

The Case of ISN 156

Medical Care and Medical Ethics at Guantanamo

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George David Annas, MD, MPH
Clinical Assistant Professor of Psychiatry
Upstate Medical University, Syracuse, NY



Tort of Negligence

- ~~Duty~~
- Breach
- ~~Injury/Damages~~
- Causation
 - Direct: “But for the actions ...”
 - Proximate (i.e. time, space)

*i.e. No controversy over duty existing and damages sustained

Sources

- *AR 15-6 Investigation: Report on the Facts and Circumstances Surrounding the 8 September 2012 Death of Detainee Adnan Farhan Abd Latif, JTF-GTMO, dated 11/8/2012*
- Department of Defense (DoD) Documents and FOIA-request released documents:
 - http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/

Limitations

194. ~~(U//FOUO)~~ Several corpsmen indicated that they are

(b)(7)(E)

(Exhibits 21, 23)

195. ~~(U//FOUO)~~ Indeed, the JMG Training Officer, b(3):10 USC §130b,(b)(6),(b)(7)(C), indicated that

(b)(3):10 USC §130b,(b)(6),(b)(7)(C),(b)(7)(E)

196. ~~(U//FOUO)~~ Furthermore, a registered nurse assigned to the BHU/DH b(3):10 USC §130b,(b)(6),(b)(7)(C) noted

(b)(3):10 USC §130b,(b)(6),(b)(7)(C),(b)(7)(E)

Limitations

~~(U//FOUO)~~

(b)(6), (b)(7)(C)

(U) INVESTIGATING OFFICER

Standard of Care (SoC)?

- American Psychiatric Association (APA, 2000)
- American Public Health Association (APHA, 2000)
- National Commission on Correctional Health Care (NCCHC, 2003)
- National Institute of Corrections (DOJ)

Standard of Care?

- Department of Defense:

http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/10-F-0841-KeyPoints_onDetaineeTreatment.pdf

Suggested Responses to Specific Questions (if asked)

Note: Responses immediately below is for use if asked about conditions at Guantanamo.

Can you assure us categorically that al-Qa'ida and Taliban detainees at Guantanamo are consistently treated humanely and in full accord with the Geneva Convention and all other international law?

- As our government has previously stated, the United States Armed Forces have treated, and will continue to treat, all individuals detained at Guantanamo humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949, even though neither al-Qa'ida nor Taliban detainees at Guantanamo are entitled to POW status.

Standard of Care?

- Department of Defense Instruction (23 I 0.08E):
 - “4.1.2 Health care personnel charged with the medical care of detainees have a duty to protect detainees’ physical and mental health and provide appropriate treatment for disease. To the extent practicable, treatment of detainees should be guided by professional judgments and standards ***similar to those applied to personnel of the U.S. Armed Forces.***” (2006)

Standard of Care?

- Southcom/JTF-GTMO (Fact Sheet: Detainee Medical Care):

“The medical care provided to detainees at Guantanamo is consistent with what U.S. service members receive.” (2013)

http://www.jtfgtmo.southcom.mil/xWEBSITE/fact_sheets/medical.pdf

Camp Delta Suicides

Year	Population*	Suicide	CI (per 100K)	State Prison (U.S.)**
2002	156	0	0	14
2003	625	0	0	16
2004	652	0	0	16
2005	544	0	0	17
2006	496	3	605	17
2007	396	1	253	16
2008	277	0	0	15
2009	242	1	413	15
2010	192	0	0	16
2011	173	1	578	14
2012	171	1	585	.
2013	166	0	0	.

