

By Scott Horton

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### 1. “Asymmetrical Warfare”

When President Barack Obama took office last year, he promised to “restore the standards of due process and the core constitutional values that have made this country great.” Toward that end, the president issued an executive order declaring that the extra-constitutional prison camp at Guantánamo “shall be closed as soon as practicable, and no later than one year from the date of this order.” Obama has failed to fulfill his promise. Some prisoners are being charged with crimes, others released, but the date for closing the camp seems to recede steadily into the future. Furthermore, new evidence now emerging may entangle Obama’s young administration with crimes that occurred during the Bush presidency, evidence that suggests the current administration failed to investigate seriously—and may even have continued—a cover-up of the possible homicides of three prisoners at Guantánamo in 2006.

Late in the evening on June 9 that year, three prisoners at Guantánamo died suddenly and violently. Salah Ahmed Al-Salami, from Yemen, was thirty-seven. Mani Shaman Al-Utaybi, from Saudi Arabia, was thirty. Yasser Talal Al-Zahrani, also from Saudi Arabia, was twenty-two, and had been imprisoned at Guantánamo since he was captured at the age of seventeen. None of the men had been charged with a crime, though all three had been engaged in hunger strikes to protest the conditions of their imprisonment. They were being held in a cell block, known as Alpha Block, reserved for particularly troublesome or high-value prisoners.

As news of the deaths emerged the following day, the camp quickly went into lockdown. The authorities ordered nearly all the reporters at Guantánamo to leave and those en route to turn back. The commander at Guantánamo, Rear Admiral Harry Harris, then declared the deaths “suicides.” In an unusual move, he also used the announcement to attack the dead men. “I believe this was not an act of desperation,” he said, “but an act of asymmetrical warfare waged against us.” Reporters accepted the official account, and even lawyers for the prisoners appeared to believe that they had killed themselves. Only the prisoners’ families in Saudi Arabia and Yemen rejected the notion.

Two years later, the U.S. Naval Criminal Investigative Service, which has primary investigative jurisdiction within the naval base, issued a report supporting the account originally advanced by Harris, now a vice-admiral in command of the Sixth Fleet. The Pentagon declined to make the NCIS report public, and only when pressed with Freedom of Information Act demands did it disclose parts of the report, some 1,700 pages of documents so heavily redacted as to be nearly incomprehensible. The NCIS report was carefully cross-referenced and deciphered by students and faculty at the law school of Seton Hall University in New Jersey, and their findings, released in November 2009, made clear why the Pentagon had been unwilling to make its conclusions public. The official story of the prisoners' deaths was full of unacknowledged contradictions, and the centerpiece of the report—a reconstruction of the events—was simply unbelievable.

According to the NCIS, each prisoner had fashioned a noose from torn sheets and T-shirts and tied it to the top of his cell's eight-foot-high steel-mesh wall. Each prisoner was able somehow to bind his own hands, and, in at least one case, his own feet, then stuff more rags deep down into his own throat. We are then asked to believe that each prisoner, even as he was choking on those rags, climbed up on his washbasin, slipped his head through the noose, tightened it, and leapt from the washbasin to hang until he asphyxiated. The NCIS report also proposes that the three prisoners, who were held in non-adjointing cells, carried out each of these actions almost simultaneously.

Al-Zahrani, according to the report, was discovered first, at 12:39 a.m., and taken by several Alpha Block guards to the camp's detention medical clinic. No doctors could be found there, nor the phone number for one, so a clinic staffer dialed 911. During this time, other guards discovered Al-Utaybi. Still others discovered Al-Salami a few minutes later. Although rigor mortis had already set in—indicating that the men had been dead for at least two hours—the NCIS report claims that an unnamed medical officer attempted to resuscitate one of the men, and, in attempting to pry open his jaw, broke his teeth.

The fact that at least two of the prisoners also had cloth masks affixed to their faces, presumably to prevent the expulsion of the rags from their mouths, went unremarked by the NCIS, as did the fact that standard operating procedure at Camp Delta required the Navy guards on duty after midnight to “conduct a visual search” of each cell and detainee every ten minutes. The report claimed that the prisoners had hung sheets or blankets to hide their activities and shaped more sheets and pillows to look like bodies sleeping in their beds, but it did not explain where they were able to acquire so much fabric beyond their tightly controlled allotment, or why the Navy guards would allow such an obvious and immediately observable deviation from permitted behavior. Nor did the report explain how the dead men managed to

hang undetected for more than two hours or why the Navy guards on duty, having for whatever reason so grievously failed in their duties, were never disciplined.

