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Center for Policy & Research

DOD CONTRADICTS DOD

**An Analysis of the Response to
*Death in Camp Delta***

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EXECUTIVE SUMMARY

The Seton Hall School of Law Center for Policy and Research Report, *Death in Camp Delta*, analyzed the official investigation into the June 9-10, 2006 deaths of three detainees at Guantanamo Bay Naval Base Detention Facility. The Center found a deeply flawed investigation, which failed to resolve serious questions about what really happened that night that resulted in the deaths of three men in U.S. military custody. In response to an article in *Harper's Magazine* which built on the Seton Hall study and independently investigated the events at Camp Delta, the Department of Defense (DOD) provided further information. Unfortunately, this response, like the initial investigation itself, is disturbingly flawed. While the response confirms at least some of Seton Hall's criticisms of the earlier investigation in the course of providing new information, it also contradicts factual claims in its own investigation, raising new questions as to whether the DOD can be trusted to investigate its own conduct. In analyzing the DOD's response, the Center finds that:

The Department of Defense defends the NCIS investigation by contradicting several of its own key findings.

- DOD now asserts only one detainee had a rag in his throat at the time of death, but the NCIS investigation shows all three had rags in their throats.
- DOD asserts that more than 100 interviews were conducted during the first three days of the investigation; however, only 24 personnel were interviewed on June 10 and none on June 11, 12, and 13. No more than 45 individuals were interviewed during the entire investigation.
- DOD now asserts that NCIS reviewed all available video footage, and found nothing of evidentiary value. The record shows NCIS had a videotape of the events. Since either activity in the camp or lack of activity would be relevant to the conflicting claims, it is implausible that there is nothing of evidentiary value on the tape.
- DOD now asserts that the detainees hanged themselves while lights were dimmed. The Admiral concluded the detainees hanged themselves with the lights on. The DOD does not explain this discrepancy.

The centerpiece of the DOD's response is the assertion that over 100 interviews were conducted within the first three days. This assertion ignores that all of the guards on the block that night gave prior statements that NCIS considered false. All of those prior false statements are still missing. Additionally, most of the statements either refute or do not corroborate the NCIS findings. In light of the DOD's responses, there must be another investigation into the events of June 9-10, 2006.

INTRODUCTION

On June 9, 2006 three men, Yassar Talal Al Zahrani, Mani Shaman Turki Al Habardi Al Tabi, and Ali Abdullah Ahmed, died while detained on Alpha Block in Camp 1 at the detention facility at Guantanamo Bay Naval Base. Within hours, the military announced that their deaths were suicides, acts of “asymmetrical warfare” against the United States. This announcement came as the official investigations were only just getting underway. The conclusions of those investigations would not be released publicly for more than two years, and then only after a court ordered their release. When the files were released, they were heavily redacted, but the conclusion had not changed from the morning after the deaths had occurred: a coordinated suicide.

The Seton Hall School of Law Center for Policy and Research analyzed the investigative file in the report *Death in Camp Delta*. What the Center found was startling. The evidence gathered over the course of the investigation did not support the ultimate conclusions. The men were dead for more than two hours before they were reportedly found hanging in their cells. Their hands were bound; at least one man’s feet were bound; their faces masked; cloth or rags were in their mouths and throats. According to the government’s findings, the men did all of this to themselves, behind blankets draped across their cells in violation of standard operating procedures, and stepped off a sink to commit suicide, all under constant supervision of highly trained Navy guards. The ultimate conclusions of the Admiral in charge of the camp, Admiral Harry B. Harris, were that, while there were SOP violations, those violations merited no disciplinary measures whatsoever.

Seton Hall thoroughly analyzed the investigation materials, witness statements, autopsy reports, and investigative methodology used. The Center concluded that the investigation was severely flawed, and the conclusions reached were not supported by the evidence.

Shortly after publication of *Death in Camp Delta*, four Army guards assigned to the watchtowers in Camp Delta that night (referred to as “Tower Guards”) came forward with a version of events that contradicts the official conclusions while helping to resolve some of the issues the Center found. The Tower Guards are quoted in a *Harper’s Magazine* article “The Guantanamo “Suicides”: A Camp Delta Sergeant Blows the Whistle”. Most relevant to the Center’s Report, these witnesses state that no bodies were ever brought from Alpha Block to the clinic.

Seven weeks after Seton Hall’s Report was published, the Department of Defense issued a statement purporting to address flaws in the Report, what the DOD referred to as “factual errors.” The DOD’s statement suggests its own lack of any knowledge as to the facts of the Department’s own investigation. As evidenced by misunderstandings of the circumstances and misstatements of facts, DOD’s assertions are as flawed as the infirm investigation they seek to defend.

The DOD asserts that only one detainee had a rag in his throat. Multiple witness statements found throughout the voluminous materials compiled by Naval Criminal Investigation Service (NCIS), Southern Command (SOUTHCOM), and Criminal Investigation Task Force (CITF) confirm that each individual detainee had some form of cloth lodged in his throat.

The DOD contends that because NCIS conducted more than one hundred interviews, their conclusions are sound. The DOD confounds number of interviews with number of interviewees. Many interviewees were interviewed multiple times. Those with first-hand knowledge—the guards who transported the bodies, the medics and the commanding officer and the Senior Medical officer in the clinic—did not observe or report that anyone died of hanging or that anyone committed suicide. The other witnesses interviewed were the guards on duty on Alpha Block that night. Their interviews came after they had all been officially warned about making false statements to investigators.

On the contrary, as demonstrated in *Death in Camp Delta*, an analysis of the statements gathered reveals conflicting timelines, contradictions as to facts, and a general sense of disarray. Clinic staff claim that, when the detainee's bodies were brought in, they were stiff with rigor mortis, they had ropes tight around their necks, and they had cloth lodged in their throats. The clinical staff never asked the guards what had happened, and the guards never told them. Therefore, any statements by the clinic staff can speak only to what happened after the bodies arrived.

Standard Operating Procedure (SOP) requires every person involved in the incident to write a sworn statement. Several individuals began to do so, but they were ordered to stop – in direct contravention of SOP. Those partial statements, started in the immediate aftermath of the incident while events were fresh in the minds of the witnesses, are not produced in the NCIS files. Many of the statements produced are third-person interview summaries. Many suggest that the interviewee was asked questions to elicit answers that would corroborate other witnesses. Overall, the witness statements provoke many more questions than they answer and do not satisfactorily support DOD's conclusions.

The DOD claims to have reviewed videotape of the night of the deaths but then claims the footage was of no evidentiary value. The NCIS investigation confirms at least one tape exists. It was delivered into the custody of NCIS, and was the only videotape NCIS reported that it possessed relevant to this incident. The investigation does not contain a summary of the video recording, a notation of its running time, or any other indication that it was viewed. If this videotape exists, and if it shows the dead men being cut down from hanging in their cells, or strapped to backboards in the hallway, or carried from Alpha Block to the Clinic, it would definitively disprove the Tower Guards' claims. Conversely, if the tape showed no such activity, it would tend to confirm the Tower Guards' story. In short, this tape would certainly be of evidentiary value, and yet the DOD claims not to have anything of the kind.

