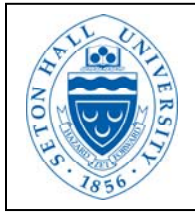


SETON HALL LAW

PUBLIC LAW AND LEGAL RESEARCH PAPER SERIES



JUNE 10TH SUICIDES AT GUANTANAMO: GOVERNMENT WORDS AND DEEDS COMPARED

Mark Denbeaux and Joshua W. Denbeaux

This paper can be downloaded without charge from the
Social Science Research Network Electronic Paper Collection at:

<http://ssrn.com/abstract=>

REPORT

June 10th Suicides at Guantánamo: Government Words and Deeds Compared 21 August 2006

by

Mark P. Denbeaux
Professor, Seton Hall University School of Law

&

Joshua Denbeaux, Esq.
Denbeaux & Denbeaux

&

David Gratz
John Gregorek
Matthew Darby
Shana Edwards
Shane Hartman
Daniel Mann
Megan Sassaman
Helen Skinner
Seton Hall University School of Law

June 10th Suicides at Guantánamo: Government Words and Deeds Compared

EXECUTIVE SUMMARY*

Detainees Died While Critical Information Was Withheld

1. On June 10, 2006, The Government reported that three detainees at Guantánamo Bay, Cuba, had committed suicide.
2. The Government reported that none of the three detainees was represented by counsel at the time that they died.
3. The Government's claim that none of the deceased was represented by counsel is inconsistent with the Federal District Court records.
4. The Federal District Court records reveal these attorneys' repeated attempts to communicate with their clients.
5. The attempted communication was thwarted by the Government.
6. The detainees died without information that might have given them hope. One died not knowing that he was to be released to his homeland, Saudi Arabia; a second detainee died without seeing a videotape from his father asking him to cooperate with his American legal counsel.
7. The only available evidence of the basis upon which the three individuals were being detained is the contents of the Government's press releases — the same press releases that incorrectly characterized the absence of the detainees' representation by counsel.
 - One detainee was held on suspicion of being a “mid to high level al Qaeda operative.”
 - A second detainee was held on suspicion of having fought with the Taliban against the Northern Alliance in Afghanistan.
 - The third detainee was held primarily because of his association with Jama'at al Tablighi. Many Muslims are associated with Jama'at al Tablighi.
8. Jama'at al Tablighi is not listed as a terrorist organization in State Department or Treasury Department lists.

* Co-Authors Mark Denbeaux and Joshua Denbeaux represent two Guantánamo detainees.

Introduction

On June 10, three detainees—Mani Shaman Turki Al-Habardi Al-Utaybi, Yassar Talal Al-Zahrani, and Ali Abdullah Ahmed—apparently committed suicide at the United States naval base at Guantánamo Bay, Cuba. Quickly following their deaths, the United States Government stated that the suicides were "not an act of desperation, but an act of asymmetric warfare aimed at us here at Guantánamo."¹ The Government claimed that the deaths "were means and methods for protestation... a good PR move to draw attention."² It painted the victims as "committed jihadists... [who] will do anything they can to advance their cause,"³ and as "violent terrorists who [were] captured waging war against our country."⁴

These descriptions were not accompanied by the Government's release of the evidence summaries of the suicide victims from the Combatant Status Review Tribunals. Thus, the public cannot know what acts of terrorism the Government believes these men committed. Absent such information, the public is likely to credit the military's statements that these men were dangerous.

The purpose of this Report is to assess the likelihood of the suicide victims posing any threat to the United States to the extent this is possible in light of Government statements to the press, court documents, and AP news stories.

A prior study by the authors of this Report, *Report on Guantánamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data*, concluded that 55% of the detainees at Guantánamo were *not* accused of committing any hostile acts against the US or the Coalition.⁵ Without access to Government records, it is not possible to determine whether any or all of these three detainees were among the minority who were accused of committing a hostile act.

At the outset, it should be stressed that various Government actions suggest that they were *not* high-risk detainees. Camp 5 houses the most dangerous detainees.⁶ These three men were detained in Camp 1.⁷ None had previously attempted suicide.⁸ Al-Utaybi had been cleared for transfer to Saudi Arabia.⁹ If Guantánamo is truly the place where "the worst of the worst"

¹ Sgt. Sara Wood, *Three Guantanamo Bay Detainees Die of Apparent Suicide*, AMERICAN FORCES INFORMATION SERVICE, June 10, 2006, available at http://www.defenselink.mil/news/Jun2006/20060610_5379.html.

² Michael Rowland, *US Official Calls Guantanamo Suicides a PR Tactic*, ABC (Australia), June 13, 2006, transcript available at <http://www.abc.net.au/worldtoday/content/2006/s1661866.htm>, audio available at http://www.bbc.co.uk/worldservice/ondemand/rams/xin24208___2006.ram

³ Wood, *supra* note 1

⁴ Peter Graff, *US Steps Back from Guantanamo Suicide Comments*, ABC NEWS, June 12, 2006, available at <http://abcnews.go.com/US/wireStory?id=2065050>.

⁵ Mark Denbeaux *et al.* REPORT ON GUANTANAMO DETAINEES: A PROFILE OF 517 DETAINEES THROUGH ANALYSIS OF DEPARTMENT OF DEFENSE DATA (2006), available at http://law.shu.edu/news/guantanamo_reports.htm.

⁶ Paisley Dodds, *Inside Guantanamo*, OTTOWA CITIZEN, July 8, 2004, at C17.