A separate report, the result of an “informal investigation” initiated by Admiral Harris, found that standard operating procedures were violated that night but concluded that disciplinary action was not warranted because of the “generally permissive environment” of the cell block and the numerous “concessions” that had been made with regard to the prisoners’ comfort, which “concessions” had resulted in a “general confusion by the guard and the JDG staff over many of the rules that applied to the guard force’s handling of the detainees.” According to Harris, even had standard operating procedures been followed, “it is possible that the detainees could have successfully committed suicide anyway.”

This is the official story, adopted by NCIS and Guantánamo command and reiterated by the Justice Department in formal pleadings, by the Defense Department in briefings and press releases, and by the State Department. Now four members of the Military Intelligence unit assigned to guard Camp Delta, including a decorated non-commissioned Army officer who was on duty as sergeant of the guard the night of June 9–10, have furnished an account dramatically at odds with the NCIS report—a report for which they were neither interviewed nor approached.

All four soldiers say they were ordered by their commanding officer not to speak out, and all four soldiers provide evidence that authorities initiated a cover-up within hours of the prisoners’ deaths. Army Staff Sergeant Joseph Hickman and men under his supervision have disclosed evidence in interviews with *Harper’s Magazine* that strongly suggests that the three prisoners who died on June 9 had been transported to another location prior to their deaths. The guards’ accounts also reveal the existence of a previously unreported black site at Guantánamo where the deaths, or at least the events that led directly to the deaths, most likely occurred.

## 2. “Camp No”

The soldiers of the Maryland-based 629th Military Intelligence Battalion arrived at Guantánamo Naval Base in March 2006, assigned to provide security to Camp America, the sector of the base containing the five individual prison compounds that house the prisoners. Camp Delta was

at the time the largest of these compounds, and within its walls were four smaller camps, numbered 1 through 4, which in turn were divided into cell blocks. Life at Camp America, as at all prisons, was and remains rigorously routinized for both prisoners and their jailers. Navy guards patrol the cell blocks and Army personnel control the exterior areas of the camp. All observed incidents must be logged. For the Army guards who man the towers and “sally ports” (access points), knowing who enters and leaves the camp, and exactly when, is the essence of their mission.

One of the new guards who arrived that March was Joe Hickman, then a sergeant. Hickman grew up in Baltimore and joined the Marines in 1983, at the age of nineteen. When I interviewed him in January at his home in Wisconsin, he told me he had been inspired to enlist by Ronald Reagan, “the greatest president we’ve ever had.” He worked in a military intelligence unit and was eventually tapped for Reagan’s Presidential Guard detail, an assignment reserved for model soldiers. When his four years were up, Hickman returned home, where he worked a series of security jobs—prison transport, executive protection, and eventually private investigations. After September 11 he decided to re-enlist, at thirty-seven, this time in the Army National Guard.

Hickman deployed to Guantánamo with his friend Specialist Tony Davila, who grew up outside Washington, D.C., and who had himself been a private investigator. When they arrived at Camp Delta, Davila told me, soldiers from the California National Guard unit they were relieving introduced him to some of the curiosities of the base. The most noteworthy of these was an unnamed and officially unacknowledged compound nestled out of sight between two plateaus about a mile north of Camp Delta, just outside Camp America’s perimeter. One day, while on foot patrol, Hickman and Davila came across the compound. It looked like other camps within Camp America, Davila said, only it had no guard towers and it was surrounded with concertina wire. They saw no activity, but Hickman guessed the place could house as many as eighty prisoners. One part of the compound, he said, had the same appearance as the interrogation centers at other prison camps.

The compound was not visible from the main road, and the access road was chained off. The Guardsman who told Davila about the compound had said, “This place does not exist,” and Hickman, who was frequently put in charge of security for all of Camp America, was not briefed about the site. Nevertheless, Davila said, other soldiers—many of whom were required to patrol the outside perimeter of Camp America—had seen the compound, and many speculated about its purpose. One theory was that it was being used by some of the non-uniformed government personnel who frequently showed up in the camps and were widely thought to be CIA agents.

A friend of Hickman’s had nicknamed the compound “Camp No,” the idea being that anyone who asked if it existed would be told, “No, it doesn’t.” He and Davila made a point of stopping by whenever they had the chance; once, Hickman said, he heard a “series of screams” from within the compound.