For the purposes of this report, the Center has taken the DOD statement to *Harper's Magazine* as an official response to *Death in Camp Delta* as well and has analyzed it as such. The full statement is attached as an appendix and addressed point by point in the body of this report. When evaluated in light of what has been learned in the process of studying the full investigation, many of DOD's assertions are directly contradictory to NCIS's investigation. *Put in their proper context, several of the points they make actually support Seton Hall's conclusions.* If, three and a half years after the three men died, and seven weeks after Seton Hall revealed the failings of the investigation, this is the strongest response the DOD could muster, there is reason to suspect that no good response exists. The initial investigation into the deaths of three detainees on June 9, 2006, was flawed, the DOD's response is flawed, and a new investigation is necessary to find out what really happened that night.

Background

On December 7, 2009, Seton Hall University School of Law's Center for Policy and Research (the Center) published its analysis of the Department of Defense's (DOD) investigation into the alleged suicides committed by three Guantanamo Bay Naval Base (GTMO) detainees on the night of June 9-10, 2006, in a report titled *Death in Camp Delta*.¹

On January 18, 2010, *Harper's Magazine* published *The Guantanamo "Suicides": A Camp Delta Sergeant Blows the Whistle*.² This article was the result of *Harper's* independent analysis of the events analyzed in the Center's report.

Both the *Harper's* article and the Center's report concluded that the various investigations conducted by the DOD produced findings that were unsupported.

Following the January 18 publication of *Harper's* article, the DOD has asserted that both *Harper's* article and the Center's report are "factually incorrect."

The DOD submitted to the editorial staff of *Harper's Magazine* a list of assertions defending its investigation into the three detainee deaths that occurred at GTMO on the night of June 9, 2006. The Center analyzed DOD's conclusions and found, like the original NCIS investigation, that they were unsupported by the evidence produced within its own investigative files.

¹ "Death in Camp Delta," [hereinafter "Report"] Center for Policy and Research, Seton Hall University School of Law (Dec. 7, 2009), available at http://law.shu.edu/ProgramsCenters/PublicIntGovServ/policyresearch/upload/gtmo_death_camp_delta.pdf

² Horton, Scott. "The Guantánamo "Suicides": A Camp Delta sergeant blows the whistle." *Harper's Magazine* 18 Jan 2010: n. pag. Web. 30 Jan 2010, <http://harpers.org/archive/2010/01/hbc-90006368>.

DOD Statement: *NCIS special agents who investigated this case found no evidence to suggest that the three detainees died by means other than suicide.*

The NCIS investigation never allowed for the possibility that the men died by means other than suicide. As evidenced by the immediate announcement by the military that the three detainees hanged themselves in their cells, an announcement made before the investigation had really begun, the NCIS investigation started with the premise that the men committed suicide, and proceeded from there. Indications to the contrary were ignored.

Only such a mind-set could explain the failure of the investigation to uncover information revealed by *Harper's*. Most obvious, the Tower Guards were never interviewed, and several now contradict NCIS' version of events.³ One might well ask whether, if the investigation were thorough, how at least four witnesses have emerged with divergent views of the events of that night.

When those on duty were asked to complete official sworn written statements, as per Standard Operating Procedures (SOPs), they began to do so but were subsequently ordered to stop.⁴ This order was in direct contravention of SOP. Neither in its current defense of the NCIS investigation or in the original investigation itself is this explained. The original uncompleted statements do not appear in the unredacted portion of the NCIS file. Additionally, no official sworn statements or first-person accounts of June 10, 2006, are available in the NCIS investigative file. Rather, third person interviews (not handwritten statements) appear to have been conducted, which directly contradicts SOPs.

A number of the statements that were given are questionable in their veracity. Six military personnel were accused of failures to obey direct orders and/or suspected of making false official statements. These six were the only guards responsible for Alpha Block on June 9-10, 2006. Official warnings against making false official statements of not one, but all six of the people with the only direct knowledge of the most important events of that night, casts serious doubt on the statements' trustworthiness. In turn the suspect statements are nowhere to be found in the investigative file. All statements now present generally corroborate each other.⁵

There are other reasons to consider some other statements to be of questionable evidentiary value. At the end of Colonel Bumgarner's eleven-page sworn statement just above his signature: "This statement, consisting of this page and two other pages. . . ."⁶ But the document in the file is an eleven-page statement. It is not clear where the additional information came from, or whether the Colonel attested to it. There are corrections and changes made throughout the eleven pages, indicated by redacted initials before and after nearly every paragraph.

³ Scott Horton, *The Guantanamo Suicides: A Camp Delta sergeant blows the whistle*, *Harper's Magazine*, Jan. 18, 2009, available at <http://www.harpers.org/archive/2010/01/hbc-90006368>. For full list of interviewed respondents subjects see: SJA at 92-94.

⁴ SOP 32-1 (e) (10) (2004).; *see also* SOP 6-15 (d)(2)(2004). NCIS at 944, 1086; CITF at 41.

⁵ *See* [the part with the statements with leading questions]

⁶ NCIS at 1064.

There is also physical evidence that suggests the detainees died by means other than suicide. Ahmed presented with a broken hyoid bone; a distinct sign of manual strangulation.⁷ ““There is considerable folklore about the neck injury in judicial hanging, including the notion that radical displaced fractures occur. So, common misconception allows that there will be fractures of some sort of internal neck injury in people who hang themselves.’ In fact, in suicidal hanging, there is scarcely ever any internal evidence of neck injury at all.”⁸ This suggests that Ahmed at the least may have died by means other than suicide.

Even as the events unfolded on June 9, 2006, it was not readily apparent that the men had committed suicide. Seven days after the deaths, Colonel Bumgarner stated in his official NCIS statement, “I was still not sure how it had happened. While I suspected that had all [sic] been found hanging, I told the Admiral [sic] was not sure if they had been found hanging, but I pointed out the ligature marks on each detainee.”⁹ This uncertainty suggests that the cause of death was not obvious to an observer who arrived shortly after the men had arrived at the clinic.

DOD Statement: *On the contrary, it was clear from interviews and forensic evidence that these detainees wanted to end their lives and methodically took steps to accomplish that goal.*

It is not evident that the detainees wanted to end their lives. There is no evidence of state of mind, nor any unredacted mental health examinations that would provide a basis for this statement. Colonel Bumgarner’s official NCIS statement says, “Two of the three had been cleared by Behavioral Health Services just the week prior [to their deaths] and were noted to be in good spirits.”¹⁰

NCIS’s conclusion claims as evidence of a conspiracy that an unnamed detainee walked up and down the block on June 9, 2006, saying, “tonight’s the night.”¹¹ There is no evidence, statement, or any information in the NCIS investigative file to support this assertion. This story is not attributed to any source, and the supposed detainee was never interviewed by NCIS. The undocumented event appears only in the NCIS post-investigation statement issued in 2008.

NCIS and CITF interviewed as many as 21 detainees,¹² and none stated that they were aware that the three men planned their suicides. Conversely, multiple detainees stated that, had they known, they would have informed Camp Delta personnel out of compassion and concern.

If this was in fact a coordinated effort, the NCIS investigative file presents no evidence of the detainee’s ability to collaborate or act in concert. Detainees are not allowed to pass notes or anything else between cells. They are not allowed to talk to one another.¹³ They are never

⁷ Clinically Oriented Anatomy, 6th Ed. by Keith L. Moore, Arthur F. Dalley II, Anne M. R. Agur. Autopsy Report for ISN 693 at 13.