*GTMO Detainee Population in beginning of year, Source: <http://projects.nytimes.com/guantanamo>

**BJS, Mortality in Jails and State Prisons 2000-2011 - Statistical Tables, July 2013

Camp Delta Suicides

- GTMO Suicide Rate (per 100,000/yr)*:
 - Average Population at Risk: 171
 - Largest Population: 107
 - Assuming Largest Population: 89
- U.S. State Prison Average*:
 - 2002-2011: 16

*Calculated from GTMO Detainee Population, Source: <http://projects.nytimes.com/guantanamo>

**BJS, Mortality in Jails and State Prisons 2000-2011 - Statistical Tables, July 2013

Suicide Prevention

- What SOPs does JTF-GTMO have in place for addressing suicide prevention?
 - SOP NO: 079: Detainee Suicide Attempt, February 2005
 - “Suicide Attempts can be expected in any detained population”
 - Camp Delta SOPs (1 March 2004):
 - Chapter 32: Emergency Action Plans

Questions: Institutional SoC

- Did JTF-GTMO have proper procedures in place to administer appropriate medical and mental health care? (ex: suicide prevention plan)
- Were those procedures being followed?
- If not, why? (inadequate training? Inadequate supervision?)
- Did lack of any of the above lead to the direct and proximate cause of Latif's death?

Implementation?

- Med-check procedure
- Searches
- Line of Sight
- Prior Recommendations

Medication Distribution

- 2004 SOPs: 33-26, pg. 202

f. MPs will verify a detainee has taken their medication, if orally, by making the detainee open their mouth and move their tongue around as to check all areas for hidden medications. All MPs will make detainees open their hands before leaving the meds pass bean hole area to ensure no medications that are to be taken orally are being hidden.

Searches?

- 2004 SOPs: 6-3, pg. 37

b. Search cells whenever a detainee exits a cell or prior to his return to his cell.

i. Search detainees at a minimum each time they are removed from a cell.

- 1/2 page detailing routine search

Searches?

- 2004 SOPs: 6-4, pg. 38

6-4. Searching the Koran

a. To ensure the safety of the detainees and guards while respecting the cultural dignity of the Korans thereby reducing the friction over the searching the Korans. JTF-GTMO personnel directly working with detainees will avoid handling or touching the detainee's Koran whenever possible. When military necessity does require the Koran to be searched, the subsequent procedures will be followed.

(1) The guard informs the detainee that the Chaplain or a Muslim interpreter will inspect Koran. If the detainee refuses the inspection at any time, the noncompliance is reported to the DOC and logged appropriately by the Block NCO.

Line of Sight (LOS)

- AR 15-6 Report, #95, pg. 22:

95. ~~(U//FOUO)~~ (b)(3):10 USC §130b,(b)(6),(b)(7)(C) indicated they did not see ISN156 ingest any pills. They also indicated that they did not leave their duty, and did not look away from ISN156 for more than two to five seconds while they were on line of sight duty. (Exhibits 1-A, 6-A)

- AR 15-6 Report, #104, Pg. 24:

104. (b)(3):10 USC §130b,(b)(6),(b)(7)(C) indicated they did not see ISN156 ingest any pills. They also indicated they never left their duty, and did not look away from ISN156 for more than 30 to 60 seconds while they were on line of sight duty. (b)(3):10 USC §130b (b)(6),(b)(7)(C) stated, however, that he was not looking at ISN156's breathing pattern and was focused on verifying that ISN156 was not trying to hurt himself. (Exhibits 8-A, 10-A, 23-A, 25-A)

Prior Recommendations

- AR 15-6 Report, footnote, pg. 73:

Recommendations 1, 2, 3, 4, 8, 11, 12, 13, 16, 18 from the investigation into the death of ISN782 (1 February 2011). (Exhibits 124, 125)

“Recommendations 1, 2, 3, 4, 8, 12, 13, 16, 18 from the investigation into the death of ISN782 (1 February 2011). (Exhibits 124, 125)”

Questions: Psychiatrist SoC

- Did the care given to Mr. Latif by the Psychiatrist fall below the standard of care?
 - Possible areas of debate:
 - Suicide Risk Assessment
 - Proper precautions in place?
 - Proper to endorse his transfer to the disciplinary unit?
 - General management:
 - Timing of prescribed medications
 - Insomnia properly addressed?

Remaining Questions

- Would such a case cause public outcry if Mr. Latif was serving a sentence in a state prison?
- Environment of Care at GTMO?
 - What do Physicians have the power to do?
 - Institutional pressure/Chain of Command?
 - Frequent turnover