Hickman and his men also discovered that there were odd exceptions to their duties. Army guards were charged with searching and logging every vehicle that passed into and out of Camp Delta. “When John McCain came to the camp, he had to be logged in.” However, Hickman was instructed to make no record whatsoever of the movements of one vehicle in particular—a white van, dubbed the “paddy wagon,” that Navy guards used to transport heavily manacled prisoners, one at a time, into and out of Camp Delta. The van had no rear windows and contained a dog cage large enough to hold a single prisoner. Navy drivers, Hickman came to understand, would let the guards know they had a prisoner in the van by saying they were “delivering a pizza.”

The paddy wagon was used to transport prisoners to medical facilities and to meetings with their lawyers. But as Hickman monitored the paddy wagon’s movements from the guard tower at Camp Delta, he frequently saw it follow an unexpected route. When the van reached the first intersection, instead of heading right—toward the other camps or toward one of the buildings where prisoners could meet with their lawyers—it made a left. In that direction, past the perimeter checkpoint known as ACP Roosevelt, there were only two destinations. One was a beach where soldiers went to swim. The other was Camp No.

### 3. “Lit up”

The night the prisoners died, Hickman was on duty as sergeant of the guard for Camp America’s exterior security force. When his twelve-hour shift began, at 6 p.m., he climbed the ladder to Tower 1, which stood twenty feet above Sally Port 1, the main entrance to Camp Delta. From there he had an excellent view of the camp, and much of the exterior perimeter as well. Later he would make his rounds.

Shortly after his shift began, Hickman noticed that someone had parked the paddy wagon near Camp 1, which houses Alpha Block. A moment later, two Navy guards emerged from Camp 1, escorting a prisoner. They put the prisoner into the back of the van and then left the camp through Sally Port 1, just below Hickman. He was under standing orders not to search the paddy wagon, so he just watched it as it headed east. He assumed the guards and their charge

were bound for one of the other prison camps southeast of Camp Delta. But when the van reached the first intersection, instead of making a right, toward the other camps, it made the left, toward ACP Roosevelt and Camp No.

Twenty minutes later—about the amount of time needed for the trip to Camp No and back—the paddy wagon returned. This time Hickman paid closer attention. He couldn't see the Navy guards' faces, but from body size and uniform they appeared to be the same men.

The guards walked into Camp 1 and soon emerged with another prisoner. They departed Camp America, again in the direction of Camp No. Twenty minutes later, the van returned. Hickman, his curiosity piqued by the unusual flurry of activity and guessing that the guards might make another excursion, left Tower 1 and drove the three quarters of a mile to ACP Roosevelt to see exactly where the paddy wagon was headed. Shortly thereafter, the van passed through the checkpoint for the third time and then went another hundred yards, whereupon it turned toward Camp No, eliminating any question in Hickman's mind about where it was going. All three prisoners would have reached their destination before 8 p.m.

Hickman says he saw nothing more of note until about 11:30 p.m, when he had returned to his preferred vantage at Tower 1. As he watched, the paddy wagon returned to Camp Delta. This time, however, the Navy guards did not get out of the van to enter Camp 1. Instead, they backed the vehicle up to the entrance of the medical clinic, as if to unload something.

At approximately 11:45 p.m.—nearly an hour before the NCIS claims the first body was discovered—Army Specialist Christopher Penvose, preparing for a midnight shift in Tower 1, was approached by a senior Navy NCO. Penvose told me that the NCO—who, following standard operating procedures, wore no name tag—appeared to be extremely agitated. He instructed Penvose to go immediately to the Camp Delta chow hall, identify a female senior petty officer who would be dining there, and relay to her a specific code word. Penvose did as he was instructed. The officer leapt up from her seat and immediately ran out of the chow hall.

Another thirty minutes passed. Then, as Hickman and Penvose both recall, Camp Delta suddenly “lit up”—stadium-style flood lights were turned on, and the camp became the scene of frenzied activity, filling with personnel in and out of uniform. Hickman headed to the clinic, which appeared to be the center of activity, to learn the reason for the commotion. He asked a distraught medical corpsman what had happened. She said three dead prisoners had been delivered to the clinic. Hickman recalled her saying that they had died because they had rags

stuffed down their throats, and that one of them was severely bruised. Davila told me he spoke to Navy guards who said the men had died as the result of having rags stuffed down their throats.

Hickman was concerned that such a serious incident could have occurred in Camp 1 on his watch. He asked his tower guards what they had seen. Penvose, from his position at Tower 1, had an unobstructed view of the walkway between Camp 1 and the medical clinic—the path by which any prisoners who died at Camp 1 would be delivered to the clinic. Penvose told Hickman, and later confirmed to me, that he saw no prisoners being moved from Camp 1 to the clinic. In Tower 4 (it should be noted that Army and Navy guard-tower designations differ), another Army specialist, David Carroll, was forty-five yards from Alpha Block, the cell block within Camp 1 that had housed the three dead men. He also had an unobstructed view of the alleyway that connected the cell block itself to the clinic. He likewise reported to Hickman, and confirmed to me, that he had seen no prisoners transferred to the clinic that night, dead or alive.

