an independent mental health evaluation is mandatory, if Mr. Aamer continues to be held in solitary confinement. I attach his preliminary report.

My office will be coordinating with the British Government to ensure diplomatic intervention on Mr. Aamer's case at the earliest possible moment. If this does not resolve the situation, then we will have to seek judicial intervention in Washington, D.C.

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However, I naturally thought it best to contact you directly to see whether reasonable people could not resolve the issue without all that palaver.

I would be very glad to speak with you on this, at your convenience this week, as I am here until Sunday, September 17th. Meanwhile, if you could ensure that Mr. Aamer is immediately moved from his isolation cell to somewhere more conducive to his mental health, I would be grateful.

I should stress that I am not asking you to have a military mental health professional see him. He is, naturally enough, not willing to take part in a medical examination that is not privileged, and where a doctor is in the unenviable position of having to inform on a patient to the military.

Thank you for your assistance. I remain,

Yours sincerely,

/s

Clive A. Stafford Smith

cc. Andrew Warden, DOJ, SJA office
Rt. Hon. Margaret Beckett, Foreign Secretary, Foreign & Commonwealth Office
Rt. Hon. Tony Blair, Prime Minister

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Dr. James A.C. MacKeith
M.A.,M.B.,B.Ch.,D.P.M.,F.R.C.Psych.
Emeritus Consultant Psychiatrist, South London and Maudsley N.H.S.
Trust.

Hayes Grove Priory Hospital,
Preston Road,
Hayes,
Kent BR2 7AS.

All correspondence to:
P.O. Box 20824,
London SE22 8WS.
Tel.: Ms. Dunn on:
020 7362 0100 (office hours).

Clive Stafford Smith
Reprieve
PO Box 52742
London EC4 4WS

Interim Medical Report:

Re: Mr Shaker Aamer (dob: 12th December 1966)

Introduction: I understand that you and Zachary Katznelson represent Mr Aamer, who has been incarcerated at Guantamo Bay in the custody of the US armed forces since February 2002.

You have provided me with memoranda giving an account of some salient events affecting Mr Aamer including his account of his experiences both before he was kidnapped and eventually handed over to US military forces as well as his ordeal since then.

You have asked me to express an opinion, necessarily qualified as I have not yet had the opportunity to examine Mr Aamer and see his medical records at Guantanamo Bay. Your colleague Mr Katznelson described his client thus, having seen him on the 8th and 16th: 'Shaker appeared to me to be on the edge of a mental breakdown. At times he verged on hysteria. He would consciously have to get a grip on himself and calm himself down.' You have seen Mr Aamer on several occasions, sometimes for several hours at a time. It is your view that although he has demonstrated tremendous fortitude in the face of maltreatment, there have been occasions when the pressure has got through to him, and he has been overtly psychotic.

Background information on Mr Aamer which you have provided: He was originally from Saudi Arabia but lived for some years in London where he was married to a British citizen. They have four children, one of whom he has never seen.

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By his account he was subject to harsh and abusive treatment when held in Afghanistan in late 2001 and early 2002. He says he lost a great deal of weight, dropping from 19 to 9 stone. He has described beatings, hogtying, death threats, sleep deprivation etc. At Guantanamo Bay, where the situation could readily ensure a calm, orderly and disciplined regime, Mr Aamer describes deliberate maltreatment in various forms. He has now been held there for 4 1/2 years without a prospect of a resolution to his predicament. He has been in solitary confinement for over 340 days. His lawyers have described his cellular accommodation. He is shackled to a ring in the floor whenever a meeting takes place. It is an extremely cramped cell and there is no privacy. He has not been outside, in the sunlight, for 78 days.

He reports being assaulted and beaten when he has refused to provide finger prints and a retinal scan. On occasions he said that he has been assaulted by a group of personnel know as an ERF team who invade his cell. He believes the authorities are deliberately trying to 'break' him. He believes that his only available non-violent response is to go on hunger strike.

He complains of a variety of physical symptoms, including wheezing, pain in his major joints, constipation and stomach pains. He complains of 'kidney pains' and tinnitus. He is clearly worried about his physical health and those concerns have not been successfully alleviated by military medical staff.

Qualifications and experience: I am a Consultant Forensic Psychiatrist, previously having worked at Her Majesty's Prison Brixton; Broadmoor Maximum Security Special Psychiatric Hospital and a Medium Secure Unit at the Bethlem Royal and Maudsley Hospitals, London. I trained at the Maudsley Hospital and at Johns Hopkins Hospital, Baltimore USA. I have appeared as an expert witness in the Civil and Criminal Courts in the UK for about 32 years.

I have experience of assessing the effects of long term solitary confinement on the mental health and welfare of detainees, particularly in the context of imprisoned Irish Republican terrorists in the 1980s. I would be happy to provide a Curriculum Vitae for any medical colleague who is interested.

Opinion: It is self evident that the US government has a duty of care to this detainee. Solitary confinement does have the potential to harm a detainee, especially if the personnel are not subject to instructions to engage in conversation and activities with the detainee. The conditions of imprisonment described are clearly in breach of those minimum standards considered acceptable in Europe. (See the European Convention Against Torture. Website:cpt.coe.int. The Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.)

In my opinion Mr Aamer's mental and also perhaps his physical health is likely to be at risk, especially in the short term and perhaps in the longer term. This concern can only be satisfactorily resolved if a thorough medical examination and report on Mr Aamer is completed soon. The physician would need to enjoy the confidence of Mr Aamer and his lawyers.

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Advice: I suggest that the British government is asked to support the idea that a psychiatrist nominated by Mr Aamer's lawyers is allowed to visit him in Guantamo Bay and to conduct a detailed assessment. It would be important for Mr Aamer's medical records to be made available to the doctor and for medical personnel to be available to consult with the visiting doctor. Such a proposal was in fact previously supported by the British Government, about a medical examination of a Mr Moazzem Begg, then detained in Guantanamo Bay. The agreement of the US government to this arrangement would reflect well on the claim that human rights of detainees are properly protected at Guantamo Bay.

/s/

Dr James A C MacKeith

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Attachment B

<http://www.nytimes.com/2006/09/17/magazine/17guantanamo.html>

September 17, 2006

The Battle for Guantánamo

By TIM GOLDEN

Note: This article is a preview of the Sept. 17 issue of The Times Magazine.

1. A Warning From Shaker Aamer

Col. Mike Bumgarner took over as the warden of Guantánamo Bay in April 2005. He had been hoping to be sent to Iraq; among senior officers of the Army's military police corps, the job of commanding guards at the American detention camp in Cuba was considered not particularly challenging and somewhat risky to a career. He figured it would mean spending at least a year away from his family, managing the petty insurgencies of hundreds of angry, accused terrorists.

"Is this what I went to bed at night thinking about?" he would ask nearly a year later, as he whacked at mosquitoes on a muggy Cuban night. "No."

Bumgarner, then 45, received his marching orders from the overall commander of the military's joint task force at Guantánamo, Maj. Gen. Jay W. Hood. A few weeks earlier, General Hood dispatched the previous head of his guard operation and two other senior officers for fraternizing with female subordinates. He was known as a flinty, detail-oriented boss with low tolerance for bad judgment, and his instructions to the colonel were brief: He should keep the detainees and his guards safe, Bumgarner says Hood told him. He should prevent any escapes. He should also study the Third Geneva Convention, on the treatment of prisoners of war, and begin thinking about how to move Guantánamo more into line with its rules.