⁸ SJA at 226 citing Hawkey, Dean, *Death by Strangulation*.

⁹ NCIS at 1060.

¹⁰ NCIS at 1063.

¹¹ NCIS Summary at 1-2.

¹² See Report, App’x G. CITF reported 15 detainee interviews. NCIS reports 6. It is unknown if there were multiple interviews of any of the detainees.

¹³ NCIS at 732.

supposed to be left together in the same place at the same time in Camp 1.¹⁴ The NCIS file provides no evidence that any of these SOPs were violated.

The alleged “suicide notes,” addressed elsewhere in this report, may provide some evidence of conspiracy, but it is hardly conclusive. For example, the SOUTHCOM file includes 40 pages of both translated and non-translated notes that allegedly declare the intent of each detainee to end his life.¹⁵ However, not one of the notes indicates that collaboration was involved. Some of the notes are addressed to a detainee with a redacted name who was a member of the 2005 detainee “council.”¹⁶ The true nature of these documents is far from certain.

The only other steps one might consider methodical would be the tearing of cloth, braiding of rope and use of other materials as “mannequins” to deceive the guards. No forensic examination of these materials exists in the unredacted portion of the NCIS file. No other forensic evidence is produced in the file that addresses this assertion.

DOD Statement: *To hang themselves, they did not need to jump off the sinks as suggested by the author, but only had to apply the necessary pressure to the neck to cut off blood flow.*

With this assertion, the DOD appears to shift ground from the clear message of the manner of death in the NCIS report. Several eyewitness accounts produced in the NCIS report indicate or suggest that men jumped from the sink: “It appeared to me that he climbed onto the sink and tied himself off and then jumped from the sink.”¹⁷

Each portion of the investigation explicitly stated that the detainees were discovered hanging within close proximity to the sinks (also referred to as a “fountain”) located within their cells.¹⁸ Further, the investigations found that the detainees were fully suspended when they were discovered.¹⁹

¹⁴ See SOP 2-2(c) (2004). Two detainees may be allowed to be in the exercise yard together; however, they are heavily supervised. See SOP 6-8.

¹⁵ SOUTHCOM at 609–649.

¹⁶ Id. at 609, 632, and 637.

¹⁷ NCIS at 991.

¹⁸ See NCIS at 1004 (noting that “ISN-693 was suspended approximately six (6) inches from the deck. No part of his body was in contact with the deck”; NCIS at 1031 (“I saw the detainee’s feet off the ground approximately one and a half inches with no shoes on”); NCIS at 950 (“The detainee was suspended above the floor on the side of the cell...”); NCIS at 975 (“...I saw the detainee hanging fully suspended off the floor of his cell”). See also CITF at 45 (in which one guard stated that he “saw ISN 093 hanging from the ceiling”).

¹⁹ SJA at 54. See also “Detainee Information Management Entries” SJA at 254 (“Further investigation revealed that Cells A5, A12, and A8 were all setup in the same manner with a sheet and blanket in the same back corner of the cell by the drinking fountain and the beds were setup to look as if someone was sleeping. ISN#000588, ISN#000693, ISN#000093 were all tied up and hanging behind blanket. [sic] All in the same manner.”); SJA at 51 (“The detainee was [suspended] totally upright against the cell wall between cells A-8 and REDACTED next to the sink.”); NCIS at 1042 (“I saw a blanket hanging up near the sink area”); NCIS 1039 (“As I turned to walk towards A5, I glanced at cell A12, and realized that something was wrong, because at this point I could see the blanket hanging in the back corner of the cell where the sink is located.”); NCIS at 990 (“The blanket covered a diagonal portion of the cell that contained the sink but not the toilet”); CITF at 1010 (“The placement of the blanket effectively shielded the sink section of the cell from view”).

It is remarkable that, in response to Seton Hall's *Death in Camp Delta* report and the Harper's article, DOD for the first time raises an alternative hypothesis. To the extent that it may be true, it is consistent with the findings of *Death in Camp Delta*: "What is clear is that the true circumstances surrounding the detainees' deaths cannot be discerned from the investigative file or the statement of findings."²⁰ But it is by no means clear that the hypothesis is correct, and the DOD offers no support for it.

The Center has consistently maintained the position that the three detainees did not necessarily die in the manner concluded by the DOD's investigators, and that the evidence in the NCIS file does not support the government's conclusions. Based on the investigative files, the expert consultant produced during the Staff Judge Advocate investigation conducted by Admiral Harris, and this new assertion set forth in DOD's statement, it is likely that there are plausible alternative manners of death.²¹

DOD Statement: *The knots, which bound their hands (and in one case, the decedent's feet), were not elaborate, but were indeed possible to make by each of the detainees who died.*

The Center agrees with the DOD that there is no reason to believe that the detainees were unable to tie knots. However, the knots themselves are irrelevant to the Center's conclusions. Rather than focus on the knots, the Center's analysis in *Death in Camp Delta* questioned the materials supposedly used. More specifically, the knot used to create a noose was a corded knot which was tied to the upper mesh of the wall and was wrapped multiple times around each detainee's neck.²² NCIS submitted fabric materials recovered from the cells of the detainees along with each body to the pathologist(s).²³ The materials were created out of "braided rope made from bed sheets and tee shirts."²⁴ Each segment of fabric was knotted with proximity to the end of each fabric segment and secured by additional braided materials.²⁵ Further, each autopsy report remarked that each detainee's neck was encircled with a deep furrow that featured abrasions.²⁶ The abrasions were described as "intricate weave-type patterns."²⁷ Additionally, it was observed that the three detainees covered their faces with masks²⁸ and that all three men were gagged.²⁹

JTF-GTMO JDG restricts the number of permissible cell items for both compliant and non-compliant detainees.³⁰ Detainees are not provided with implements capable of cutting fabric. Additionally, detainees are provided with a limited amount of fabric.³¹ In addition to the use of

²⁰ *Death in Camp Delta* at P. 54.

²¹ SJA at 226 citing Hawkley, Dean, *Death by Strangulation*.

²² SJA at 49-50.

²³ See Autopsy of Detainee 588 Mani Shaman Turki Alutaybi (Al-Tabi), 093; Autopsy of Detainee 093 Yasir T. Al Zahrani; and Autopsy of Detainee 693 Ahmed, Ali Abdulla. See also NCIS at 1202; CITF at 2.

²⁴ NCIS Statement of Findings from Suicide Investigation at 1.

²⁵ Id.

²⁶ Autopsy of Detainee 588; Autopsy of Detainee 093; Autopsy of Detainee 693.

²⁷ Id.

²⁸ SJA at 254.

²⁹ See, e.g., NCIS at 938, 950, 958, 959, 966, 975, 1024, 1025, 1073-74, 1079, 1091, 1093, 1097; CITF at 32, 49, 50.

³⁰ See "Basic Cell Items" and "Comfort Cell Items" SOP (b) (15) (2004).

³¹ See *Death in Camp Delta* for a comprehensive analysis.

the “tee shirt like material” which was intricately braided and knotted to create the alleged death implements, the investigations state that multiple pieces of fabric were used to conceal the detainees’ activities. For example, Al Zahrani allegedly tied to his cell (a minimum of) a blanket, three sheets, and the noose itself; found within his cell were a wash cloth a white color cloth, clothes, a blanket, a rug, and multiple non-fabric cell items.³²

In short, the braided ropes were elaborate because they were manufactured with enough precision to leave fine patterns on the skin of the three men and were secured by multiple knots. In light of the items discovered in each detainee’s cell, there is a serious question as to how so many impermissible items were kept in the cell of each detainee in the absence of additional derelictions by the guards. In addition, the ability of three detainees to produce such a quantity of homemade ropes and bindings raises even more pointed questions about the supervision over the extended period of time necessary for such work.