#### 4. “He Could Not Cry out”

The fate of a fourth prisoner, a forty-two-year-old Saudi Arabian named Shaker Aamer, may be related to that of the three prisoners who died on June 9. Aamer is married to a British woman and was in the process of becoming a British subject when he was captured in Jalalabad, Afghanistan, in 2001. United States authorities insist that he carried a gun and served Osama bin Laden as an interpreter. Aamer denies this. At Guantánamo, Aamer’s fluency in English soon allowed him to play an important role in camp politics. According to both Aamer’s attorney and press accounts furnished by Army Colonel Michael Bumgarner, the Camp America commander, Aamer cooperated closely with Bumgarner in efforts to bring a 2005 hunger strike to an end. He persuaded several prisoners to break their strike for a while, but the settlement collapsed and soon afterward Aamer was sent to solitary confinement. Then, on the night the prisoners from Alpha Block died, Aamer says he himself was the victim of an act of striking brutality.

He described the events in detail to his lawyer, Zachary Katznelson, who was permitted to speak to him several weeks later. Katznelson recorded every detail of Aamer’s account and filed an affidavit with the federal district court in Washington, setting it out:

On June 9th, 2006, [Aamer] was beaten for two and a half hours straight. Seven naval military

police participated in his beating. Mr. Aamer stated he had refused to provide a retina scan and fingerprints. He reported to me that he was strapped to a chair, fully restrained at the head, arms and legs. The MPs inflicted so much pain, Mr. Aamer said he thought he was going to die. The MPs pressed on pressure points all over his body: his temples, just under his jawline, in the hollow beneath his ears. They choked him. They bent his nose repeatedly so hard to the side he thought it would break. They pinched his thighs and feet constantly. They gouged his eyes. They held his eyes open and shined a mag-lite in them for minutes on end, generating intense heat. They bent his fingers until he screamed. When he screamed, they cut off his airway, then put a mask on him so he could not cry out.

The treatment Aamer describes is noteworthy because it produces excruciating pain without leaving lasting marks. Still, the fact that Aamer had his airway cut off and a mask put over his face “so he could not cry out” is alarming. This is the same technique that appears to have been used on the three deceased prisoners.

The United Kingdom has pressed aggressively for the return of British subjects and persons of interest. Every individual requested by the British has been turned over, with one exception: Shaker Aamer. In denying this request, U.S. authorities have cited unelaborated “security” concerns. There is no suggestion that the Americans intend to charge him before a military commission, or in a federal criminal court, and, indeed, they have no meaningful evidence linking him to any crime. American authorities may be concerned that Aamer, if released, could provide evidence against them in criminal investigations. This evidence would include what he experienced on June 9, 2006, and during his 2002 detention in Afghanistan at Bagram Airfield, where he was subjected to a procedure in which his head was smashed repeatedly against a wall. This torture technique, called “walling” in CIA documents, was expressly approved at a later date by the Department of Justice.

### 5. “You All Know”

By dawn, the news had circulated through Camp America that three prisoners had committed suicide by swallowing rags. Colonel Bumgarner called a meeting of the guards, and at 7:00 a.m. at least fifty soldiers and sailors gathered at Camp America’s open-air theater.

Bumgarner was known as an eccentric commander. Hickman marveled, for instance, at the colonel’s insistence that his staff line up and salute him, to music selections that included Beethoven’s Fifth Symphony and the reggae hit “Bad Boys,” as he entered the command



center. This morning, however, Hickman thought Bumgarner seemed unusually nervous and clipped.

According to independent interviews with soldiers who witnessed the speech, Bumgarner told his audience that “you all know” three prisoners in the Alpha Block at Camp 1 committed suicide during the night by swallowing rags, causing them to choke to death. This was a surprise to no one—even servicemen who had not worked the night before had heard about the rags. But then Bumgarner told those assembled that the media would report something different. It would report that the three prisoners had committed suicide by hanging themselves in their cells. It was important, he said, that servicemen make no comments or suggestions that in any way undermined the official report. He reminded the soldiers and sailors that their phone and email communications were being monitored. The meeting lasted no more than twenty minutes. (Bumgarner has not responded to requests for comment.)