⁷ Wood, *supra* note 1

⁸ *Id.*

⁹ Respondents' Response to Petitioners' Motion for Order Requiring Respondents to Allow counsel to Meet with Petitioner In-Person at 1, *Al-Harbi v. Bush*, No. 05-cv-1857 (D.C. Cir.)

are held, as Defense Secretary Donald Rumsfeld consistently claims,¹⁰ then the Government could not have considered a detainee scheduled for release from Guantánamo to be among that group.

Research Approach

A Presumption in Favor of Government Data

The Government has yet to release any documentation regarding the deaths of the three detainees, including death certificates, autopsy reports, or Navy investigations. Although the Naval Criminal Investigative Service began such an investigation, it suspended it on June 18, eight days after the suicide, because of complications involving material confiscated from other detainees.¹¹ The Government has not revealed whether autopsy reports or death certificates exist.

This lack of documentation has led detainee family members¹² to suggest that the three men did not die as a result of suicide, but rather at the hands of American guards.¹³ However, this Report treats all statements made by the Government as true, and presumes that the detainees did in fact commit suicide.

This Report also uses the Government's spelling of the names of the suicide victims.

Available Data

This Report varies from its predecessors in that the Government has not released sufficient information to positively link the deceased detainees to available records.

The single identifiable document that directly pertains to any of the three suicide victims is Ali Abdullah Ahmed's Summary of Administrative Review Board Proceedings, attached as Exhibit A. The Administrative Review Board is an annual review "to assess annually the need to continue to detain each enemy combatant," at which the detainee may "explain why he is no longer a threat to the United States and its allies."¹⁴ However, because Ahmed chose not to attend the hearing, the document does not reveal the Government's reasons for continued detention and therefore is of limited utility.

Aside from statements to the press, the Government has not released any information that objectively delineates the charges against the three suicide victims. As we have detailed in our

¹⁰ Katherine Q. Seelye, *Threats and Responses: The Detainees*, N.Y. TIMES, Oct. 23, 2002, § A, at 14.

¹¹ Respondents' Motion for Procedures Related to Review of Certain Detainee Materials and Request for Expedited Briefing at Ex. B, Hicks (Rasul) v. Bush, No. 02-cv-0299 (D.C. Cir., July 7, 2006).

¹² *Father of Gitmo Suicide Victim Blames U.S.*, MSNBC, June 14, 2006, available at <http://www.msnbc.msn.com/id/13300107/>.

¹³ See, e.g., Emergency Motion for Preservation Order and Points and Authorities in Support Thereof at 4-6, Al Salami v. Bush, No. 05-cv-2452 (D.C. Cir.,).

¹⁴ Order: Administrative Review Procedures for Enemy Combatants in the Control of the Department of Defense at Guantanamo Bay Naval Base, Cuba, (May 11, 2004), available at <http://www.defenselink.mil/news/May2004/d20040518gtmoreview.pdf>

earlier Reports, the Government has released various detainee-related documents. However, it has not released the evidence summaries or transcripts from Al-Utaybi's, Al-Zahrani's, or Ahmed's Combatant Status Review Tribunal ("CSRT").

CSRTs were administrative proceedings by the Defense Department in 2004 and 2005 to determine if each detainee was properly classified as an enemy combatant. The Government has released 517 evidence summaries of the 558 detainees who underwent CSRTs, leaving 41 evidence summaries unaccounted for. These evidence summaries outline the charges against the detainees that rationalize their classifications as enemy combatants, thereby justifying their detention at Guantánamo. However, since detainee names and identification ISN numbers were redacted from the evidence summaries, independent analysis is required to determine which evidence summary applies to which detainee.

Through such analysis, the Seton Hall research team has matched 387 evidence summaries to specific detainees, leaving 130 evidence summaries unassigned to a detainee and 171 detainees unassigned to an evidence summary. All three suicide victims are among the 171 for whom there is no identifiable evidence summary. The applicable evidence summaries may be among the 130 unassigned summaries or among the 41 that the Government chose not to release.

Obviously, assessing the true danger these men posed when they were alive would be much facilitated by the Government's identifying and/or providing the CRST evidence summaries.

Data Analyzed

Since the Government has made it impossible to link the suicide victims to appropriate data, this Report relies on Government statements to the press and compares them to evidence found in court documents, counsel statements, and Associated Press articles.

Questions of Identity for These and Other Detainees

As described in the relevant "Narrative of Representation" section, suicide victims Al-Utaybi and Ahmed both had their *habeas corpus* proceeding delayed as a result of the Government's failure to promptly identify them as petitioners in a lawsuit. This failure is far from unique. It is rather an example of the widespread Government inability to identify detainees as *habeas corpus* petitioners.

One hundred eighty seven *habeas corpus* petitions have been brought on behalf of detainees. There are considerably more than 187 petitioners because many of these petitions involve multiple detainees. According to a Government pleading filed on March 27, 2006, the Government did not "identify over 100 purported petitioners in other habeas cases as individuals presently detained at Guantánamo Bay."¹⁵ A high percentage of detainees in *habeas corpus*

¹⁵ Respondents' Memorandum in Opposition to Petitioners' Motion for Entry of Protective Order at 3, Al Salami v. Bush, No. 05-cv-2452 (D.C. Cir. March 27, 2006).

actions suffered delayed actions and access to counsel because of the Government's confusion as to their identities.

Arabic names differ from Western names in their construction. Usually, an Arabic person has a single given name as well as various identifying features, including paternity, maternity, place of origin, nicknames, and honorifics. All of these features can be used in a person's proper name, but most of them are optional.¹⁶ Additionally, transliterating Arabic into the Roman alphabet yields variations in spelling. Identifying Guantánamo detainees necessarily involves variations in names, but a knowledge of Arabic name construction should be sufficient to overcome this obstacle.