It had been three years since President Bush declared that the United States would not be bound by any part of the Geneva treaties in dealing with prisoners in the fight against terrorism. He ordered that American forces treat captives in ways "consistent" with the conventions but hadn't explained what that meant. Now, Bumgarner thought, the mandate seemed to be shifting a little. He was being asked to get more specific.

In the cramped bungalow headquarters of his Joint Detention Operations Group at Guantánamo, Bumgarner had his operations officer look up the conventions on the Internet and print out a copy. After nearly 24 years as a military police officer, Bumgarner knew the document well. He thought it obvious that many of the rights would never apply to Guantánamo detainees. No one was going to allow the distribution of "musical instruments" to suspected terrorists, as the 1940's-era conventions stipulated for the captured soldiers of another army. No one was going to pay the detainees a stipend to spend at a base canteen.

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But the assignment was more complicated than just cutting and pasting where he could. On some level, Bumgarner thought, he was being asked to weigh how far the military should go to improve the lives of prisoners whom the president and his aides had labeled some of the most dangerous terrorists alive. Or, as the colonel put it to me during our first conversation at Guantánamo in March: "How do you deal with an individual whom the president of the United States and the secretary of defense have called the worst of the worst?"

At that point, in the spring of 2005, he had little time to consider an answer. Tensions in the camp were surging, as the detainees tested a fresh rotation of Army and Navy guards. Of the 530 prisoners then being held at Guantánamo, most were classified as "noncompliant." The two segregation blocks, which held prisoners who had assaulted guards, were full. So were two other blocks where detainees were sent for lesser infractions. "People were in a waiting pattern to get in and serve their time there," Bumgarner said.

In older parts of the camp, the detainees would sometimes bang for hours on the steel mesh of their cells, smashing out a beat that rattled up over the razor wire into the thick, tropical air. Occasionally they would swipe at the guards with metal foot pads ripped from their squat-style toilets, declassified military reports say. The detainees rarely tried to fashion the sort of shanks or knives made by violent prisoners in the United States. But they did manage to unnerve and incite the young guards, often by splattering them with mixtures of bodily excretions known on the blocks as "cocktails."

By the time Bumgarner took command at Guantánamo, information had emerged to suggest that many of the detainees were not, in fact, the hardened terrorists whom Pentagon officials had claimed to be holding there. Bumgarner did not doubt that his new prisoners were dangerous, but neither was he wary of getting to know them better. As he walked the blocks in Camp Delta, the fenced-in core of the prison, he soon began trying to engage some of the more influential detainees.

Military and C.I.A. analysts had been studying the Guantánamo population since the camp opened in January 2002. They observed that there were detainee spokesmen, who tended to speak English, and religious leaders, or "sheiks," who issued opinions on questions of Islamic law. There was also a more hidden cadre, whose leadership the analysts defined as "political" or, when they could direct the protests of others, "military." Nonetheless, there was much debate over who the most important leaders were, intelligence officials later told me. Like most guard officers before him, Bumgarner gravitated toward those who spoke English.

His ambitions were modest. "I was looking for a way, with what General Hood was wanting, just to have a peaceful camp," he recalled recently. He said his initial message to the detainees was "Look, I'm willing to give you things, to make life better for ya, if y'all will reciprocate." What he asked in return was "Just do not attack my guards."

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Bumgarner considered himself a take-charge, solve-the-problem kind of commander. A big, balding, garrulous man who speaks with a faint Carolina drawl and carries his 250 pounds easily on a 6-foot-2-inch frame, he grew up the son of a career Army sergeant in a family where military service was proudly taken for granted. In high school in Kings Mountain, N.C., a small town in the Blue Ridge foothills, he played quarterback for the football team and applied to West Point at his father's urging. He quit the academy after only a few months but joined the R.O.T.C. to help pay his way through Western Carolina University. At Guantánamo, he was one of those officers who seemed to relish calling out, "Honor bound!" (shorthand for the camp motto, "Honor bound to defend freedom"), when a soldier saluted. Saying goodbye, he favored "Hoo-rah" over "See you later."

But that image could be deceiving. Before deploying to Cuba, Bumgarner oversaw the development of detention doctrine at the Army's Military Police School at Fort Leonard Wood, Mo. Like many military police officers, he had been deeply embarrassed when the Abu Ghraib scandal erupted in May 2004 and was determined to see its legacy undone. "We were not going to let that happen to us," he said.

At Guantánamo, Bumgarner moved quickly to try to reduce tensions in the camp. If the detainees wanted clocks on the cellblock walls, he saw no reason they shouldn't have them. In response to endless complaints from the detainees about their tap water, he persuaded Hood to approve the distribution of bottled water at mealtimes. The only stocks available were the soldiers' own, bottled with a stars-and-stripes label under the vanity brands Patriot's Choice and Freedom Springs. To avoid any problems, guards were ordered to peel off the labels before they passed out the bottles.

The detainees did not respond as the military authorities hoped. In late June 2005, two months after Bumgarner took command, some prisoners went on a hunger strike, calling for better living conditions, more respectful treatment of the Koran by guards and - most important - fair trials or freedom. Although it was hardly the first such protest, the camp's medical staff worried about the unusually large number of prisoners involved.

Soon after the strike began, Bumgarner was alerted to a disturbance in Camp Echo, an area of more isolated cells on the eastern edge of the detention center. The problem was with a 38-year-old Saudi named Shaker Aamer. The colonel had not previously encountered Aamer, but he was already familiar with the legend of detainee No. 239 - the one his guards called the Professor. They marveled at his English, which was eloquent, and his presence, which was formidable. Some intelligence officials said they believed he had been an important Qaeda operative in London, where he lived and married before moving to Afghanistan in the summer of 2001. (Aamer has denied having anything to do with Al Qaeda or terrorism.)

The colonel's immediate concern was that Aamer was giving his guards fits, pressing one of the sporadic civil disobedience campaigns for which he was famous. "I finally said: 'That's it! I'm gonna go down to talk to him myself.'" As Bumgarner remembers it, he

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burst into the small, hospital-white room as Aamer sat on his bunk, fuming behind the painted mesh that caged him into one corner. "You're either gonna start complying with the rules," Bumgarner recalls warning him, "or life's gonna get really rough." The colonel said he did not mean to threaten physical force, only to emphasize strongly that Aamer's few privileges - like, say, his use of a toothbrush - hung in the balance.

Aamer, who wore a thick black beard and had his hair pulled back in a ponytail, was unimpressed. The prisoner, who was not wearing his glasses, squinted for a moment, trying to read the officer's insignia. "Colonel," he finally said, "don't come in here giving me that."

As Bumgarner settled into a white plastic chair, Aamer crossed his legs on the bunk and began to talk about his life. He spoke about his family, his travel to Afghanistan, his feelings about the United States. He told of working as an interpreter for American troops in Saudi Arabia during the first gulf war, and of later working at a coffee shop outside Atlanta.