Neither the original NCIS report nor the most recent DOD response explains how three men — detained within a maximum security military prison under supposedly constant supervision — were able to:

1. Procure enough material to cover significant areas of their cells
2. Intricately weave fabric bindings
3. Repeatedly knot the bindings
4. Tie the binding material at a point in the cell high enough so that each detainee would be able to suspend fully without their feet touching the ground
5. Wrap the binding around their necks several times
6. Create knots to bind their limbs and torso
7. Gag themselves
8. And somehow hang to death while fully suspended without discovery by the guard force

The Admiral Harris SJA (Staff Judge Associate) investigation explicitly stated that, although there were “minor” SOP violations, the guard force could not have prevented the June 9-10 “suicides.”³³

The Center finds the DOD’s lack of an explanation incredible.

DOD Statement: *In addition, a short written statement declaring their intent to be martyrs was found in the pockets of each of the detainees. Lengthier written death declarations were also found.*

The investigations include copies of “possible suicide notes” found on the bodies of the three dead detainees³⁴ as well as longer “apparent suicide notes” found in the cells of other detainees, only two of which were identified as written by the detainees who died June 10.³⁵ All

³² NCIS at P. 1245-6

³³ See SJA AR 15-6 at 1-5.

³⁴ NCIS at 1239.

³⁵ NCIS at 2. See NCIS at 1310–1313.

Arabic language documents in the investigative files were accompanied by English translations prepared by unnamed persons.³⁶ The Center's Report did not seek to verify the translations' accuracy, and accepted the government's translations as accurate.

On several of the translations, notes indicate the translator's opinions as to the cultural significance of the content of the documents, and most of these comments do not treat the language as suggesting the intent to commit suicide. The documented translations do speak of the authors' souls being ready for whatever is to come, and other similar rhetoric (one describes Uncle Sam tightening a rope around the writer's neck), so it is possible that these documents may indeed be the "suicide notes." However, even assuming accuracy of translation, these documents could merely reflect Islamic religious writing or expressions of oppression or other personal emotions.

Furthermore, there is no evidence in any of these documents of a conspiracy between the three dead men. At no time do any of the alleged notes mention meetings, or planning, or coordination of any kind. The final report simply states that the fact that all three men had written documents in their cells and/or on their persons is an indication of conspiracy, and makes no further attempt to support that conclusion.

It is also unknown how many other detainees were in possession of similar documents; materials which would have been collected at the same time as those included in the investigative files. Whether or not the written notes in question are suicide notes, their translations provide no evidence of a conspiracy between the three dead men.

DOD Statement: The rulings of the Armed Forces Institute of Pathology (AFIP), which determined the cause and manner of death, were wholly consistent with the NCIS investigative findings.

Despite the DOD's statement, there are several unexplained inconsistencies between the autopsy reports and the NCIS investigative findings.

Most importantly, the autopsy reports conclude that each detainee was dead for hours before being found. "The medical examiner from the Armed Forces Institute of Pathology concludes that detainees Al Tabi and Ahmed were deceased for 'at least a couple hours prior to the discovery.'"³⁷ NCIS does not mention this fact in its investigative findings.

According to autopsies, only Ahmed had rags in his throat.³⁸ In contrast, NCIS interviews reveal multiple sources stating that each of the deceased detainees had rags in his throat upon discovery. Statements to the NCIS describe rags or cloths of some kind being removed from the mouths and throats of all three detainees, but only Ahmed's autopsy mentions a rag in the throat.

³⁶ See SOUTHCOM 609-648, 655-663, 664-672; NCIS at 1239.

³⁷ Report at page 21.

³⁸ See Autopsy Report for ISN 693.

Further, only Al Tabi's autopsy reveals no internal hemorrhaging in the neck. This conflicts with NCIS's conclusion that all three men died in the same way and the difference between the forensic evidence and the supposed common method of death is not explained by either the pathologist or NCIS. The only sign of hanging the examiner found was a "circumferential dried abrasion collar around the neck."³⁹ The pathologist finds support for his finding of death by hanging in reliance on a report that "... he was discovered in his secure cell suspended by the neck by braided segments of material."⁴⁰

NCIS interviews and the autopsy reports corroborate that all three detainees were dead for at least two hours before being found. Each body was found in rigor mortis, a post mortem condition from which one cannot be resuscitated.⁴¹ Despite this, the autopsy states that, after being found, detainees were given invasive treatment, including use of oral-gastric tubes, orally placed endotracheal tubes, intravenous catheter with attached urinary bladder bag, puncture marks on arms and hands, use of electrocardiogram pads, and defibrillator pads.⁴² The autopsy conclusions rely on earlier reports that a suicide occurred and that the enumerated treatments were used to attempt resuscitation. Neither the NCIS investigation nor the most recent DOD response explain why invasive life-saving procedures would be performed on persons in rigor mortis who have been passed the point of possible revival for more than an hour.

The morning following the three deaths, June 10, 2006, the military announced that all three had committed suicide in a coordinated act of "asymmetrical warfare." Interestingly, no autopsies had yet been performed at the time of this statement. In fact, the first autopsy was not performed until 18:30 on June 10, or 6:30pm, and the last on June 11, at 11:00am.⁴³ The pathology rulings and the NCIS investigation fall in line with this predetermined conclusion. Indeed, the pathologist(s) based the rulings at least in part upon some information that NCIS provided. "After an extensive investigation there is no evidence to suggest that anyone else was involved in this death. *Based on the information available*, the manner of death is suicide."⁴⁴ "Opinion: 30 year-old detainee died of hanging; *[B]y report*, he was discovered in his secure cell suspended by the neck by braided segments of material."⁴⁵ Autopsy reports also confirm that an NCIS Special Agent was present for all three autopsies. In short, these were not investigative efforts independent of one another; they were two arms of the same investigation, one which started with the pre-determined conclusion of suicide.

DOD Statement: "2. Regarding rags found in the mouth, there was only one rag lodged down the throat of one of the detainees."

This statement directly contradicts multiple statements in the NCIS investigation.⁴⁶ It is clear from official statements made under oath that all three men had rags in their throats or in

³⁹ Autopsy Report for ISN 093 at 4; Autopsy Report for ISN588 at 25; Autopsy Report for ISN 693 at 15.

⁴⁰ *Id.*

⁴¹ Report at 19; *See also* NCIS at 1071, 1078-9.

⁴² *See* Autopsy Report for ISN 093; Autopsy Report for ISN 588; Autopsy Report for ISN 693.

⁴³ Autopsy Report for ISN 093 at 1; Autopsy Report for ISN 588 at 1; Autopsy Report for ISN 693 at 1.

⁴⁴ Autopsy of Detainee 093 Yasir T. Al Zahrani. (emphasis added).

⁴⁵ Autopsy of Detainee 588 Mani Shaman Turki Alutaybi (Al-Tabi). (emphasis added).