The question, obviously, is how the Government could have failed to know the various names of detainees who have been incarcerated in Guantánamo for years. One would expect that a professional interrogation effort would record various names, name spellings and aliases of alleged terrorists in an easily-accessible database.

The Government has not moved to dismiss a single Guantánamo *habeas* suit based on the claim that it did not hold the petitioner. Instead, its initial reaction to the petitions is often to claim that it did not know which detainee was the individual listed in the court document.

The same Government pleading further states that, in two cases, the Government "incorrectly identified petitioners in the Guantánamo Bay detainee cases; errors which, unfortunately, were not discovered until counsel visited and interviewed these detainees at Guantánamo Bay."¹⁷

Mani Shaman Turki Al-Habardi Al-Utaybi

Narrative of Representation

Prior to his death on June 10, 2006, Mani Shaman Turki Al-Habardi Al-Utaybi was cleared for transfer to his native Saudi Arabia.¹⁸ Commander Robert Durand, spokesman for the United States Southern Command, stated that he did not know whether Al-Utaybi had ever been informed of his imminent transfer.¹⁹ His lawyers never had the opportunity to inform him of his transfer because of inexplicable delays caused by the Government.²⁰

¹⁶ Searching for Romanized Arabic Records in MIRLYN, <http://www.lib.umich.edu/area/Near.East/searchmirlyn.pdf>,

¹⁷ Respondents' Memorandum in Opposition to Petitioners' Motion for Entry of Protective Order, *supra* note 15 at 3.

¹⁸ Respondents' Response to Petitioners' Motion for Order Requiring Respondents to Allow Counsel to Meet with Petitioner In-Person, *supra* note 9.

¹⁹ *Gitmo Detainee Was Cleared for Transfer before Suicide*, ST. PETERSBURG TIMES (Florida), June 12, 2006, at 11A.

²⁰ Carol Rosenberg, *Detainees Unaware of Lawyers*, MIAMI HERALD, June 16, 2006, available at <http://www.miami.com/mld/miamiherald/news/nation/14831015.htm>.

Jeff Davis, of Moore & Van Allen, and George Daly, a retired attorney, filed suit for Al-Utaybi on September 19, 2005.²¹ They received his name from a lawyer representing one of the other detainees.²² In their legal documents, the two attorneys listed Al-Utaybi's name as "Mazin Salih al-Harbi."²³ On October 4, 2005, they attempted to communicate with their client and asked to be allowed to send him mail.²⁴ The Department of Justice replied, in a court document filed October 27, that it was unable to identify the detainee.²⁵

On November 3, Daly and Davis specified that the name of their client was "Mane Shaman Al-Habardi."²⁶ The Government then informed counsel in December that the detainee had been positively identified because the newer version of the name more closely matched a detainee. However, the Government refused to provide the detainee's identification ISN number and also refused to allow the lawyers to send a letter to their client²⁷ until the attorneys displayed their "authority to initiate litigation on behalf of the petitioner."²⁸

Daly and Davis found it difficult to display "authority to initiate litigation," since such authority can be obtained only from the incarcerated detainee and since the lawyers had no way of mailing or visiting their client. Thus, the Government effectively prevented counsel from fulfilling the very specification it required.

This stalemate continued through the winter and spring of 2006, until Magistrate Judge Kay entered his Order rejecting the Government's requirement of prior client authorization. On April 14 Daly and Davis moved to be allowed to visit.²⁹ On April 26 the Department of Justice told them that their client had been cleared for return to Saudi Arabia.³⁰ This notification apparently was a result of Davis and Daly having previously obtained an Order requiring that they be given 30 days notice of any intended transfer of their client from Guantánamo. The Department of Justice then allowed them to go to Guantánamo in the middle of May. George Daly arranged to go, but the Government forbade him from telling Al-Utaybi of his upcoming transfer, instead permitting Daly only to ascertain whether the detainee would like to return home if he were allowed to do so.³¹ Daly went to Guantánamo but once he was there was told that Al Utaybi had refused to see him. Daly sent his client a note requesting a meeting and

²¹ First Declaration of George Daly and Jeffrey J. Davis at 1, Al-Harbi v. Bush, No. 1:05-cv-01857 (D.C. Cir. April 14, 2006).

²² Notice at 1, Al-Harbi v. Bush, No. 1:05-cv-01857 (D.C. Cir. June 12, 2006).

²³ Petition for Writ of Habeas Corpus at 1, Al-Harbi v. Bush, No. 1:05-cv-01857 (D.C. Cir. September 19, 2005).

²⁴ First Declaration of George Daly and Jeffrey J. Davis, *supra* note 21, at ex. A

²⁵ Respondents' Memorandum in Opposition to Petitioner's Motion for Preliminary Injunction Requiring Advance Notice of Transfer or Release at 1, Al-Harbi v. Bush, No. 1:05-cv-01857 (D.C. Cir. Oct. 27, 2005).

²⁶ Notice, *supra* note 22, at 1.

²⁷ Telephone conversation between Jeff Davis, counsel, Moore & Van Allen, and Joshua Denbeaux, counsel, Denbeaux and Denbeaux (July 12, 2006).

²⁸ First Declaration of George Daly and Jeffrey J. Davis, *supra* note 21, at ex. D.

²⁹ Motion to Require Respondents to Allow Counsel to Meet with Petitioner In-Person, Al-Habarbi v. Bush, No. 1:05-cv-01857 (D.C. Cir. April 14, 2006).