"I got the impression that he was hanging around in clubs, drinking," Bumgarner told me. "He loved women. But he said he had realized the error of his ways." Aamer had a revelation, he told the colonel, "that this life of running around with women and boozing it up was the wrong path."

"It was part of his charisma, that drawing me in," Bumgarner said later. "He became a person."

Much of the conversation centered on Aamer's thoughts on the detention operation and what could be done to improve it. The Saudi's ideas, it seemed, were perhaps not so far from Hood's. "His implication was that if you applied the Geneva Conventions fully, everything would be just fine in the camps," Bumgarner recalled.

After almost five hours, Aamer asked the colonel if he had made someone very angry. "Otherwise, you wouldn't be in Guantánamo.

"Nobody survives Guantánamo," he added. "You won't survive, either."

II. A Permanent Place

As part of the military's standard tour of Guantánamo, visitors are driven to the end of a two-lane road that winds up to the northeast corner of the naval base on which the prison sits. They pause there on a small hill overlooking a locked gate that leads into Fidel Castro 's part of the island. The tour guide, usually a young Marine corporal with a black Beretta pistol strapped to his thigh, then recounts a brief history of Communist efforts to drive the American forces away.

At one point, the corporal says, the Cubans tried to cut off the Americans' water supply.

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They trained floodlights on an American guardhouse to keep the soldiers inside from getting any sleep. But such annoyances were merely that. The United States never surrendered an inch of the 45 square miles it has occupied under a disputed lease since 1903, following the Spanish-American War. "We're not as big a presence as we once were," one tour guide, Cpl. Denis R. Espinoza, who is 22, said earlier this year. "But we're still here, and we're going to stay."

In the Land of Unsubtle Metaphors that is Guantánamo Bay, the message of the tour is transparent: the United States fought a dangerous, implacable enemy here once before, in another war that seemed without end. Had we not held our ground then, the argument goes, the world might now be a darker place.

Despite the intense criticism it has drawn, the detention camp at Guantánamo has proved one of the more resilient institutions of the Bush administration's fight against terror. It has weathered a 2004 Supreme Court decision that allows prisoners to challenge their detention in the federal courts. Scandals over the abuse of the detainees have come and gone, but Guantánamo has endured.

When President Bush announced broad changes in policies for the detention and prosecution of terror suspects on Sept. 6, he said the government "will move toward the day when we can eventually close the detention facility at Guantánamo Bay." But by sending 14 important C.I.A. captives there and pushing to try prisoners before reconstituted military tribunals, he appeared to be extending the life of the detention center for the foreseeable future. Even if many more detainees are sent home and dozens are tried, administration officials acknowledged, the United States could easily end up with 150 or 200 others whom it would want to hold indefinitely and without charge. As to how the military should treat such men, Washington offered only the most general guidance.

What impact the C.I.A.'s prisoners might have on the camp's operations is unclear. Already, though, Guantánamo has been the scene of an extraordinary struggle between the detainees and their guards. Only a few episodes of this conflict have come to light, like the suicides of three prisoners in June. But what has hardly been glimpsed is the dynamic that developed as military officers tried to deal more closely with the detainees, easing the harsh conditions in which they have been held and asking for compliance in return.

This article presents a view inside the prison based on interviews with more than 100 military and intelligence officials, guards, former detainees and others. It shows that as pressure built among the prisoners and some threatened even to kill themselves in protest, Bumgarner and other guard officers - acting as much on instinct as policy - took surprising steps to contain the upheaval.

That experiment illuminates the challenge the United States faces in continuing to detain indefinitely some 460 men at Guantánamo, only 10 of whom have been formally charged

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with crimes. Perhaps not surprisingly, the military has sought to keep what has taken place there under wraps. Asked recently about his dealings with the detainees and those of his staff officers, General Hood would respond only through an Army spokesman, saying, "Operational security precludes any public discussions that could potentially jeopardize the lives of detainees or the security force at Guantánamo."

Rather than making Guantánamo go away, the administration has tried to make it smaller and less objectionable. The ruins of Camp X-Ray, the provisional facility where the first prisoners were held in cages, are slowly being swallowed by the jungle. Tour guides display them as proof of Guantánamo's progress. Inside the existing camp, a barricaded precinct of the quaint, 50's-era naval base where off-duty soldiers play softball and stop to eat at McDonald's, the guides point out Camp 6, a new \$30 million facility modeled after a county jail in southern Michigan.

But the detainees have long memories, and the portraits drawn by those who have been released - sometimes horrific, often impossible to verify - have shaped global perceptions in ways that the Bush administration has been unable to overcome. Their stories have been set down in books, films, plays and raps, most of which depict an Orwellian world that is by turns brutal, calculated and inept.

"Every country has its own way of torturing people," Rustam Akhmiarov, a 26-year-old Russian who was arrested in Pakistan and ended up in Guantánamo, told me after his release. "In Russia, they beat you up; they break you straightaway. But the Americans had their own way, which is to make you go mad over a period of time. Every day they thought of new ways to make you feel worse."

Over the last two years, human rights groups and the International Red Cross have noted some improvements. Hood said that the use of more extreme interrogation methods was curtailed within months of his taking command, around the time that the Abu Ghraib scandal became public. Yet the larger questions that indefinite detention at Guantánamo raises - how to forestall the radicalization of the detainees; how to control men who have only the slimmest hope of freedom - have never been resolved by senior policy makers. They have been left to military officers on the ground.

III. Out of the Dark Ages

As Colonel Bumgarner landed at Guantánamo in April 2005, he sensed that the military was in the midst of what he called "sort of an effort to normalize things." The Pentagon wanted to streamline the guard operation as part of a push toward a more modern, less labor-intensive detention facility. It also wanted to present a more humane face to the world. Both goals required lowering the level of conflict within the camp.

After his first briefing from Hood, Bumgarner put the printout of the Geneva Conventions on his desk and left it there. "I had my staff look at it," he said. "For me, it was the only black-and-white piece of something that I could reach out and grab for

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guidance."

At that point, White House officials were still opposed to adopting even the most basic Geneva standard for the treatment of prisoners, a provision that bans "outrages upon personal dignity, in particular humiliating and degrading treatment." Bumgarner considered such issues above his pay grade. He tried to deal with the detainees man to man. "Human beings are human beings," he said in one of a series of conversations. "I always think that I can deal with anybody. I feel like dialogue can't hurt."

Weeks before he would meet the Saudi prisoner Shaker Aamer, Bumgarner came across a tall, wild-eyed detainee who was screaming at the guards in British-accented English. It wasn't clear what his problem was, but when the colonel asked, the man quickly calmed down. "You are creating these problems by the way you are treating us," the prisoner said.

A day or two later, Bumgarner had guards deliver the man to Juliet block, a small, fenced-in courtyard beside his command center where Red Cross representatives meet with detainees at aluminum picnic tables. He asked a guard to uncuff the prisoner's hands. "It puts them in a much better mood to talk to you," the colonel explained. Prisoner No. 590, Ahmed Errachidi, was a handsome 39-year-old Moroccan who spent 17 years in London. He worked as a chef at a string of restaurants, including the Hard Rock Cafe, before traveling to Afghanistan after the United States began bombing the country in October 2001. The military authorities accused him of belonging to a radical Moroccan Islamist group and training at a Qaeda camp in Afghanistan, charges that his lawyers have disputed. Intelligence officials told me they did not consider him a high-value detainee and noted that he had been hospitalized for manic depression. But the guards, impressed by his influence and sense of self-importance, had nicknamed him the General.