⁴⁶ *See, e.g.*, NCIS at 938, 950, 958, 959, 966, 975, 1024, 1025, 1073-74, 1079, 1091, 1093, 1097; CITF at 32, 49, 50.

their mouths and throats. *Death in Camp Delta* specifically documented evidence from NCIS and CITF for a rag in the mouth, throat, or mouth and throat of each of the three detainees:

Al Zahrani

Al Zahrani was hanging behind blankets with a sheet wrapped around his neck and his hands were bound together. Someone shackled his arms, and AG1 and AG2 both reported shackling his legs. AG3 recalls that zip ties were used on Al Zahrani's wrists and ankles instead of shackles. *The NCO tried to pull the cloth lodged in the detainee's mouth and throat.* AG1 and the NCO both tried to obtain a pulse, but there was none.⁴⁷ . . . An ambulance arrived to take Al Zahrani to the Naval Hospital located on the edge of Camp Delta. While en route, the EMTs discovered that cloth was lodged in Al Zahrani's mouth and throat, blocking his airway.⁴⁸

Ahmed

As far as can be determined from the heavily redacted statements, Ahmed was in exam room 10:

After loading the first detainee into the ambulance I went back into the clinic and this was when I first realized that there were other detainees in the clinic being treated. I looked into the first exam room on the left and I saw there were enough people in there treating that detainee. I did not go into this room at all. I then went into the second exam room on the left and I saw a third detainee being worked on by two Corpsmen. . . . The[n] he tried to tube him but we could not get his jaw open. [REDACTED] used a laryngoscope...blade, which is made of metal, to pry the detainee's mouth open and in doing so broke some of the detainee's teeth. *Once the mouth was open we saw that there was a big piece of cloth lodged in the back of the detainee's mouth.* [REDACTED] extracted it with the forceps and it appeared to take a good amount of force to get it out. Once it was out I saw that it was folded repeatedly on itself and nearly as big as a wash cloth that was folded once in half. . . .In the aftermath of all that had happened *I heard that the second detainee had something in his mouth. The cloth we removed from the third detainee (second one I worked on) was clamped to his shirt with the forceps and someone took a picture of it.*⁴⁹

From a different sworn statement:

⁴⁷ Report at 29, citing NCIS at 950, 958, 966, 975. (emphasis added).

⁴⁸ Report at 32, citing NCIS at 1071, 1103, CITF 49, 50. According to NCIS EMIT statements, the rag was removed from Al Zahrani's throat in the ambulance. *See also*: "the first detainee had what appeared to be a t-shirt wrapped around his hands and blue marks on his neck. The detainee also had what appeared to be a shredded t-shirt inside of his mouth that [REDACTED]." NCIS at 1097; *see also* SJA at 254.

⁴⁹ NCIS 1078-79; *See also* Report at 33. (emphasis added).

At that time the Senior Medical Officer (SMO) entered examination room (10) and attempted to intubate the detainee. [REDACTED] however, was unable to do so because the detainee's jaw was locked shut and he could not open it. I assisted [REDACTED] to open the detainee's mouth. While struggling to open his mouth, we broke at least one (1) of the detainee's teeth. We eventually opened the detainee's mouth and *discovered what I believe to be a white nylon sock inserted into the back of the detainee's mouth.* [REDACTED] extracted the sock [from] the detainee's mouth, and again attempted to intubate the detainee.⁵⁰

Another report states:

ISN 693 [Ahmed] was the third detainee brought in and *appeared to have a white cloth in his mouth.*⁵¹

Al Tabi

Al Tabi, ISN 588, was housed in cell Alpha 12. One statement recalled, "I do remember 588 having a mask made from sheets that was *in hi[s] mouth* and wrapped around his head."⁵² Another guard stated: "When I got to Alpha 12, I saw a blanket hanging up near the sink area. ...The detainee's eyes were open, he had some sort of white cloth around his mouth..."⁵³ Still another recalls the "attempt to intubate this detainee and found *what appeared to be either gauze or white fabric lodged in the back of the detainees throat,* which [was] removed."⁵⁴

In sum, the abundant body of evidence in the unredacted portion of the investigative file demonstrates beyond a doubt that all three of the detainees had some form of cloth in their mouth, throat, or mouth and throat.⁵⁵ DOD's contention is in direct contradiction with its own investigation. If the DOD now has some reason to doubt the NCIS report in this regard, the implications for doubting the overall report are obvious.

DOD Statement: "Rather than being 'proof' of homicide, this was due to the detainee himself positioning the rag in his mouth in order not to make any noise so as to alert the guards. The rag was inhaled as a natural reaction to death by asphyxiation."

The Center's Report never stated that the rags were "proof of homicide," which makes the DOD's use of the word "proof" in quotes an exercise in creating a strawman. The Report

⁵⁰ NCIS at 1091. (emphasis added).

⁵¹ CITF at 1065. *See also* NCIS 1088, 1090, 1015, 1044, 1077, 1073. (emphasis added).

⁵² NCIS at 966.

⁵³ NCIS at 1042.

⁵⁴ NCIS 1073-74. (emphasis added).

⁵⁵ The great weight of evidence in the NCIS file points to all three having rags in their throats. Nowhere is it suggested that only one had a rag in his throat. Conversely, a single source, the DIMS provided on P. 254 of the SJA report, states that only 2 of the detainees had rags in their throats. Thus, the DOD's witnesses, investigative file, and recording systems are rife with inconsistencies, an indication that the DOD cannot say with certainty how many detainees died with rags in their throats.

criticized the NCIS because the investigation never addressed the reason why each detainee had a rag deep in his throat, evidence which should immediately raise the suspicions of an investigator. Because all three dead men were found to have died of asphyxiation and with rags lodged in their mouth and/or throat, the relevance of the rags is obvious.

The medics began resuscitation attempts on each detainee after his arrival. According to descriptions from the guards, medics, and autopsy reports, all three detainees were cold to the touch, bluish in color, and in a state of rigor mortis, indicating that each had been dead for more than two hours at the time of discovery. Their eyes were rolled back in their sockets and they had no pulse. Rigor mortis locked their jaws and impeded resuscitation attempts. In the case of one detainee, his jaw had to be pried open with a metal instrument that broke his teeth. At that time, medical personnel discovered that he had a cloth deep in his mouth and down his throat. The same condition was discovered in the other two bodies. The investigations did not explain why the detainees had rags in their throats.⁵⁶

The DOD's current claim that each detainee placed a rag in his mouth "*in order not to make any noise so as to alert the guards*" is a possible hypothesis. But it appears to be so theorized for the first time in the current response. Nowhere in the unredacted portion of the NCIS investigation was this explanation asserted, nor was any evidence for this conclusion given.

The assertion that inhaling a rag is a natural reaction to death by asphyxiation is never addressed by the NCIS investigation. Nowhere in the three autopsies do the only medical experts consulted address the role of the rags in the men's throats in their deaths. Admiral Harris' conclusions do not mention the rags. NCIS does not present scientific evidence that inhaling an obstruction is a natural reaction to death by asphyxiation, especially when that asphyxiation is supposed to have been brought about by hanging.⁵⁷ It is unclear how a man can inhale a rag (or a sock, or a washcloth) after constricting his airway with a noose around his neck, drawn tight enough to cut off all air. This statement both goes beyond the scope of and contradicts the medical findings of NCIS's investigation.