³⁰ E-mail from Jeff Davis, counsel, Moore & Van Allen, to Matthew Darby, student, Seton Hall University School of Law (August 17, 2006, 4:38:40 EST); see also Notice of Filing of Protected Information, Al-Harbi v. Bush, No. 1:05-cv-01857 (D.C. Cir. April 26, 2005).

³¹ E-mail from Jeff Davis, counsel, Moore & Van Allen, to Emi Maclean, counsel, Center for Constitutional Rights, cc'd to Mark Denbeaux, professor, Seton Hall University School of Law, and Joshua Denbeaux, counsel, Denbeaux and Denbeaux (Aug 11, 2006, 13:10:20 EST).

informing him that he had some (undisclosed) important information for him, but the next day was again told that Al Utaybi had again refused to meet with him.³²

It is not uncommon for detainees to be suspicious of their American lawyers. Guantánamo interrogators pose as lawyers in order to extract information. Interrogators tell detainees that those who are released rarely have lawyers. They tell those with representation that their lawyers are Jews. Furthermore, sometimes counsel receive notice that a detainee refuses to see them but learn from that detainee at later meetings that the detainee never received notice about the prior scheduled interview.³³

As a result of this sequence of events, Al-Utaybi's attorneys were unable to inform him of his pending transfer.³⁴ He committed suicide on June 10. Since no Government statement suggests that the Department of Defense informed him of his clearance for transfer, it seems highly likely that Al Utaybi died without knowing that his detention at Guantánamo was nearing its end.

Government Charges against Al-Utaybi

According to Government press releases, Al-Utaybi was detained for the previous four years because of his involvement with Jama'at al Tablighi³⁵ and other undisclosed groups.³⁶ The Government characterizes Jama'at al Tablighi as a "militant missionary group."³⁷ In fact, Jama'at al Tablighi is a mainstream, worldwide religious community.

Jama'at al Tablighi was founded in India in 1923 as a distinctly non-political Islamic evangelical group,³⁸ and it seems to have retained its aversion to politics to this day.³⁹ Tablighi members visit mosques and university campuses in small groups, often inviting young men to accompany them on their itinerant travels.⁴⁰ Members wear distinctive clothing meant to imitate the dress of the Prophet Muhammad.⁴¹

Jama'at al Tablighi has a global presence. It is the largest Islamic revival movement in Great Britain,⁴² and it is planning to construct in London the largest mosque in Western

³² E-mail from Jeff Davis, counsel, Moore & Van Allen, to Matthew Darby, student, Seton Hall University School of Law (August 17, 2006, 4:38:40 EST).

³³ Eliza Griswold, *American Gulag: Prisoners' Tales from the War of Terror*, HARPER'S MAGAZINE, Sept. 2006, at 41, 43.

³⁴ Rosenberg, *Detainees Unaware*, *supra* note 20.

³⁵ Carol Rosenberg, *U.S. Names Dead Guantánamo Detainees*, MIAMI HERALD, June 11, 2006, available at <http://www.miami.com/mld/miamiherald/14796188.htm>.

³⁶ Andrew Selsky, *Pentagon Identifies 3 Guantanamo Suicides*, HOUSTON CHRONICLE, June 11, 2006, 11:21 PM.

³⁷ *Guantanamo Inmate Was To Be Moved*, AL JAZEERA, June 12, 2006, available at <http://english.aljazeera.net/NR/exeres/A9C98586-81EC-48F1-927A-A96DFA6EC68D.htm>.

³⁸ Mark Larabee & Maxine Bernstein, *Suspect Allegedly Weighed U.S. Attack*, OREGONIAN, Oct. 11, 2002, at A01.

³⁹ Malise Ruthven, *There Is Only One God and His Name Is Allah. And Abraham, Jesus and Muhammad Are His Prophets. There Should Be a Marriage of Ideas Made in Heaven*, THE OBSERVER NEWS PAGE, Dec. 17, 2005, at 20.

⁴⁰ Susan Sachs, *A Muslim Missionary Group Draws New Scrutiny in U.S.*, N.Y. TIMES, July 14, 2003, at A1.

⁴¹ *Id.*

⁴² Ruthven, *supra* note 39.

Europe.⁴³ It is Pakistan's largest Islamic group.⁴⁴ The New York Times, when describing Tablighi members in Yemen, compares them to the Jehovah's Witnesses.⁴⁵

Jama'at al Tablighi is also present in the United States. The Al Fala mosque in Corona, Queens, NY draws hundreds of Tablighi members from across the nation.⁴⁶

The Government claims that members of Al Qaeda could use Jama'at al Tablighi's meetings, full of young Muslim men, as a recruitment ground. In fact, John Lindh, Jose Padilla, and Richard Reid have all been associated with the religious group. However the Government has never accused Jama'at al Tablighi of being a terrorist organization, nor has it accused the group of helping Al Qaeda in any way.

Jama'at al Tablighi does not appear on any official Government list of suspected terrorist organizations.⁴⁷ As described in *Second Report on the Guantánamo Detainees: Inter- and Intra-Departmental Disagreements About Who Is Our Enemy*, these lists are used to identify and hinder the activities of suspected and confirmed terrorist organizations. Entities that give assistance to terrorist groups are also on these lists.⁴⁸ Therefore, Al-Utaybi had been detained since 2002 based on a suspicion of his association with a group that the Government does not consider a terrorist organization.