Errachidi seemed rather surprised to be sitting down with the commander of the detention group, Bumgarner told me. But in that meeting on June 6 and a second, longer one two days later, Errachidi seized the chance to inventory the prisoners' grievances: The water was foul, he said, and the food terrible. The detainees were angry about the guards' habit of walking loudly through the cellblocks at prayer times and even angrier that "The Star-Spangled Banner" sometimes played over distant naval-base loudspeakers during or right after the evening call to prayer.

The General "kept talking about 'the dark ages,'" Bumgarner would later recall. The prisoner complained, for example, that the guards often referred to the detainees in demeaning ways, calling out when they were moving a prisoner that they had "a package" ready.

"We are not 'packages,'" Errachidi told the colonel. "We are human beings."

After the first meeting, Bumgarner received a piece of paper from a guard. It was a

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drawing by Errachidi, a sort of map. In one corner, it showed a shaded area labeled "the Dark Ages." From there, a path wound through a thicket of obstacles. They had labels like "No 'packages,'" "Better food" and "Turn the lights down." At the end of the path, Errachidi had drawn what looked like an oasis, with water and palm trees.

Back at Bumgarner's command center, some of his staff officers wondered about the wisdom of trying to solve such complaints. They were used to their commanders walking the blocks and occasionally speaking to prisoners; they were not accustomed to sit-downs. Nor did they see why they should be the ones to pick through the Geneva provisions and suggest whether the detainees might be entitled to elect their own representatives or attend educational programs.

"We're the guys on the ground," the detention group's former operations officer, Maj. Joseph M. Angelo, told me not long ago. "So why was I making recommendations on what portions of the Geneva Conventions we should implement? That just struck me as kind of weird."

Still, the unease of Bumgarner's staff did not compare with the reaction he got from the intelligence side of the Guantánamo task force. There had long been tension between the two military units, but this time members of the Joint Intelligence Group "were furious," one staff officer recalled. There were few privileges to give out at Guantánamo, this officer and others said, and interrogators felt they should be the ones to dispense them - in return for cooperation from the detainees.

Before he deployed to Cuba, Bumgarner's military police superiors had been emphatic that he should stick to his responsibilities and leave his counterparts in military intelligence to their interrogations and analysis. Bumgarner wasn't worried about stepping out of his lane. "I run the camps," he said.

Bumgarner set about trying to solve the problems he saw. He instructed members of the guard force to stop referring to the detainees as "packages." On compliant blocks, he had guards start turning down the lights between 10 p.m. and 4 a.m. and stop moving prisoners during those hours to allow the detainees to sleep. To avoid disturbing their prayers, he ordered guards to place yellow traffic cones spray-painted with a "P" in the cellblock halls at prayer times. He asked his aides to see that "The Star-Spangled Banner" recording would be played at least three minutes before the call to prayer.

Another of Bumgarner's senior staff officers, Maj. Timothy O'Reilly, a reservist who is a lawyer in civilian life, began to recognize some of what he was seeing from jails and prisons in the United States. "The ultimate nirvana for anybody in law enforcement or corrections is compliance," he said earlier this year. "In order to run an effective prison, you need to have people comply with your orders, and that's no different from the smallest jail to the biggest high-security prison."

But Guantánamo was clearly unlike other prisons in one important respect: The detainees

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found much less incentive to obey the rules. To some, exile to the discipline or segregation blocks was a source of status and pride, military intelligence officials said. And the punishments were limited. Striking or spraying urine on a guard brought 30 days' segregation, the maximum length of any punishment under Geneva rules. There was no such thing as getting a few more years tacked on to your sentence.

In an American prison, O'Reilly and others noted, an inmate could be a sworn enemy of the prison authorities, respected among other prisoners, and still try to "run a good program" - avoiding trouble in an effort to reduce his time behind bars. At Guantánamo, compliance with the rules brought only prayer beads, packets of hot sauce, a slightly thicker mattress. It would not bring early parole.

Former detainees I met insisted that their defiance was provoked not only by their despair over their uncertain futures but also by unnecessarily harsh and arbitrary treatment from the guards. "If people's basic human rights were respected, I don't think they would have had any of these problems," said Abdul Salam Zaeef, a former Taliban cabinet minister and ambassador to Pakistan who was the pre-eminent leader of Afghan prisoners at Guantánamo before his release in the late summer of 2005. "There were no rules and no law. Any guard could do whatever they wanted to do."

Like other small, insular groups that live at the mercy of a more powerful force, the detainees have woven intricate, conspiratorial theories about their fate. In a closed world where prayer gives structure to daily life and the Koran is the one possession guards are never supposed to take away, prisoners were acutely sensitive to any perceived disrespect for their faith. But there were many other grievances. Some former detainees told me that early on, they were injected at Guantánamo with psychotropic drugs, a claim that military officials denied. Later, detainees continued to suspect hidden agents of social control in everything from the cloudy tap water to the configuration of their cells.

"Those blocks are designed so that you will not rest," says Mohammed al-Daihani, a government accountant from Kuwait who was sent home last November. "There is metal everywhere. If anyone drops anything, you hear it. If anyone shouts or talks loudly, it disturbs everyone. If there is a problem at the other end of the block, you cannot possibly rest. After two or three weeks, you think you will lose your mind."

Although the detainees came from diverse backgrounds and more than three dozen countries, there was only one real prison gang at Guantánamo. The authorities were convinced it was controlled by Al Qaeda members. An August 2002 study by the C.I.A. asserted that Qaeda detainees at Guantánamo had quickly begun "establishing cellblock leaders and dividing responsibility among deputies for greeting new arrivals, assessing interrogations, monitoring the guard force and providing moral support to fellow detainees, among other tasks." (The study was posted in July on the Web site *The Smoking Gun*; two officials confirmed its authenticity to me.)

Such conclusions may have been drawn from the actions of detainees like Shaker Aamer,

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the man with whom Bumgarner spoke for hours at the end of June. Abdullah al-Noaimi, a Bahraini student who was released from Guantánamo last November, described in interviews at his home in Bahrain in June how Aamer initially organized their cellblock through sheer force of personality. "He's always laughing and talking, very extroverted," al-Noaimi said. "He was born to be a leader."

Soon after his own arrival in Cuba, al-Noaimi recalled, Aamer rallied the detainees on the block to refuse to be weighed by the medical staff - a largely meaningless protest, he said, but one that infuriated the guards and thrilled the detainees. Eventually, he added, Aamer organized the 48-cell block into four groups of 12, with representatives for each unit and a spokesman for the block. "It's the same thing John McCain did in Vietnam," said Lieut. Col. Kevin Burk, who commanded the army's first military police battalion at Guantánamo. "You continue your resistance."