DOD Statement: "*Blankets and sheets had been used to obstruct the guards' views and to create the appearance that the detainees were asleep in their cells. During its investigation, NCIS discovered that detainees were allowed to hang sheets for privacy;...*"

It is entirely plausible that blankets and sheets could have been used to obstruct the guards' views into the cells⁵⁸ or to create the appearance that the detainees were asleep in their cells. In order for this to be true, however, the detainees would have to have been violating the

⁵⁶ Report at 5.

⁵⁷ However, SJA at 223-232 states that the presence of the rag expedites asphyxiation. Thus, the DOD's consulted expert concluded a more logical alternative based on scientific fact which the DOD chose to ignore.

⁵⁸ See NCIS at 1245-46 for Al Zahrani cell description; 1261-63 for Al Tabi cell description; 1279 -80 for Ahmed cell descriptions.

SOPs. “Blankets or sheets may be temporarily hung up, no higher than half way up the cell walls, to provide privacy while using the toilet. Once the detainee has completed using the toilet, the blankets and sheets must be taken down.”⁵⁹ This issue was dealt with directly in the Seton Hall report:

Despite strict SOPs stating that detainees may only hang items to dry no higher than half way up the cell walls, the guard statements allege that they were unable to see the detainees hanging as sheets and blankets were arranged to obstruct their view. According to SOPs, —‘[d]etainees may only hang wet clothing and linen items in cell windows so that they may dry. Once dry, they must be removed.’⁶⁰

Thus, the assertion that the detainees hung blankets and sheets for several hours is questionable considering the SOPs and guard practice. Assuming the truth of this, the question remains why such a grievous breach of SOPs with fatal results did not warrant some kind of disciplinary action.

DOD Statement: “...[T]hey were allowed to have extra linens and/or blankets;...”

The SOPs do state that, as a reward for good behavior, detainees are allowed to obtain comfort items including extra blankets and/or sheets.⁶¹ Two of the deceased detainees had ended hunger strikes only days before their deaths, raising questions as to whether they would have been considered to have been on “good behavior” and thus able to earn a substantial number of comfort items. The fact that sufficient amounts of such comfort items were given each of the three detainees as a result of his good behavior raises serious questions.

More generally, Camp 1 had been on lockdown following the riots on May 18. “In the weeks leading up to the three deaths, the guards and officers were on high alert. According to NCIS, there had been 44 reported suicide attempts prior to June 9, 2006, and more recent events including a detainee riot on May 18, 2006, increased the need for special vigilance.”⁶² Just days before the deaths, Colonel Bumgarner even stated in an interview with Bill O’Reilly that the detainees were more violent than ever and were planning attacks on guards at every moment.⁶³ Thus, there is a serious question whether the detainees *were* actually given extra blankets and sheets, and if so, whether giving such items conformed to the SOPs in place.

DOD Statement: “...[S]ome of the lights in the detention facility were dimmed at night to permit better sleep. This explains how the detainees were able to obscure their actions and why the guards did not discover the deceased detainees right away.”

⁵⁹ SOP 6-21(d) (2004).

⁶⁰ *Death in Camp Delta*, at 18.

⁶¹ Report at A-51.

⁶² Report at 24.

⁶³ Report at 36.

This might be true, but if so, it is contrary to Admiral Harris's findings of fact. Based on the pathologist's estimated time of death, he surmised: "[I]f a couple of hours was more than two and a half hours, then the detainees hanged themselves while the tier was fully illuminated."⁶⁴

Of course, it is possible that Harris was wrong. "[A] couple of hours" put the time of death at 10:00pm or later, which meant that some lights were likely turned off. The JTF GTMO procedures up through June 9, 2006, were to shut out the overhead lights on one side of the tier at 2220.⁶⁵ "The SOP related to lighting in cells during darkness in Camp 1 is to turn off half the lights on the tier. Camp 1 does not have lights inside the cell. The lights are on the ceiling of the tier and shine into the cells. So one side of the tier is lit and the other is not."⁶⁶ It is not known from the unredacted materials which side of the tier was left lit on the night of June 9.

If the DOD reference to "dimmed" lights referring to the half the lights being turned off, it may be correct, but necessarily impeaches Harris findings. In any event, even if the SOP were followed, the guards were nonetheless required to see skin or movement for *every* detainee *at least* every three hours.⁶⁷ In addition, guards were required to walk the block every ten minutes in order to maintain a continuous presence on the block at all times.⁶⁸ While reduced lighting could have made it more difficult to see the detainees, it does not explain why no guard noticed three detainees hanging in their cells for hours given the fact such strict monitoring procedures were required of them.

DOD Statement: *"All available video footage was reviewed by NCIS, and nothing of evidentiary value was discovered."*

DOD's use of the caveat "available" is telling. This statement does not describe what angles were available or whether video-monitoring equipment in the cell blocks recorded the reported incident at all. It does not state the duration of the recording. DOD contends that the Tower Guards are wrong, that three detainees were indeed cut down from hanging in their cells and carried from Alpha Block to the clinic. If video evidence exists at all, it can show two possible scenarios. Either it shows three detainees being cut down from hanging in their cells and carried to the clinic, thus confirming the DOD's position, or it shows that detainees were not cut down and carried to the clinic, thus confirming the story the Tower Guards told *Harper's Magazine*. Either of these possibilities is of enormous evidentiary value.

To accept the DOD's statement at face value would mean that, despite numerous cameras in Camp Delta, there are no recordings:

- of the guards removing the detainees from the cells
- of the detainees being taken by backboard through the prison hallways
- of detainees being carried out of the cell block and into the clinic

⁶⁴ SJA AR 15-6 Investigation at 30. (citation omitted).

⁶⁵ NCIS at 949.

⁶⁶ Bumgarner on NCIS 1056.

⁶⁷ Report at 16.

⁶⁸ SOP 6-1(d) 2004.

- of guards running around yelling for help, coordinating medical support and ordering guards to inspect other cells

These activities are all things that should have been captured on one or more of the many cameras. There is no explanation as to why “nothing of evidentiary value was discovered.”

NCIS was provided all videotapes on or about June 13, 2006, but there is no indication in the unredacted file that NCIS reviewed them.⁶⁹ It is clear from a statement by Rear Admiral Mark H. Buzby that hallway and common area video monitoring at Guantánamo is standard practice.⁷⁰ A memorandum dated June 15, 2006, confirms that SOUTHCOM delivered on June 14 “a videotape of the events of 10 Jun 06...The video is the only tape the command holds relating to the events under investigation.”⁷¹ Aside from the two memoranda in the SOUTHCOM file that mention delivery of the videotapes to NCIS, the government never refers to any videos in the investigative documents. Further, audio recordings of the radio and telephone calls were apparently not reviewed.⁷²

The NCIS report recounts the statement of a guard who began to videotape the events in the clinic and was told to stop taping. “Someone called for a combat camera. I am combat camera qualified so I volunteered to videotape the event. I ran the video camera for approximately two (2) minutes until I was instructed by [REDACTED] to halt taping.”⁷³ What makes the lack of video evidence even more surprising is the fact that video monitoring is required by the SOPs in many circumstances. The SOPs require video recording during self-harm attempts, during completions of serious incident reports, and whenever IRF teams are used.⁷⁴ This is another documented violation of SOPs for which no one was ever disciplined.