Twenty six of the 517 evidence summaries available to the public accuse a detainee of association with Jama'at al Tablighi. Al-Utaybi's may or may not be among these. In any event, at least 26 people have been held at Guantánamo, at least in part, because of their alleged association with a non-terrorist organization.

Of these 26 evidence summaries accusing detainees of association with Jama'at al Tablighi, eleven are among the 130 unmatched evidence summaries. Because of the paucity of additional information regarding Al-Utaybi, however, it is impossible to tell which of these eleven is Al-Utaybi's evidence summary. It is also possible that none of the eleven referencing Jama'at al Tablighi apply to Al-Utaybi, and that the Government has not released his evidence summary.

⁴³ Don Melvin, *Proposal for Huge Mosque Stirs Concern in Britain*, ATLANTA JOURNAL-CONSTITUTION, Dec. 17, 2005, at 2B.

⁴⁴ Thomas W. Simons, Jr., *Politics in Both Countries*, BOSTON GLOBE, June 14, 2002, at A27.

⁴⁵ John Kifner and Marc Santora, *F.B.I. Makes 6th Arrest in Buffalo Inquiry; Community Says Its Sons Aren't Terrorists*, N.Y. TIMES, Sep. 16, 2002, at A12.

⁴⁶ Sachs, *supra* note 40.

⁴⁷ Government lists that do not mention Jama'at al Tablighi include the Foreign Terrorist Organizations List, used to guide immigration officials; the Country Reports on Terrorism, which annually updates Congress on worldwide terrorism; the Terrorist Exclusion List, created by the Patriot Act; Executive Order 13224, explicitly created in response to 9/11 with the intent to block the assets of those assisting terrorists; and the Specially Designated Nationals list, a list with thousands of entries and aliases maintained by the Office of Foreign Assets Control to block the assets of suspected terrorists, terrorist organizations, and those who support them.

⁴⁸ Mark Denbeaux *et al*, *Second Report on the Guantanamo Detainees: Inter- and Intra-Departmental Disagreements About Who Is Our Enemy* (2006), available at http://law.shu.edu/news/guantanamo_reports.htm.

Ultimately, since connection to Jama'at al Tablighi is the strongest charge the Government brings against Al Utaybi, it is not surprising that the Department of Defense cleared him for transfer.

Ali Abdullah Ahmed⁴⁹

Narrative of Representation

Ali Abdullah Ahmed died without knowing that his father wished him to cooperate with American lawyers. His father had previously prepared a videotape in which he informed his son that he was trying to obtain representation for him, and asked his son to work with the counsel he would find. Ahmed's father hoped that the videotape would be shown to the detainee when the attorney met him.⁵⁰ However, the Government's failure to identify Ahmed effectively prevented that meeting from ever taking place and may have contributed to Ahmed's suicide.

An attorney for the Center for Constitutional Rights met with Ali Abdullah Ahmed's father on June 15, 2005 and agreed to find a lawyer for his son.⁵¹ Shortly thereafter, the law firm Dickstein Shapiro Morin & Oshinsky brought suit on December 22, 2005, with the Center for Constitutional Rights as co-counsel.⁵²

Problems resulting from the Government's failure to properly identify detainees as petitioners immediately arose. The Government claimed that the name in the *habeas corpus* petition was not accurate. Dickstein Shapiro listed Ahmed's name on the original petition as "Saleh Ali Abdullah Al Salami," disclosed his father's name as "Ali Abdullah Al-Salami," and cited his Yemeni nationality.⁵³ The Government replied that it was unable to identify the detainee without more information.⁵⁴

After additional consultation with the detainee's family, counsel presented a letter previously written by the detainee to his father and sent from Guantánamo pursuant to the Guantánamo procedures for such letters. Counsel also specified that the detainee went by the name "Ahmed."⁵⁵ Upon receipt of this information, on February 27, 2006, more than two months after the petition was brought, the Government acknowledged the identity of the petitioner.⁵⁶

⁴⁹ Although the Seton Hall research team recognizes that the detainee's father knows him as "Ali Abdullah Ahmed Al Salami," for ease of referencing the detainee throughout news articles and Government documents, this Report uses the name the Government reported.

⁵⁰ Telephone conversation between Reginald McKnight, counsel, Dickstein Shapiro Morin & Oshinsky, and Mark Denbeaux, professor, Seton Hall University School of Law (July 10, 2006).

⁵¹ Petitioners' Reply Brief in Support of Motion for Entry of Protective Order at 2, *Al-Salami v. Bush*, No. 05-cv-2452 (D.C. Cir. April 6, 2006).

⁵² Petition for Writ of Habeas Corpus, *Al Salami v. Bush*, No. 1:05-cv-0252 (D.C. Cir. Dec. 22, 2005).

⁵³ *Id.* 1, 3,

⁵⁴ Emergency Motion for Preservation Order and Points and Authorities in Support Thereof, *supra* note 13, at ex. B.

⁵⁵ *Id.* at ex. C

⁵⁶ *Id.* at ex. D

The difference in spelling between the attorneys' original submission and the corrected submission seems an insufficient basis to miss someone in a database of only 759 individuals. The List of Individuals Detained by the Department of Defense at Guantánamo Bay, Cuba, from January 2002 through May 12, 2006⁵⁷ reveals only four Yemenis with "Ali Abdullah" in their names. It would have been a simple matter to ask each of the four the name of his father. This inquiry would have revealed which of the four detainees was the correct petitioner. Since Ahmed never knew that he was being represented,

In summary, Ahmed's attorneys brought suit on December 22, 2005.⁵⁸ The Government was unable to identify the detainee until February 27, 2006,⁵⁹ and disputed the protective order until April 13, when the Court signed the order.⁶⁰ The Government scheduled a meeting between Ahmed and his lawyer for August.⁶¹ Ahmed died on June 10.