Some parts of the camp were easier to manage than others. The guards looked on the roughly 110 Afghans then at Guantánamo as relatively cooperative. They filled much of Camp 4, the newer wing where Level 1, or "highly compliant," prisoners were allowed to live in communal barracks, serving their own food and moving freely in and out of small recreation yards. Most of the rest of the Afghans were in Camp 1, for Level 2, or "compliant," detainees. Only a handful were held in Camp 5, the maximum-security area. Yet as more prisoners were released, the remainder were becoming a more cohesive group, military officials and former detainees said. They were also overwhelmingly Arab, and more likely to have endured more extreme interrogation techniques like sleep deprivation, sexual humiliation and threats.

Several former detainees insisted that it was not Al Qaeda that bound them at Guantánamo but a common adversary. In standard prison fashion, they developed ingenious ways to organize and communicate. They attached messages to long threads from their clothing with wads of hardened toothpaste and then cast them into neighboring cells. They shouted into the plumbing to talk between floors in the maximum-security unit. And as their frustration grew, their ability to organize was brought to bear in new ways.

IV. Aamer the Hero

The hunger strike that confronted Colonel Bumgarner in mid-June 2005 escalated quickly. Of the many strikes since early 2002, few had gone far enough to prompt doctors to force-feed the detainees through stomach tubes. This time, however, there were not a handful of hunger-strikers but dozens.

As they often had before, military spokesmen dismissed the protest as a publicity bid typical of Al Qaeda-trained terrorists. Officers at Guantánamo had tabulated hundreds of incidents of what they termed "manipulative, self-injurious behavior." Privately, though, they began to discuss how to respond to a potential suicide. At the Pentagon, officials dusted off contingency plans for dealing with a body that would need prompt burial under

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Islamic law.

Senior members of the Guantánamo staff began to meet regularly with General Hood to monitor the strike. The chief medical officer, Navy Capt. John S. Edmondson, M.D., worried about the prospect of having to force-feed large numbers of detainees. The medical risk was relatively low, but there were other considerations. "Anytime you're doing a procedure that the patient doesn't want, it's not a place you want to be," he would tell me later. "What takes precedence? The patient's rights, or their life? It's not an easy question."

Bumgarner soon turned to Aamer, who had been on strike since around the time of their first meeting in Camp Echo. During that first encounter, he said, the prisoner had been "trying to convince me, in a very subtle way, that he could help control things in the camp." He decided to consider the proposal.

Over a couple of more conversations with Aamer, Bumgarner made his case: He wanted the detention camp to run more smoothly, to make things easier for detainees who obeyed the rules. He was prepared to move closer to the standards of the Geneva Conventions in some parts of the operation, including discipline. What did Aamer think it would take, the colonel wanted to know, for the hunger strike to end?

Aamer summarized his discussions with Bumgarner in a statement he dated Aug. 11, 2005, and later gave to his lawyer, Clive Stafford Smith. In it, he said the hunger-strikers demanded ending "the secret abuse project of Camp 5" (which he did not explain) and either bringing the detainees to trial or sending them home. Meanwhile, they wanted better medical and living conditions. Aamer wrote that the colonel promised him "that justice would come to Guantánamo at last." The prisoner, his lawyer said later, had "decided that this was a man who he could trust."

Bumgarner said he tried always to bring the talks back to what he could deliver: modest improvements in the detainees' living conditions. He said Aamer told him: "If you can get me to go around the camps, I can turn this off."

There were no precedents for chaperoned consultations among detainees. But by July 26, 2005, the number of detainees refusing to eat was at 56, and doctors were becoming concerned about the health of several of them. Bumgarner decided to act. "I saw the chance to end it, and I just did it," he said.

The colonel went to see Aamer at a small hospital inside the detention camp. He was sitting on a bed, one ankle chained to the frame, surrounded by some of the other more determined hunger-strikers. According to Bumgarner, Aamer told him that several of the detainees had had a "vision," in which three of them had to die for the rest to be freed. Still, he agreed to try to persuade them to drop the protest.

Aamer agreed to suspend his own strike on July 26, his lawyer said, but was unsuccessful

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in persuading others. That evening or the next, Bumgarner said, he had guards retrieve Aamer from the hospital and meet him at Camp 5, the imposing maximum-security unit. Once inside the heavy doors, they went through the cellblocks one by one, as Aamer spoke with a handful of the most influential detainees.

Aamer went first to see Saber Lahmar, an Algerian-born Islamic scholar who was arrested in Bosnia in a supposed conspiracy to bomb the American Embassy in Sarajevo. (Lahmar denied any involvement in such a plot.) Trailed by the colonel and a military interpreter, Aamer continued through the tiers, crouching down to speak to a handful of others through the slots by which they received their food. His last stop was the cell of Ghassan al-Sharbi, a 30-year-old Saudi who studied electrical engineering in Prescott, Ariz. Al-Sharbi, who was later charged in the military tribunals with joining in an Al Qaeda conspiracy to manufacture bombs for attacks in Afghanistan, was reluctant to give up the strike. When he finally agreed, the others went along, two military officials said. As they prepared to leave Camp 5, Bumgarner says, he asked Aamer if he needed to speak with some of the other hunger-strikers there as well. "No," Aamer answered matter-of-factly. "The others will put the word out."

The colonel and his prisoner drove to Camps 2 and 3. As they entered some of the blocks - Bumgarner in his camouflage fatigues, Aamer handcuffed to a chain around his waist - the cells erupted with applause.

"He was treated like a rock star, some of the places we would go in," Bumgarner recalls.

"I have never seen grown men - with beards, hardened men - crying at the sight of another man." He paused, searching for an analogy. "It was like I was with Bon Jovi or something," he said.

Former detainees who witnessed the visits recounted to me that Aamer, speaking in Arabic, proposed to end the hunger strike and explained that other detainees in Camp 5 were in agreement. In return, he said, the military authorities promised to try to resolve problems the prisoners faced and to observe parts of the Geneva Conventions.

The colonel's subordinates had grown accustomed to his hands-on style of leadership. But they worried more openly about his meetings with Aamer. The Saudi, one officer pointedly said, "has an almost hypnotic power over some people." Two others referred to Aamer as "Svengali."

Bumgarner himself struggled with Aamer's frequent demands. One morning, as Aamer was being sent off with other officers to brief detainees, he had a new one for the colonel: Now he wanted to move around without the leg shackles that were standard for detainees being transported outside their cellblocks.

"Look, Shaker, don't make a big deal out of this," Bumgarner recalled telling him. "Let's get on to the bigger thing here. I can't take you out of those shackles."

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"I'm not going unless you just handcuff me," the prisoner responded.

"Shaker, don't do this to me," the colonel said. "It's just going to make it harder."

"No," he quoted Aamer as saying. "I'm not doing any of this."

Bumgarner ordered the shackles removed. The handcuffs stayed on. Aamer finally went ahead with his briefings to the other prisoners. "It was clearly a risk - not in terms of putting anybody in danger, but in terms of perception," Bumgarner told me later. "But I thought that in the end, in order to keep things going, I was going to have to do it."

Mullah Zaeef, the former Taliban ambassador, had just finished his prayers in Camp 4 when a sergeant came to his dormitory. "There is someone who wants to see you," the sergeant said. Zaeef had never had an unannounced visitor at Guantánamo before. He found Aamer waiting. The two men had known each other in Camp 1, where they were briefly neighbors. Zaeef, who spoke Arabic, noted that many of the Arabs respected the Saudi's leadership. Aamer told Zaeef about his conversations with the colonel.