DOD Statement: NCIS conducted over 100 interviews during the first three days of the investigation, including interviews with all the guards who worked in the cellblock that day and all the detainees who were housed there. None of those interviewed told of any detainees being taken away or alleged homicide.

While NCIS and CITF may have conducted 100 interviews, they interviewed no more than 45 people, and most of those interviewed did not have first-hand knowledge of the core events.⁷⁵ The record reflects multiple interviews of the same person. For example, the SJA

⁶⁹ Report at 50, *citing* SOUTHCOM at 837.

⁷⁰ White, Josh. Defendants' Lawyers Fear Loss of Potential Evidence at Guantanamo Bay, WASH. POST. February 14, 2008, available at <http://www.washingtonpost.com/wpdyn/content/article/2008/02/13AR2008021303164.html> (“Buzby's declaration, filed in federal cases Friday and yesterday, said the video recordings were part of a surveillance system used to monitor the camps and were mostly of mundane operations.”)

⁷¹ Report at 50, *citing* SOUTHCOM at 839.

⁷² The Dictaphone recording system, which records emergency calls throughout the camp, was reported to have been inactive and not available for the investigators to review. NCIS at 926 (“Reporting Investigator and [name redacted] logged into the Dictaphone recording system and discovered it had experienced a power failure and had not been properly reactivated. Because the Dictaphone was deactivated, it did not record any calls from 03MAY06 until about 2100 on 10JUN06, when power was restored during maintenance.”).

⁷³ NCIS, at 1004.

⁷⁴ Report at 16, 17, 33.

⁷⁵ See Report at App's A.

report logs six interviewees from Block Duty Personnel on June 9-10, 2006, each of whom provided three statements, for a total of 18 statements from only six interviewees.⁷⁶ Further, one member of Naval Hospital Medical Personnel provided two statements, another guard provided a total of four statements, and a second guard provided three.⁷⁷

First Three Days of the Investigation

NCIS did not interview 100 people within the first three days of the investigation. During the first three days of the investigation only 24 people were interviewed,⁷⁸ but none of them gave first-person statements. NCIS began collecting first-person statements on June 14, more than three days after the detainees died and after the official announcement that they hanged themselves.

Interviewees

At most, 45 individuals,⁷⁹ excluding detainees, were interviewed: 26 guards, escorts, and officers, 16 medics, and 3 civilians. Of those interviewed, only 36 gave written first-person statements;⁸⁰ the rest are summaries of interviews written by the investigators. Of the 36, six were the guards on duty on Alpha Block that night. These six were the key witnesses to the events of June 9-10 as told by the NCIS investigation. All six were suspected by NCIS of making false statements, calling the credibility of their resulting statements into question. The false statements are not included in the NCIS investigation and remain missing.

The individuals interviewed were only a select group of guards, including the six who were suspected of making false statements by NCIS itself. Only one Sally port guard was interviewed, and no tower guards were interviewed, although many may have seen activity within the camp to confirm the response in the wake of the deaths. Additionally, the NCIS file contains only one interview with a June 9 day-shift guard, although four other guards were on duty earlier that day who may have noticed suspicious activity earlier in the day.⁸¹

DOD Statement: *AFIP sent a senior medical examiner to Guantanamo to perform the autopsies. In addition, an independent, state-level, senior medical examiner flew to Guantanamo to observe the autopsies, standard operating procedure for AFIP in high profile cases.*

⁷⁶ SJA at 146.

⁷⁷ SJA at 145, 147.

⁷⁸ This number does not include detainees, some of whom later than June 10.

⁷⁹ Non-detainees.

⁸⁰ There are two interviews dated June 12, 2006 from the Department of the Navy on different forms than the NCIS used. These two interviews were attached to the SOUTHCOM file. See SOUTHCOM at 928-932. These two interviews were not counted in the overall count as to who was interviewed because the forms indicate the statements were made for an internal review not statements made for the external NCIS investigation.

⁸¹ See Report at App'x A.

The Center Report examined the autopsy reports, and never contested that autopsies were in fact performed. Five personnel were present at each autopsy, and it appears likely that they were the same five people each time; however, all names of the medical examiners were redacted from the files. Only their titles—“NCIS Special Agent,” “Medical Examiner,” “Autopsy Assistant,” “Medical Photographer,” and “Medical Examiner Investigator”—were left.⁸² As detainee autopsies become part of the public record upon completion of the reports, it is unclear why the examiner names are redacted.

In addition, “The medical examiner from the Armed Forces Institute of Pathology concludes that detainees Al Tabi and Ahmed were deceased for ‘at least a couple hours prior to the discovery.’”⁸³ NCIS does not mention this fact in its investigation.

DOD Statement: *All the materials released to date have been highly redacted. While Seton Hall students may have done the best they could with what they had, the fact is they only had available to them a small fraction of the reports.*

Our report stressed that we only had access to the unredacted portion and that the redacted portion may contain more answers.⁸⁴ However, existence of information to which the Center did not have access does not change the fact that the unredacted portions contain many contradictions and unusual events that cannot be redressed through additional information. See *Death in Camp Delta* for a thorough analysis.

* * *

In addition to the response Major Shawn Turner provided to *Harper’s*, he is also cited as the source of a statement on a blog website, which appeared online January 29, 2010.⁸⁵ This seems odd because the statement is not otherwise publicly available, and has not been reported in any other media source. The statement is largely identical to the one sent to Harper’s, with two additional assertions set forth

DOD Statement: *The bodies were thoroughly examined for signs of torture. None was found.*

The autopsy reports never mention any specific measures taken to seek out signs of torture. The NCIS statement of findings released in August 2008 does not state any conclusions regarding torture. None of the statements in the investigation file mentions torture. There is no way to verify this statement from what is available in the unredacted NCIS file.

The examiners accepted that the detainees had been found hanging dead in their cells and premised their examination on this information. All three detainees had rags in their throats when they died. This was never investigated further by the autopsy examiners.

⁸² See pages AFME 1, 9, 10, 11, 12, 19, 20, 21, 22, 28, 29, 30.

⁸³ Page 21.

⁸⁴ See page 6.

⁸⁵ *Harper’s Is Wrong on GTMO Suicides*, available at <http://www.humanevents.com/article.php?id=35388>

This is further evidence that the investigation appears to have been based from the beginning on the premise that the deaths were all suicides, and each step of the investigation was meant only to support that predetermined conclusion.

DOD Statement: *A thorough, years-long investigation by NCIS concluded unequivocally that the detainees' deaths were the result of suicide. In addition, the Justice Department took this matter very seriously and a number of experienced department attorneys and agents extensively and thoroughly reviewed the allegations and found no evidence of wrongdoing.*

The three men died on June 9, 2006. No interviews were conducted after July 11, 2006. None of the tower guards were interviewed, despite the fact that they had visual command of Camp Delta and Alpha Block, as well as the clinic and the path from Alpha Block to the Clinic, throughout the night. Commanding Officer, Rear Admiral Harry B. Harris, signed off on his assessment of the completed investigation on September 6, 2006, less than 90 days after the deaths occurred.⁸⁶ There is no indication that NCIS took any investigative measures after this date. This investigation was far from “years-long;” indeed, it can barely be described as “months-long.” The brevity of the investigation undercuts the DOD’s present claims of thoroughness and calls into question whether the investigation truly was a serious effort to discern the truth.