Government Charges against Ahmed

A Government press release claims that Ahmed was a "mid- to high-level Al Qaeda operative" with access to "facilitators and senior membership," particularly Al Qaeda coordinator Abu Zubaydeh.⁶²

The charges against this detainee have presumably been released as one of the 517 CSRT evidence summaries. Because those releases were anonymous, the identification of the Government charges against Ahmed is impossible; therefore, the Government charges against him cannot be compared to the Government's public relations statement after he died.

Without independent verification of the Government's charges against Ahmed, verification that could be provided through access to his evidence summary, the public has no way of knowing the official reasons that the Government detained Ahmed as an enemy combatant. His death, of course, precludes any testing of these reasons before a court or even a military commission or court martial.

Yassar Talal Al-Zahrani

Government Charges against Al-Zahrani

Yassar Talal Al-Zahrani, the third detainee who committed suicide, was born on September 22, 1984.⁶³ He was seventeen years old when he was arrested by anti-Taliban forces in late 2001. The Government accuses him of fighting on the front lines for the Taliban,

⁵⁷ List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba, from January 2002 through May 12, 2006, available at <http://www.defenselink.mil/pubs/foi/>

⁵⁸ Petition for Writ of Habeas Corpus, *Al Salami v. Bush*, *supra* note 52, at 1.

⁵⁹ Emergency Motion for Preservation Order and Points and Authorities in Support Thereof, *supra* note 13, at ex. D.

⁶⁰ Telephone conversation between Reginald McKnight, counsel, Dickstein Shapiro Morin & Oshinsky, and Mark Denbeaux, professor, Seton Hall University School of Law (July 10, 2006).

⁶¹ *Id.*

⁶² Rosenberg, *U.S. Names*, *supra* note 35.

⁶³ *List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006*, *supra* note 56.

facilitating weapons purchases for the Taliban, and participating in the prison uprising that occurred at Mazar-i-Sharif⁶⁴ in Afghanistan on November 25, 2001.⁶⁵ It does not accuse him of otherwise being affiliated with Al Qaeda.

The Government released the only information available on Zahrani in press statements after his death. The level of detail in the press statements suggests that it would be easy to manually locate Zahrani's CSRT evidence summary among the 517 available, especially since all but 130 have been assigned to other detainees. In fact, the Seton Hall research team undertook this task, but did not find an evidence summary that conformed to the criteria in the press releases. Therefore, Zahrani's CSRT evidence summary is probably not among the 130 unclaimed evidence summaries, and is rather among the 41 evidence summaries that the Government failed to release.

Government Confusion about Detainee Representation

When the Defense Department released the identity of the three suicide victims on June 11, it stated that none of the deceased were represented by legal counsel.⁶⁶ In fact, all three had and still have legal representation:

- Mani Shaman Turki al-Habardi Al-Utaybi is represented by Jeff Davis at Moore & Van Allen and George Daly, Charlotte, NC.
- Ali Abdullah Ahmed is represented by David Engelhardt and Reginald McKnight at Dickstein Shapiro Morin & Oshinsky.
- Yassar Talal Al-Zahrani is represented by the Center for Constitutional Rights in a "John Doe" lawsuit.

The Center for Constitutional Rights is also co-counsel in Ahmed's and Al-Utaybi's cases.⁶⁷

The Center for Constitutional Rights brought the "John Doe" lawsuit on behalf of all detainees. The Supreme Court ruled in *Hamdan v. Rumsfeld*⁶⁸ that the Federal District Court in Washington, D.C. could hear *habeas* claims brought before the passage of the Detainee Treatment Act of 2005.⁶⁹ Since all detainees are included in the "John Doe" lawsuit, each can now bring his case before a Federal judge.

The day of the suicides, the Department of Defense disclosed they had occurred in a press teleconference. It did not divulge the identities of the deceased men or whether they were represented by counsel. Later that evening, the Department of Justice sent an e-mail to the

⁶⁴ Rosenberg, *U.S. Names*, *supra* note 35.

⁶⁵ *Mike Spann Biography*, available at http://www.honormikespann.org/pdfs/mike_bio.pdf

⁶⁵ Rosenberg, *U.S. Names*, *supra* note 35.

⁶⁶ *Id.*

⁶⁷ Petition for Writ of Habeas Corpus, Al-Harbi v. Bush, *supra* note 23, at 1; Petition for Writ of Habeas Corpus, Al Salami v. Bush, *supra* note 51, at 1.

⁶⁸ *Hamdan v. Rumsfeld*, No. 05-184, 2006 U.S. Lexis 2749 (U.S. June 29, 2006).

⁶⁹ Detainee Treatment Act of 2005, 10 U.S.C. § 801, at note (2006).