That evening, Bumgarner’s boss, Admiral Harris, read a statement to reporters:

An alert, professional guard noticed something out of the ordinary in the cell of one of the detainees. The guard’s response was swift and professional to secure the area and check on the status of the detainee. When it was apparent that the detainee had hung himself, the guard force and medical teams reacted quickly to attempt to save the detainee’s life. The detainee was unresponsive and not breathing. [The] guard force began to check on the health and welfare of other detainees. Two detainees in their cells had also hung themselves.

After praising the guards and the medics, Harris—in a notable departure from traditional military decorum—launched his attack on the men who had died on his watch. “They have no regard for human life,” Harris said, “neither ours nor their own.” A Pentagon press release issued soon after described the dead men, who had been accused of no crime, as Al Qaeda or Taliban operatives. Lieutenant Commander Jeffrey Gordon, the Pentagon’s chief press officer, went still further, telling the *Guardian*’s David Rose, “These guys were fanatics like the Nazis, Hitlerites, or the Ku Klux Klan, the people they tried at Nuremberg.” The Pentagon was not the only U.S. government agency to participate in the assault. Colleen Graffy, a deputy assistant secretary of state, told the BBC that “taking their own lives was not necessary, but it certainly is a good P.R. move.”

The same day the three prisoners died, Fox News commentator Bill O’Reilly completed a

reporting trip to the naval base, where, according to his account on *The O'Reilly Factor*, the Joint Army Navy Task Force “granted the *Factor*

near total access to the prison.” Although the Pentagon began turning away reporters after news of the deaths had emerged, two reporters from the *Charlotte Observer*

, Michael Gordon and photographer Todd Sumlin, had arrived that morning to work on a profile of Bumgarner, and the colonel invited them to shadow him as he dealt with the crisis. A Pentagon spokesman later told the *Observer*

it had been expecting a “puff piece,” which is why, according to the *Observer*

, “Bumgarner and his superiors on the base” had given them permission to remain.

Bumgarner quickly returned to his theatrical ways. As Gordon reported in the June 13, 2006, issue of the *Observer*, the colonel seemed to enjoy putting on a show. “Right now, we are at ground zero,” Bumgarner told his officer staff during a June 12 meeting. Referring to the naval base’s prisoners, he said, “There is not a trustworthy son of a bitch in the entire bunch.” In the same article, Gordon also noted what he had learned about the deaths. The suicides had occurred “in three cells on the same block,” he reported. The prisoners had “hanged themselves with strips of knotted cloth taken from clothing and sheets,” after shaping their pillows and blankets to look like sleeping bodies. “And Bumgarner said,” Gordon reported, “each had a ball of cloth in their mouth either for choking or muffling their voices.”

Something about Bumgarner’s *Observer* interview seemed to have set off an alarm far up the chain of command. No sooner was Gordon’s story in print than Bumgarner was called to Admiral Harris’s office. As Bumgarner would tell Gordon in a follow-up profile three months later, Harris was holding up a copy of the *Observer*: “This,” said the admiral to Bumgarner, “could get me relieved.” (Harris did not respond to requests for comment.) That same day, an investigation was launched to determine whether classified information had been leaked from Guantánamo. Bumgarner was suspended.

Less than a week after the appearance of the *Observer* stories, Davila and Hickman each heard separately from friends in the Navy and in the military police that FBI agents had raided the colonel’s quarters. The MPs understood from their FBI contacts that there was concern over the possibility that Bumgarner had taken home some classified materials and was planning to share them with the media or to use them in writing a book.

On June 27, two weeks later, Gordon’s *Observer* colleague Scott Dodd reported: “A brigadier general determined that ‘unclassified sensitive information’ was revealed to the public in the days after the June 10 suicides.” Harris, according to the article, had already ordered “appropriate administrative action.” Bumgarner soon left Guantánamo for a new post in Missouri. He now serves as an ROTC instructor at Virginia Tech in Blacksburg.

Bumgarner’s comments appear to be at odds with the official Pentagon narrative on only one point: that the deaths had involved cloth being stuffed into the prisoners’ mouths. The involvement of the FBI suggested that more was at issue.

### 6. “An Unmistakable Message”

On June 10, NCIS investigators began interviewing the Navy guards in charge of Alpha Block, but after the Pentagon committed itself to the suicide narrative, they appear to have stopped. On June 14, the interviews resumed, and the NCIS informed at least six Navy guards that they were suspected of making false statements or failing to obey direct orders. No disciplinary action ever followed.