"We thought maybe they were becoming softer in their policies," Zaeef recalls. "Or we thought maybe they were trying to trick us. But we thought that we should see which one it was."

When I met him in Afghanistan almost a year later, Zaeef still seemed a bit uncertain about what had taken place. He is an elegant, professorial man who wears wire-rimmed glasses and the black silk turban favored by the Taliban. He described the episode during two long interviews in the well-guarded government guest house on the dusty outskirts of Kabul, where he has lived since returning home last September.

According to Zaeef, Aamer described a scheme of representation for the detainees that he had worked out with Bumgarner - one that vaguely echoed the Third Geneva Convention's rules for a prisoner-of-war camp. Detainees in Camp 4 were to choose two inmates to represent them, one for the Afghans and another for the rest. With guards by his side, Zaeef said he then went from one block to the next, explaining the situation. After some discussion, he was chosen by acclamation to represent all of the Camp 4 detainees. Still, Zaeef recalled, "people were very skeptical."

Nonetheless, most of the hunger-strikers suspended their protests by July 28. Disciplinary problems on the blocks eased. The mood in the camps swelled palpably, some military officials told me. Later Bumgarner would refer to this interlude as "the Period of Peace." The colonel then turned to some of the issues the detainees had raised during their strike. He and Aamer were sitting at one of the picnic tables near his office, debating the camp food, when Aamer insisted that the detainees' meals were being poisoned.

"That's asinine!" Bumgarner said.

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"I don't see you eating the stuff," he said Aamer shot back.

Over a dinner of fish sticks and fries, they began working out a solution. Not long after, Aamer sat down with the head of the mess hall, the base nutritionist and a logistics officer on the military staff. According to one officer briefed on the meeting, Aamer unfolded a piece of paper on which he had drawn up an elaborate two-week meal plan with daily suggestions for four different diets: a standard menu, a vegetarian menu, a vegetarian-with-fish option and a bland diet for older prisoners and those with intestinal problems. Two officials said Aamer's proposal eventually became the basis for a new meal plan that raised the amount of food offered to detainees each day from 2,800 calories to 4,200 calories.

After weeks of discussion with his aides, Bumgarner also instituted a new program to simplify the discipline in the camp. Under the previous four-level system, misdeeds were punished with the loss of various "comfort items" like prayer beads and books, or stints in the discipline or segregation blocks. The system was so complicated, military officials said, that its application often seemed arbitrary.

The new plan called for all or nothing. Every detainee was restored to compliant status and issued all of the comfort items generally available, including prayer beads and bigger bars of soap. Those who broke the rules would be busted down to "basic issue," or B.I., with nothing in between. To symbolize the new order, all detainees in punishment-orange uniforms would be reoutfitted in tan.

The change might have made a dent in the prisoners' abiding sense of humiliation. The problem, some officers said, was that the plan was set in motion before enough tan clothing could be requisitioned to outfit all the detainees. Some of those left in orange complained loudly.

"We did not think that through like we were playing chess," Major Angelo said. "We thought like we were playing checkers. And that didn't work."

V. The End of Peace

A couple of days after Aamer visited Zaeef to explain the new plan for prisoner representation, a guard approached Zaeef with a cryptic message. "At 6 o'clock you are going to go somewhere," he said. At the appointed hour, Zaeef was led out of the camp and put on the rumble seat of one of the small John Deere utility vehicles used to transport detainees around the detention center and driven to Camp 1.

The guards led him to the small, fenced-in exercise yard for Alpha block, where two picnic tables had been placed. Ala Muhammad Salim, an influential Egyptian religious leader in the camp who was known as Sheik Ala, was already there. The two prisoners sat down and began quizzing each other about what was going on. Four others trickled in.

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They included Aamer and two of the men he met with in Camp 5: Saber Lahmar, the Algerian scholar, and Ghassan al-Sharbi, the Saudi engineer. The sixth was Adel Fattoh Algazzar, a former Egyptian Army officer with a master's degree in economics. Bumgarner did not attend the meeting, but when all of the detainees were seated, his deputy arrived with two other officers. Al-Sharbi acted as the Arabic interpreter.

According to other officers I spoke with, the deputy delivered a simple message: The six were being asked to provide their input on how to improve conditions in the camp. Each of the detainees responded in turn.

"Do not mistreat us anymore," Zaeef recalled saying. "Be respectful of our religion and our Koran. Respect us as human beings, because we are human beings. If we are criminals, take us to court. But if we are innocent, let us go."

News of the meeting buzzed through the camp. Right away, several former detainees said, the prisoners began to debate what was taking place. "We had never talked to the colonels before," Abdulaziz al-Shammari, a Kuwaiti teacher, said. "But this Bumgarner came around all the time, wanting to negotiate with us."

The younger detainees pressed Aamer to push past the matter of living conditions and focus on their demands for trial or release. "The shabab said to him, 'We must not go only for the small things; we should go to the core issues,'" al-Shammari said, using the Arabic word for "young people" or "youth."

Mohammed al-Daihani, the Kuwaiti accountant, now released, said that soon after the colonel and Aamer visited his cellblock, Ahmed Errachidi, the Moroccan known as the General, challenged others there to analyze the possible motives of their captors. "He said: 'Why is a colonel from the most powerful country in the world coming to negotiate with the detainees? They must be under some kind of pressure.'"

The skeptics on Bumgarner's side were also growing more vocal. "I was one of the few who thought we should let the leaders come talk to us," the colonel acknowledged. Hood was clearly uneasy with the negotiations, other officers said. He told aides not to refer to the six as "the council," as the detainees did. Still, several officers emphasized, the talks would never have gone forward if Hood had not approved them.

On the evening of Saturday, Aug. 6, shortly after the council's first meeting, the colonel convened the six again, officers said. This time, he sat with the group himself. Aamer had insisted that they should not be handcuffed or shackled. "These are leaders," he told the colonel.

Bumgarner agreed, and the handcuffs were removed. Guards armed with pepper spray stood by, while an immediate-reaction team waited just out of sight. The colonel later summarized his introduction thusly: "You're here. I'm here. You've got my attention. Tell me what the grievances are, and we'll work through them." He added, "This place ain't

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going away, so we might as well make the best of it."

As Zaeef recalled the encounter, Bumgarner made several promises: He would allow the circulation of religious books among the detainees and try to resolve problems that arose with the guards. He would assure that the prisoners' food was "adequate." Zaeef said the most important thing the colonel pledged was to send another official who would be able to speak with the detainees about their "future." Bumgarner said he promised only that guards would act "in the spirit of the Geneva Conventions" and that he would see that Guantánamo's discipline was consistent with its terms.

On the following Monday, the officers said, the six detainees were allowed to meet alone in the fenced-in yard. A pair of military interpreters were positioned nearby to monitor their conversation, officers said. According to both Zaeef and military officials, the detainees began using pens and paper they had been given to write notes. An officer observing the meeting interrupted them: they were not to pass notes, he said. When they insisted on confidentiality, he stepped forward again. But as the officer moved to confiscate the notes, some of the detainees popped them into their mouths and began chewing.