Center for Constitutional Rights, asking the Center to advise all *habeas corpus* counsel that none of the detainees were presently represented by counsel; it also stated that one of the detainees had previously been represented by counsel but was no longer.⁷⁰ This E-mail is attached as Exhibit C. A later e-mail, also in Exhibit C, specified that this reference was to Al-Utaybi.⁷¹ However, neither Jeff Davis nor George Daly ever denied representing Al-Utaybi.⁷²

Further, the Department of Justice June 10 e-mail to the Center for Constitutional Rights does not recognize that Ahmed had representation even though the Department of Justice recognized on February 27 that Ahmed was the petitioner in the case brought by Reginald McKnight and David Engelhardt on December 22. Furthermore, on April 13, the Department of Justice consented to a protective order to allow the lawyers to communicate with their client. Pursuant to the April 13th protective order, David Engelhardt, Reginald McKnight, and the Department of Justice scheduled an attorney-client visit between the lawyers and Ahmed for August.⁷³

The morning after the suicides, on June 11, Saudi Arabian authorities identified the two Saudi citizens as Manei al-Otaibi and Yasser al-Zahrani.⁷⁴ Later that evening, the Defense Department released the names of all three suicide victims as Mani Shaman Turki al-Habardi Al-Utaybi, Yassar Talal Al-Zahrani, and Ali Abdullah Ahmed. In this release the Government also informed the public that none of the three had legal representation.⁷⁵

Suicides in Context: Suicide Attempts and Hanging Gestures

After the press conference disclosing the suicides, the Government characterized the deaths of these three people as not suicides brought about by despair but as acts of asymmetric warfare. This is consistent with the Government's practice of re-classifying suicide attempts as "manipulative self-injurious behavior." Seton Hall has previously analyzed the records of the behavior of detainees in Guantánamo, specifically comparing Government reports of detainee self-harm to disciplinary violations.

The number of *reported* suicide attempts is undoubtedly reduced by the policy of Guantánamo personnel to classify many acts of self-harm in which the detainee intends to kill himself as "manipulative self-injurious behavior" Rather than attempted suicide, One category of "manipulative self-injurious behavior" is a "hanging gesture," in which a detainee attempts to strangle himself—an action that would be labeled a suicide attempt by any authority outside of Guantánamo.⁷⁶

⁷⁰ Emergency Motion for Preservation Order and Points and Authorities in Support Thereof, *supra* note 13, at ex. E.

⁷¹ *Id.* at ex. G.

⁷² Telephone conversation between Jeff Davis, counsel, Moore & Van Allen, and Joshua Denbeaux, counsel, Denbeaux and Denbeaux (July 12, 2006).

⁷³ Emergency Motion for Preservation Order and Points and Authorities in Support Thereof, *supra* note 13, at ex. D.

⁷⁴ *Two Dead Guantanamo Detainees Named*, ABC PREMIUM NEWS (Australia), June 11, 2006.

⁷⁵ Rosenberg, *U.S. Names*, *supra* note 35.

⁷⁶ Denbeaux, Mark *et al.* [THE GUANTÁNAMO DETAINEES DURING DETENTION: DATA FROM DEPARTMENT OF DEFENSE RECORDS \(2006\)](http://law.shu.edu/news/guantanamo_reports.htm), available at http://law.shu.edu/news/guantanamo_reports.htm.

The Government reported 460 instances of “manipulative self-injurious behavior” in 2003 and 2004. Among these instances are 120 “hanging gestures” that took place in 2003. Although “manipulative self-injurious behavior” could include non-life threatening forms of self-injury, such as banging heads against walls or hunger strikes, the Government’s labeling 120 attempted hangings as “manipulative self-injurious behavior” necessarily reduces the instances of serious “suicide attempts” in the Government’s lexicon.⁷⁷

Nothing is unique or unexpected about the three suicides on June 10, save for the fact that the detainees were successful. The Government’s response to the suicides is symptomatic of its policy to treat acts of detainee self-harm as violent assault against the United States, instead of as the despairing acts of men with little legal recourse.

⁷⁷ *Id.*

Exhibit A

UNCLASSIFIED//~~FOUO~~

Summary of Administrative Review Board Proceedings for ISN 693

The Administrative Review Board was called to order.

The Designated Military Officer (DMO) was sworn.

The Board Reporter was sworn.

The Presiding Officer announced the convening authority and purpose of the Administrative Review Board proceedings.

The Administrative Review Board members were sworn.

The Assisting Military Officer was sworn.

The Assisting Military Officer presented the Enemy Combatant Notification form, Exhibit EC-A, to the Administrative Review Board.

The Assisting Military Officer presented the Enemy Combatant Election Form, Exhibit EC-B, to the Administrative Review Board.

It was noted by the Presiding Officer that from Exhibit EC-B, the Detainee had chosen not to be present for the Administrative Review Board proceedings.

The Presiding Officer confirmed that the Assisting Military Officer had met with the Detainee and informed him of his rights regarding the proceedings, that the Detainee appeared to understand the process, that the Unclassified Summary of Evidence was read to the Detainee, that a translator was used during the interview, and that the Assisting Military Officer confirmed that the translator spoke the same language as the Detainee.

The Designated Military Officer presented the Unclassified Summary of Evidence, Exhibit DMO-1, and DMO-2, the FBI Redaction Memorandum to the Administrative Review Board.

The Designated Military Officer stated that a copy of these exhibits had been previously distributed to the Assisting Military Officer and Detainee.

The Designated Military Officer gave a brief description of the contents of the Unclassified Summary of Evidence, Exhibit DMO-1, to the Administrative Review Board.

The Presiding Officer asked the Designated Military Officer for any further unclassified information.

ISN 693
Enclosure (5)
Page 1 of 2

20855

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

The Designated Military Officer confirmed that he had no further unclassified information and requested a closed session to present classified information relevant to the disposition of the Detainee.

The Presiding Officer acknowledged the request.

When asked if the Assisting Military Officer had any information to present on behalf of the Detainee to the Administrative Review Board, the Assisting Military Officer stated that he previously submitted a summary of the interview.

The Presiding Officer read the remainder of the unclassified portion of the Administrative Review Board proceedings, and then adjourned the proceedings.