The investigators conducted interviews with guards, medics, prisoners, and officers. As the Seton Hall researchers note, however, nothing in the NCIS report suggests that the investigators secured or reviewed the duty roster, the prisoner-transfer book, the pass-on book, the records of phone and radio communications, or footage from the camera that continuously monitored activity in the hallways, all of which could have helped them authoritatively reconstruct the events of that evening.

The NCIS did, however, move swiftly to seize every piece of paper possessed by every single prisoner in Camp America, some 1,065 pounds of material, much of it privileged attorney-client correspondence. Several weeks later, authorities sought an after-the-fact justification. The Justice Department—bolstered by sworn statements from Admiral Harris and from Carol Kisthardt, the special agent in charge of the NCIS investigation—claimed in a U.S. district court that the seizure was appropriate because there had been a conspiracy among the prisoners to commit suicide. Justice further claimed that investigators had found suicide notes and argued that the attorney-client materials were being used to pass communications among the prisoners.

David Remes, a lawyer who opposed the Justice Department’s efforts, explained the practical effect of the government’s maneuvers. The seizure, he said, “sent an unmistakable message to the prisoners that they could not expect their communications with their lawyers to remain confidential. The Justice Department defended the massive breach of the attorney-client privilege on the account of the deaths on June 9 and the asserted need to investigate them.”

If the “suicides” were a form of warfare between the prisoners and the Bush Administration, as Admiral Harris charged, it was the latter that quickly turned the war to its advantage.

### **7. “Yasser Couldn’t Even Make a Sandwich!”**

When I asked Talal Al-Zahrani what he thought had happened to his son, he was direct. “They snatched my seventeen-year-old son for a bounty payment,” he said. “They took him to Guantánamo and held him prisoner for five years. They tortured him. Then they killed him and returned him to me in a box, cut up.”

Al-Zahrani was a brigadier general in the Saudi police. He dismissed the Pentagon’s claims, as well as the investigation that supported them. Yasser, he said, was a young man who loved to play soccer and didn’t care for politics. The Pentagon claimed that Yasser’s frontline battle experience came from his having been a cook in a Taliban camp. Al-Zahrani said that this was preposterous: “A cook? Yasser couldn’t even make a sandwich!”

“Yasser wasn’t guilty of anything.” Al-Zahrani said. “He knew that. He firmly believed he would be heading home soon. Why would he commit suicide?” The evidence supports this argument. Hyperbolic U.S. government statements at the time of Yasser Al-Zahrani’s death masked the fact that his case had been reviewed and that he was, in fact, on a list of prisoners to be sent home. I had shown Al-Zahrani the letter that the government says was Yasser’s suicide note and asked him whether he recognized his son’s handwriting. He had never seen the note before, he answered, and no U.S. official had ever asked him about it. After studying the note carefully, he said, “This is a forgery.”

Also returned to Saudi Arabia was the body of Mani Al-Utaybi. Orphaned in youth, Mani grew up in his uncle’s home in the small town of Dawadmi. I spoke to one of the many cousins who shared that home, Faris Al-Utaybi. Mani, said Faris, had gone to Baluchistan—a rural, tribal

area that straddles Iran, Pakistan, and Afghanistan—to do humanitarian work, and someone there had sold him to the Americans for \$5,000. He said that Mani was a peaceful man who would harm no one. Indeed, U.S. authorities had decided to release Al-Utaybi and return him to Saudi Arabia. When he died, he was just a few weeks shy of his transfer.

Salah Al-Salami was seized in March 2002, when Pakistani authorities raided a residence in Karachi believed to have been used as a safe house by Abu Zubaydah and took into custody all who were living there at the time. A Yemeni, Al-Salami had quit his job and moved to Pakistan with only \$400 in his pocket. The U.S. suspicions against him rested almost entirely on the fact that he had taken lodgings, with other students, in a boarding house that terrorists might at one point have used. There was no direct evidence linking him either to Al Qaeda or to the Taliban. On August 22, 2008, the Washington Post quoted from a previously secret review of his case: “There is no credible information to suggest [Al-Salami] received terrorist related training or is a member of the Al Qaeda network.” All that stood in the way of Al-Salami’s release from Guantánamo were difficult diplomatic relations between the United States and Yemen.

### 8. “The Removal of the Neck Organs”

Military pathologists connected with the Armed Forces Institute of Pathology arranged immediate autopsies of the three dead prisoners, without securing the permission of the men’s families. The identities and findings of the pathologists remain shrouded in extraordinary secrecy, but the timing of the autopsies suggests that medical personnel stationed at Guantánamo may have undertaken the procedure without waiting for the arrival of an experienced medical examiner from the United States. Each of the heavily redacted autopsy reports states unequivocally that “the manner of death is suicide” and, more specifically, that the prisoner died of “hanging.” Each of the reports describes ligatures that were found wrapped around the prisoner’s neck, as well as circumferential dried abrasion furrows imprinted with the very fine weave pattern of the ligature fabric and forming an inverted “V” on the back of the head. This condition, the anonymous pathologists state, is consistent with that of a hanging victim.