Hood pronounced the experiment over. "This group is not meeting anymore," the colonel recounts him saying. "And you are not going to be meeting with them anymore." The "period of peace" came to an abrupt end. According to various sources - military officials, former detainees and Aamer's lawyer, Clive Stafford Smith - the detainees were also angered by a few incidents that had taken place over the weekend before the second council meeting. In one case, a prisoner had been forcibly extracted from his cell, only to sit waiting for hours to be interrogated. In another, the questioning of a slight Tunisian detainee by a much larger criminal investigator ended in a violent scuffle involving a cut nose, the possible hurling of a mini-refrigerator and the investigator's being ordered off the island.

A couple of days after the negotiations were shut down, officials said, a riot broke out in Camps 2 and 3. Dozens of detainees tore up their cells, wrenching foot pegs from their toilets and using them to try to pry loose the mesh that separated them. Guards were pulled from the tiers and deployed to surround the perimeter of the blocks. Water and electricity were shut off, and Bumgarner finally got on a bullhorn with an Arabic interpreter to persuade the detainees to be escorted from their ruined cells. The repairs took weeks.

The guard officers were unsure what the detainee leaders had been up to. According to military and intelligence officials, there were indications that Aamer and al-Sharbi had been at odds. Al-Sharbi, the accused Al Qaeda bomb maker, once told a military review panel it was his "honor" to be classified as an enemy combatant, declaring, "May God help me to fight the infidels!" Paradoxically, he was believed to be the more pragmatic negotiator, urging that the detainees try to improve conditions in the camp. But Aamer, who had denied any involvement in militant activities, took a different position.

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According to the officials, he argued more directly that the detainees should use the talks to pressure the military into either trying them fairly or setting them free.

Aamer told his lawyer the military had "sadly betrayed its word on every occasion a promise has been made." He blamed the colonel personally. At the time, Bumgarner said, he felt similarly betrayed. But when he recounted the story months later, he sounded merely disappointed. "We almost liked each other," he said of the two Saudis, Aamer and al-Sharbi. "I shouldn't say we liked each other, but when we spoke together, there was no animosity."

By mid-August, the hunger strike that military commanders thought they had resolved was picking up strength. Complaints about living conditions were de-emphasized, military officials and lawyers for the detainees told me. Instead, the prisoners focused on their future legal status. The renewed protest hit a peak just after Sept. 11 of last year, with 131 prisoners refusing meals for at least three straight days, officials said.

Many of the officers doubted that the protesters were willing to take their own lives. Islamic law strongly forbids suicide. Abdulaziz al-Shammari, the Kuwaiti teacher who was one of the most frequent hunger-strikers, said he never considered taking his own life. "We saw that they would not let us die," he said of the military doctors. "This was merely the most extreme side of the protests."

Al-Shammari, who has a university degree in Islamic law, was one of a half-dozen more learned detainees to whom others turned for religious rulings on countless problems of their captivity. He said he knew of no relevant exceptions to the prohibition against suicide.

Two officials familiar with intelligence reporting from Guantánamo said that sometime in the late summer of 2005, Saber Lahmar, the Algerian religious leader who served on the six-man council, told other detainees of a fatwa that said it was lawful to take your own life in order to protect state secrets or to defend the common good. Other detainees spoke about the prophetic dream that Shaker Aamer mentioned to Bumgarner, in which three prisoners had to die for the rest to be free, the officials said.

As doctors began to tube-feed the more recalcitrant hunger-strikers, the strike consumed the medical staff. Specialists were flown in from naval hospitals in Florida. Most of the detainees maintained their weight at above or near 80 percent of their so-called ideal body weight. But as the strike dragged on, several slipped below 75 or even 70 percent of that measure, doctors said.

For detainees who obeyed the rules, the military offered new perks. Exercise time was extended once more. On Hood's instructions, Gatorade and energy bars were given out during recreation periods. Wednesday became pizza night. Guard officers suggested soccer and volleyball tournaments to the compliant detainees in Camp 4. The detainees came back asking that a prize - two-liter bottles of Pepsi - be awarded to the winners.

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(The detainees disdained Coca-Cola, guards said.) Before the games could begin, however, the detainees changed their minds, the officers said. They had concluded that the contest was a scheme by the military to divide them.

While increasing the incentives for compliance, the colonel also tried to clamp down on disruptive behavior. The segregation and discipline blocks were overhauled. The rules became stricter, the guards tougher. When detainees in segregation tried to shout to one another through the walls, the guards were to turn on large, noisy fans to drown them out. Worried about Shaker Aamer's influence, Bumgarner also took an unusual step. In September, he had Aamer moved to Camp Echo, where he would be even more isolated than he would be on the segregation blocks. But Bumgarner did not cut off contacts with the detainee leaders entirely. He approached Zaeef to assure him that he wanted to continue to improve things for compliant detainees. He also developed a rapport with Ghassan al-Sharbi.

Al-Sharbi was described by people who know him as an intelligent, almost ethereal man from a wealthy Saudi family. (In an appearance before a military tribunal, he sat placidly with his hands folded at the defense table and told the presiding officer in plain English: "I'm going to make it easy for you guys. I fought against the United States.") The colonel said he found al-Sharbi a useful interlocutor and met with him repeatedly. After August, he never spoke with Aamer again.

The guard officers saw some indications that the tougher approach was working. The number of detainees in the discipline and segregation blocks fell substantially. Only later did the officers begin to suspect that the more combative detainees were so focused on the hunger strike that they had little energy for other protests.

VI. The Suicides

To some of Colonel Bumgarner's officers, it seemed that the latest group of hunger-strikers were being allowed to get too comfortable. They had hospital beds, air-conditioning, attentive nurses and a choice of throat lozenges to ease the pain of their feeding tubes. The arrangement also allowed some of the hospitalized detainees to communicate relatively easily.

By late November, while many of the strikers were maintaining their weight, four or five of them were becoming dangerously malnourished, Dr. Edmondson said. By sucking on their feeding tubes, they had figured out how to siphon out the contents of their stomachs. Others simply vomited after they had been fed.

On Dec. 5, the guard force ordered five "restraint chairs" from a small manufacturer in Iowa. If obdurate detainees could be strapped down during and after their feedings, the guard officers hoped, it might ensure that they digested what they were fed.

Days later, a Navy forensic psychiatrist arrived at Guantánamo, followed by three experts

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from a Bureau of Prisons medical center in Missouri. Bumgarner said the visitors agreed with him that the strike was a "discipline issue": "If you don't eat, it's the same as an attempted suicide. It's a violation of camp rules." In addition to feeding prisoners in the chair, some of the more influential hunger-strikers were sent off to Camp Echo with the hope of weakening the others' resolve. The number of strikers, which was at 84 in early January, soon fell to a handful.

Lawyers for the detainees were appalled. The lawyers quoted their clients as saying detainees had been strapped into the chairs for several hours at a time, even as they defecated or urinated on themselves. The doctors told me later that they had run out of options. "I would have preferred to have waited," said Dr. Edmondson, the chief base physician, who other officials said opposed the restraint chairs. But he added, "I seriously believed that we were going to lose one of those guys if we didn't do something different."