The Presiding Officer opened the classified portion of the session.

The Presiding Officer adjourned the classified portion of the session and the Administrative Review Board was closed for deliberation and voting.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the Administrative Review Board proceedings.


Captain, USN
Presiding Officer

ISN 693
Enclosure (5)
Page 2 of 2

20856

UNCLASSIFIED//~~FOUO~~

Exhibit B

**ENTIRE DOCUMENT DESIGNATED BY
RESPONDENTS AS "PROTECTED INFORMATION"**

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

| | | |
|---|---|-----------------------------------|
| _____ |) | |
| MAZIN SALIH AL-HARBI, <i>et al.</i> , |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Civil Action No. 05-CV-1857 (CKK) |
| |) | |
| GEORGE W. BUSH, |) | |
| President of the United States, <i>et al.</i> , |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

**RESPONDENTS' RESPONSE TO PETITIONERS' MOTION FOR
ORDER REQUIRING RESPONDENTS TO ALLOW COUNSEL
TO MEET WITH PETITIONER IN-PERSON**

Respondents hereby respond to Petitioners' Motion For Order Requiring Respondents To Allow Counsel To Meet With Petitioner In-Person (dkt no. 15). The parties are in agreement that petitioners' motion is moot. In light of the fact that respondents have given notice that petitioner will be released from the custody of the United States and transferred to the control of his home government (the Kingdom of Saudi Arabia) for continued detention, investigation, and/or prosecution as that country deems appropriate, see Respondents' Notice Pursuant To The Court's November 17, 2005 Order (filed on April 27, 2006), respondents have made arrangements for petitioners' counsel to meet with petitioner in person at the United States Naval Base in Guantanamo Bay, Cuba on May 16-17, 2006. These visit arrangements are without prejudice to the parties' respective positions on the issue of next-friend standing and counsel

**ENTIRE DOCUMENT DESIGNATED BY
RESPONDENTS AS "PROTECTED INFORMATION"**

***ENTIRE DOCUMENT DESIGNATED BY
RESPONDENTS AS "PROTECTED INFORMATION"***

access under the Amended Protective Order And Procedures For Counsel Access To Detainees
At The United States Naval Base In Guantanamo Bay, Cuba (dkt. no. 3).

Respondents' counsel has conferred with counsel for petitioner, who agrees petitioners'
motion is moot.

For the reasons stated above, petitioners' motion should be denied as moot.

Dated: May 12, 2006

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

DOUGLAS N. LETTER
Terrorism Litigation Counsel

/s/ Andrew I. Warden

JOSEPH H. HUNT (D.C. Bar No. 431134)
VINCENT M. GARVEY (D.C. Bar No. 127191)
TERRY M. HENRY
JAMES J. SCHWARTZ
PREEYA M. NORONHA
ROBERT J. KATERBERG
NICHOLAS J. PATTERSON
ANDREW I. WARDEN (IN Bar. No. 23840-49)
EDWARD H. WHITE
MARC A. PEREZ
Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W. Rm. 7212
Washington, DC 20530
Tel: (202) 514-4107
Fax: (202) 616-8470

Attorneys for Respondents

***ENTIRE DOCUMENT DESIGNATED BY
RESPONDENTS AS "PROTECTED INFORMATION"***

Exhibit C

From: <Terry.Henry@usdoj.gov>
Date: Sat, 10 Jun 2006 16:28:19
To: <bjo@ccr-ny.org>
Cc: <jmason@paulweiss.com>, <jeffdavis@mvalaw.com>, <ggutierrez@ccr-ny.org>
Subject: GTMO

Barbara,

Would you be so kind to post the following on your listserv for habeas counsel or otherwise forward the following to habeas counsel? I have also cc'd two counsel who have sent separate inquiries to us. Thanks.

Dear Counsel:

The Department of Defense issued a press release earlier today explaining that three Guantanamo detainees in Camp 1 died last night as a result of apparent suicide. This is to inform you that only one of the three detainees was identified as possibly being a habeas petitioner, but counsel in that case informed us previously that the identification was not correct and he did not represent the detainee, even though the detainee's name closely matches the name in the petition he filed as counsel. The military commission proceedings scheduled to begin next week will be postponed until further notice.

Sincerely,

Terry Henry

Subject: GTMO Suicides

Dear Barbara:

My previous e-mail to you over the weekend informed you, based on information supplied to me, that only one of the three detainees who died as a result of apparent suicide this weekend was a possible habeas petitioner. In fact, two of the detainees were associated with habeas cases. The two detainees are:

(1) Mani Shaman Turki al-Habardi Al-Utaybi (ISN 588), case: Al Harbi v. Bush, 05-CV-1857. This is the Saudi individual referred to in my prior e-mail to you with respect to whom counsel had informed us previously that the identification was not correct and he (Mr. Daly) did not represent the detainee. We previously identified this detainee as petitioner because the detainee's name closely matches the name in the filings by counsel ("Mane Shaman Al-Habardi");

(2) Saleh Ali Abdullah Al Salami (ISN 693), case: Al Salami v. Bush, 05-CV-2452. This individual is of Yemeni nationality.

I sincerely regret the inadvertent error contained in my prior e-mail to you. We will be filing later today notices informing the Court of these regrettable deaths. Also, I am cc'ing counsel for the two detainees on this e-mail. Again, my regrets for the prior erroneous information. Thanks.

Sincerely,

Terry M. Henry

Senior Trial Counsel

Civil Division, Federal Programs Branch

U.S. Department of Justice

Tel. 202.514.4107