The pathologists place the time of death “at least a couple of hours” before the bodies were discovered, which would be sometime before 10:30 p.m. on June 9. Additionally, the autopsy of Al-Salami states that his hyoid bone was broken, a phenomenon usually associated with manual strangulation, not hanging.

The report asserts that the hyoid was broken “during the removal of the neck organs.” An odd admission, given that these are the very body parts—the larynx, the hyoid bone, and the thyroid cartilage—that would have been essential to determining whether death occurred from hanging, from strangulation, or from choking. These parts remained missing when the men’s families finally received their bodies.

All the families requested independent autopsies. The Saudi prisoners were examined by Saeed Al-Ghamdy, a pathologist based in Saudi Arabia. Al-Salami, from Yemen, was inspected by Patrice Mangin, a pathologist based in Switzerland. Both pathologists noted the removal of the structure that would have been the natural focus of the autopsy: the throat. Both pathologists contacted the Armed Forces Institute of Pathology, requesting the missing body parts and more information about the previous autopsies. The institute did not respond to their requests or queries. (It also did not respond to a series of calls I placed requesting information and comment.)

When Al-Zahrani viewed his son’s corpse, he saw evidence of a homicide. “There was a major blow to the head on the right side,” he said. “There was evidence of torture on the upper torso, and on the palms of his hand. There were needle marks on his right arm and on his left arm.” None of these details are noted in the U.S. autopsy report. “I am a law enforcement professional,” Al-Zahrani said. “I know what to look for when examining a body.”

Mangin, for his part, expressed particular concern about Al-Salami’s mouth and throat, where he saw “a blunt trauma carried out against the oral region.” The U.S. autopsy report mentions an effort at resuscitation, but this, in Mangin’s view, did not explain the severity of the injuries. He also noted that some of the marks on the neck were not those he would normally associate with hanging.

### 9. “I Know Some Things You Don’t”

Sergeant Joe Hickman’s tour of duty, which ended in March 2007, was distinguished: he was selected as Guantánamo’s “NCO of the Quarter” and was given a commendation medal. When he returned to the United States, he was promoted to staff sergeant and worked in Maryland as an Army recruiter before settling eventually in Wisconsin. But he could not forget what he had seen at Guantánamo. When Barack Obama became president, Hickman decided to act. “I thought that with a new administration and new ideas I could actually come forward,” he said. “It was haunting me.”

Hickman had seen a 2006 report from Seton Hall University Law School dealing with the deaths of the three prisoners, and he followed their subsequent work. After Obama was inaugurated in January 2009, he called Mark Denbeaux, the professor who had led the Seton Hall team. “I learned something from your report,” he said, “but I know some things you don’t.”

Within two days, Hickman was in Newark, meeting with Denbeaux. Also at the meeting was Denbeaux’s son and sometime co-editor Josh, a private attorney. Josh Denbeaux agreed to represent Hickman, who was concerned that he could go to prison if he disobeyed Colonel Bumgarner’s order not to speak out, even if that order was itself illegal. Hickman did not want to speak to the press. On the other hand, he felt that “silence was just wrong.”

The two lawyers quickly made arrangements for Hickman to speak instead with authorities in Washington, D.C. On February 2, they had meetings on Capitol Hill and with the Department of Justice. The meeting with Justice was an odd one. The father-and-son legal team were met by Rita Glavin, the acting head of the Justice Department’s Criminal Division; John Morton, who was soon to become an assistant secretary at the Department of Homeland Security; and Steven Fagell, counselor to the head of the Criminal Division. Fagell had been, along with the new attorney general, Eric Holder, a partner at the elite Washington law firm of Covington & Burling, and was widely viewed as “Holder’s eyes” in the Criminal Division.

For more than an hour, the two lawyers described what Hickman had seen: the existence of Camp No, the transportation of the three prisoners, the van’s arrival at the medical clinic, the lack of evidence that any bodies had ever been removed from Alpha Block, and so on. The officials listened intently and asked many questions. The Denbeauxs said they could provide a list of witnesses who would corroborate every aspect of their account. At the end of the meeting, Mark Denbeaux recalled, the officials specifically thanked the lawyers for not speaking to reporters first and for “doing it the right way.”