In the spring of 2006, General Hood and Colonel Bumgarner were suggesting that the mood at Guantánamo had turned. A handful of hunger-strikers were still at it - a few young Saudis and Yemenites, and Ghassan al-Sharbi. But the officers saw them as zealots whose threat to the smooth operation of the camp could be controlled. Otherwise, disciplinary infractions and attacks on the guards were down, they said, and many of the detainees were responding positively to new incentives for good behavior.

In an interview in late March, Hood said he believed that many young Arab detainees - sheltered, passionate young men who had gone to Afghanistan to fight what they thought would be a noble jihad - were beginning to see the light. They hadn't been radicalized at Guantánamo, he insisted. Rather, as conditions at the camp had improved, their preconceptions about Americans had worn away. "They discover, 'You guys aren't so bad.'"

"I think the hard-core people have lost ground over the last four years," Hood said. "They are clearly losing ground."

As he prepared to turn over his command in April to Rear Adm. Harry B. Harris Jr., Hood was upbeat about the future. "We are going to establish the most world-class detention facilities, and we are going to show the world that we're doing this right," he said. "Every provision of the Geneva Conventions related to the safe custody of the detainees is being adhered to. Today at Guantánamo - and, in fact, for a long time - the American people would be proud of the discipline that is demonstrated here."

Six weeks later, as guards in Camp 1 patrolled one of the blocks, they came upon a detainee comatose in his cell and frothing at the mouth - symptoms of an apparent overdose. "Snowball" - the guards' radio code for a suicide attempt - was called out over and over. In all, five detainees were found to have ingested medication that they and others had hoarded, and guard officers concluded that at least three were making serious suicide attempts. (Military spokesmen said that only two had really tried to kill

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themselves.)

Later that afternoon, May 18, a riot broke out among the "highly compliant" detainees in Camp 4 as guards moved to search their dormitories - and their Korans - for pills and other contraband, officials said. Detainees in one block of the camp set on guards who stormed their barracks after another guard saw a staged hanging and mistakenly called out "blizzard," the code for multiple suicide attempts. The guards' quick-reaction force fired rounds of rubber bullets and voluminous blasts of pepper spray to contain the disturbance.

Doctors later determined that the detainees had ingested sleeping pills, antianxiety medication and antipsychotics - whatever they could get their hands on. Since none of the men had been prescribed the medicines they took, it was evident that other detainees had colluded in the plan. (A cache of about 20 more pills was later found in one prisoner's prosthetic leg.) Still, the military authorities seemed uncertain how to respond.

Some officials recalled the detainees' premonition about three of them having to die. The medical staff tried to more closely monitor detainees with mental-health problems. But that screening apparently did not factor in the possibility that the men might have been determined to kill themselves for other reasons - like loyalty to a cause.

Sometime before midnight on June 9, three young Arab men, who were being held near one another in a single block of Camp 1, moved quietly to the backs of their small cells and began to string up nooses that had been elaborately made from torn linens and clothing. The bright lights had been turned down for the night. Still, the prisoners had to work quickly: guards were supposed to walk the block every three minutes.

After anchoring the nooses in the steel mesh walls of their cells, the three - Mani al-Utaybi, and Yasser Talal al-Zahrani, both Saudis, and Ali Abdullah Ahmed, of Yemen - piled clothing under their bedsheets to make it appear that they were asleep. They stuffed wads of fabric into their mouths, either to muffle their cries or perhaps to help themselves suffocate. At least one of the men also bound his legs, military officials said, apparently so he would not be able to kick as he died.

With the nooses pulled over their heads, the prisoners slipped behind blankets they had hung over the back corners of their cells and stepped onto their small, stainless-steel sinks. The drop was short - only about 18 inches - but adequate. By the time they were discovered, doctors surmised, the men had been asphyxiated for at least 20 minutes and probably longer. Military and intelligence officials said it appeared that the other 20-odd prisoners on the block knew that the suicides were being prepared. Some may have prayed with the men, the officials said, and a few may have assisted in carrying out the plan. What is certain is that in contrast to most previous suicide attempts at the camp, none of the detainees made any effort to alert the guards.

When doctors reviewed their files on the three men, they found that none of them had

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shown signs of depression or other psychological problems. All three had been on hunger strikes - one of them since the previous August - and at least two of them had been evaluated when they abandoned their protests. One doctor recalled one of the men telling him brightly: "I'm sleeping well. I feel well. No problems."

What the men hoped to communicate by their deaths may have been contained in brief notes they left behind in Arabic. The notes have not been made public, and a Navy investigation into the suicides continues. But military leaders at Guantánamo were not waiting on its outcome. They concluded immediately that the suicides were a blitzkrieg in the detainees' long campaign of protest. At a news conference hours after the suicides, the new Guantánamo commander, Admiral Harry Harris, described them as an act of "asymmetric warfare."

VII. Tightening Up

I sat down with Colonel Bumgarner one blazing afternoon in late June, as he was preparing to give up command. He looked tired and stressed, and slumped into a chair in his small, cluttered office. As Shaker Aamer did the previous summer, Bumgarner used words like "trust" and "betrayal." Bumgarner, at the time we spoke, was briefly suspended from duty while the military investigated whether he improperly disclosed classified information to a North Carolina newspaper reporter who, around the time the suicides occurred, had been in Bumgarner's headquarters reporting a feature article on the colonel from Kings Mountain. (He was absolved of any wrongdoing.) But he seemed more worried by something else: Had he completely misunderstood the prisoners he was trying to reach?

"We tried to improve their lives to the extent that we can - to the point that we may have gone overboard, not recognizing the real nature of who we're dealing with," he said. "I thought they had proven themselves. I'm ashamed to admit it, but I did not think that they would kill themselves."

Bumgarner said he could not discuss the suicides because of the Navy's continuing investigation. But several officials said that the three detainees had taken advantage of some of the colonel's quality-of-life reforms, including the nighttime dimming of lights and the availability of extra clothing. There were also indications that Ghassan al-Sharbi, the colonel's onetime interlocutor, had helped plan the suicides, two of the officials said. Looking back, Col. Kevin Burk, the commander of the military police battalion, said: "With any population like this, you're going to have a battle. It wasn't like we were all going to 'Kumbaya' together. But we were trying to find that middle ground, where the tension in the camp would even out. As far as we could see, no one had really tried to find that equilibrium before."

It is unclear if or when the military might try again. By most appearances, Guantánamo has been tightening up. Since the May riot and the suicides, the military has increased security to prevent further disturbances or deaths. In its ruling on the military tribunals in

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June, the Supreme Court left the government no choice but to abide by the minimum standards of treatment contained in the Geneva Conventions. But what other privileges and freedoms the detainees are allowed may come even more into question as the Guantánamo population is winnowed down to a harder core and joined by the most notorious terror suspects captured by the C.I.A.

One hint of Guantánamo's future may lie in the retrofitting of Camp 6, the brand-new medium-security facility that was to have opened this summer. Until this spring, the new camp was to embody the sort of conditions Colonel Bumgarner and other officials had hoped to institutionalize, with spaces for communal meals and larger recreation areas where compliant detainees could play soccer and other sports. After the riot and the suicides, the camp was substantially remade. When it eventually opens, military officials said, it will look somewhat more like Camp 5, the maximum-security unit down the road.

Tim Golden, an investigative reporter for The Times, has been writing about terrorism and detention issues since 2004.