Additionally, the cause of death was announced as suicide within hours of the deaths, and the government had already labeled the deaths as “asymmetrical warfare” and “a good PR move.”⁸⁷ In a conference call with reporters on June 10, mere hours after the deaths and before the autopsies had been completed, Admiral Harris stated that “[t]hey hung themselves with fabricated nooses made out of clothes and bed sheets,” despite the press releases of the same day stating that the manner of death was under investigation.⁸⁸ This is evidence to show the investigation started with the presumption of suicide and proceeded from there.

Colonel Bumgarner’s Statement to AP

While not formally a part of any DOD response, Colonel Bumgarner gave a statement to the Associated Press in the wake of the *Harper’s* article, stating that he would have to get clearance from the Defense Department to speak, but commenting:

“This blatant misrepresentation of the truth infuriates me. I don’t know who Sgt. Hickman is, but he is only trying to be a spotlight ranger. He knows nothing about what transpired in Camp 1, or our medical facility. I do, I was there.”

⁸⁶ STAFF JUDGE ADVOCATE (SJA) DETAINEES DEATH INVESTIGATION, (Sep. 2006), available at http://www.dod.mil/pubs/foi/detainees/death_investigation/index.html#SJA2. This assessment, accompanied by the investigation report and recommendations from NCIS to Admiral Harris, were not released until April of 2009, after Seton Hall had already begun its investigation.

⁸⁷ Report at 3.

⁸⁸ *Three Detainees Commit Suicide at Guantanamo Bay*, Fox News (June 10, 2006), available at <http://www.foxnews.com/story/0,2933,199001,00.html>.

Apparently, Colonel Bumgarner never received a clearance, as he made no further statements. This statement itself, however, is indicative of the problems in the official investigation. The relevant point to the Center's Report is the claim that he (Colonel Bumgarner) knew what transpired in Camp 1 because he was there. This claim is demonstrably false if taken literally, according to Colonel Bumgarner's own prior sworn statement to NCIS investigators, which the Seton Hall report analyzed.⁸⁹

That statement claims that on June 9, 2006, the colonel spent the evening at Admiral Harris's home, far from the camp.⁹⁰ At 00:48, the DOC called Colonel Bumgarner, who had by then returned to his quarters, to the Camp, and he immediately drove to the DET Clinic, following the ambulance into the Camp.⁹¹ Before he left, however, he called Admiral Harris to inform him that a suicide attempt had occurred.⁹² There was no doctor at the clinic when he arrived; only guards and medical personnel attended to the three lifeless detainees.⁹³ Again, Colonel Bumgarner called Admiral Harris, this time stating he believed all three were dead.⁹⁴ After the second detainee was declared dead at 01:16, Colonel Bumgarner notified the Joint Operations Center (JOC) of the deaths, and Admiral Harris arrived minutes later.⁹⁵

Colonel Bumgarner did not know how the detainees had died but he did notice the indentations on Al Tabi's and Ahmed's necks: "While I suspected that had all been [sic] found hanging, I told the Admiral [sic] was not sure if they had been found hanging, but I pointed out the ligature marks on each detainee, and the material that had [REDACTED] of ISN 588..."⁹⁶

Other statements by Bumgarner to NCIS further establish that he was not present when the bodies were discovered, or indeed, when they were first brought to the clinic. Therefore, he could not have known what happened firsthand.⁹⁷

"I was still not sure of how it happened."

"I wanted to know how much of Camp 1 had been checked and to understand the circumstances surrounding the discovery of the detainees."

"At approximately 0117 I stepped outside so I could place the cell phone call to the JOC to make notifications of the deaths."

Further undermining Bumgarner's claim that he knew what was actually happening, this phone call was made to JOC before all three had been officially pronounced dead.⁹⁸

⁸⁹ See Report at 36, citing NCIS pages 1059-1060.

⁹⁰ NCIS at 1059.

⁹¹ NCIS at 1059.

⁹² NCIS at 1059.

⁹³ NCIS at 1059.

⁹⁴ NCIS at 1059.

⁹⁵ NCIS at 1060.

⁹⁶ NCIS at 1060.

⁹⁷ NCIS at 1060.

⁹⁸ NCIS at 1060. Colonel Bumgarner made the call at 01:16. Al Zahrani was declared dead at 01:50.

APPENDIX A

Harper's Magazine printed and replied to the DOD's statement on January 26, 2010.⁹⁹ The DOD statement is reconstructed from that reply.

Statement was issued by: Major Shawn Turner, Osd.mil

1. NCIS special agents who investigated this case found no evidence to suggest that the three detainees died by means other than suicide. On the contrary, it was clear from interviews and forensic evidence that these detainees wanted to end their lives and methodically took steps to accomplish that goal. To hang themselves, they did not need to jump off the sinks as suggested by the author, but only had to apply the necessary pressure to the neck to cut off blood flow. The knots, which bound their hands (and in one case, the decedent's feet), were not elaborate, but were indeed possible to make by each of the detainees who died. In addition, a short written statement declaring their intent to be martyrs was found in the pockets of each of the detainees. Lengthier written death declarations were also found. The rulings of the Armed Forces Institute of Pathology (AFIP), which determined the cause and manner of death, were wholly consistent with the NCIS investigative findings.
2. Regarding rags found in the mouth, there was only one rag lodged down the throat of one of the detainees. Rather than being "proof" of homicide, this was due to the detainee himself positioning the rag in his mouth in order not to make any noise so as to alert the guards. The rag was inhaled as a natural reaction to death by asphyxiation.
3. Blankets and sheets had been used to obstruct the guards' views and to create the appearance that the detainees were asleep in their cells. During its investigation, NCIS discovered that detainees were allowed to hang sheets for privacy; they were allowed to have extra linens and/or blankets; some of the lights in the detention facility were dimmed at night to permit better sleep. This explains how the detainees were able to obscure their actions and why the guards did not discover the deceased detainees right away. All available video footage was reviewed by NCIS, and nothing of evidentiary value was discovered.
4. According to the Harper's article, Sergeant Hickman was stationed on the exterior perimeter of the Camp, including Tower 1, the night of the detainees' deaths. From this location, he had no visibility into the cellblock and cells where the deaths occurred, a fact confirmed by FBI and DOJ investigators who were specifically tasked to look into Sergeant Hickman's allegations. NCIS conducted over 100 interviews during the first three days of the investigation, including interviews with all the guards who worked in the cellblock that day and all the detainees who were housed there. None of those interviewed told of any detainees being taken away or alleged homicide.
5. AFIP sent a senior medical examiner to Guantanamo to perform the autopsies. In addition, an independent, state-level, senior medical examiner flew to Guantanamo to observe the autopsies, standard operating procedure for AFIP in high profile cases.

⁹⁹ <http://harpers.org/archive/2010/01/hbc-90006455>

6. All the materials released to date have been highly redacted. While Seton Hall students may have done the best they could with what they had, the fact is they only had available to them a small fraction of the reports.

In the end, the theory of a “grand conspiracy”—the participants of which include the Obama and Bush Administrations as well as the Army, the Navy, U.S. Southern Command, the Armed Forces Institute of Pathology, NCIS, the Department of Justice, the FBI, and the CIA—is not supported by the facts.

[Maj. Turner] note[d] in closing that Harper’s Magazine has done “a serious disservice to the honorable men and women who serve at Guantanamo Bay and in the U.S. military.”