Two days later, another Justice Department official, Teresa McHenry, head of the Criminal Division’s Domestic Security Section, called Mark Denbeaux and said that she was heading up an investigation and wanted to meet directly with his client. She went to New Jersey to do so. Hickman then reviewed the basic facts and furnished McHenry with the promised list of corroborating witnesses and details on how they could be contacted.

The Denbeauxs did not hear from anyone at the Justice Department for at least two months. Then, in April, an FBI agent called to say she did not have the list of contacts. She asked if this document could be provided again. It was. Shortly thereafter, Fagell and two FBI agents interviewed Davila, who had left the Army, in Columbia, South Carolina. Fagell asked Davila if he was prepared to travel to Guantánamo to identify the locations of various sites. He said he was. “It seemed like they were interested,” Davila told me. “Then I never heard from them again.”

Several more months passed, and Hickman and his lawyers became increasingly concerned that nothing was going to happen. On October 27, 2009, they resumed dealings with Congress that they had initiated on February 2 and then broken off at the Justice Department’s request; they were also in contact with ABC News. Two days later, Teresa McHenry called Mark Denbeaux and asked whether he had gone to Congress and ABC News about the matter. “I said that I had,” Denbeaux told me. He asked her, “Was there anything wrong with that?” McHenry then suggested that the investigation was finished. Denbeaux reminded her that she had yet to interview some of the corroborating witnesses. “There are a few small things to do,” Denbeaux says McHenry answered, “then it will be finished.”

Specialist Christopher Penvose told me that on October 30, the day following the conversation between Mark Denbeaux and Teresa McHenry, McHenry showed up at Penvose’s home in south Baltimore with some FBI agents. She had a “few questions,” she told him. Investigators working with her soon contacted two other witnesses.

On November 2, 2009, McHenry called Mark Denbeaux to tell him that the Justice Department’s investigation was being closed. “It was a strange conversation,” Denbeaux recalled. McHenry explained that “the gist of Sergeant Hickman’s information could not be confirmed.” But when Denbeaux asked what that “gist” actually was, McHenry declined to say. She just reiterated that Hickman’s conclusions “appeared” to be unsupported. Denbeaux asked what conclusions exactly were unsupported. McHenry refused to say.

### **10. “They Accomplished Nothing”**

One of the most intriguing aspects of this case concerns the use of Camp No. Under George W. Bush, the CIA created an archipelago of secret detention centers that spanned the globe, and authorities at these sites deployed an array of Justice Department–sanctioned torture techniques—including waterboarding, which often entails inserting cloth into the subject’s



mouth—on prisoners they deemed to be involved in terrorism. The presence of a black site at Guantánamo has long been a subject of speculation among lawyers and human-rights activists, and the experience of Sergeant Hickman and other Guantánamo guards compels us to ask whether the three prisoners who died on June 9 were being interrogated by the CIA, and whether their deaths resulted from the grueling techniques the Justice Department had approved for the agency’s use—or from other tortures lacking that sanction.

Complicating these questions is the fact that Camp No might have been controlled by another authority, the Joint Special Operations Command, which Bush’s defense secretary, Donald Rumsfeld, had hoped to transform into a Pentagon version of the CIA. Under Rumsfeld’s direction, JSOC began to take on many tasks traditionally handled by the CIA, including the housing and interrogation of prisoners at black sites around the world. The Pentagon recently acknowledged the existence of one such JSOC black site, located at Bagram Airfield in Afghanistan, and other suspected sites, such as Camp Nama in Baghdad, have been carefully documented by human-rights researchers.

In a Senate Armed Services Committee report on torture released last year, the sections about Guantánamo were significantly redacted. The position and circumstances of these deletions point to a significant JSOC interrogation program at the base. (It should be noted that Obama’s order last year to close other secret detention camps was narrowly worded to apply only to the CIA.)

Regardless of whether Camp No belonged to the CIA or JSOC, the Justice Department has plenty of its own secrets to protect. The department would seem to have been involved in the cover-up from the first days, when FBI agents stormed Colonel Bumgarner’s quarters. This was unusual for two reasons. When Pentagon officials engage in a leak investigation, they generally use military investigators. They rarely turn to the FBI, because they cannot control the actions of a civilian agency. Moreover, when the FBI does open an investigation, it nearly always does so with great discretion. The Bumgarner investigation was widely telegraphed, though, and seemed intended to send a message to the military personnel at Camp Delta: Talk about what happened at your own risk. All of which suggests it was not the Pentagon so much as the White House that hoped to suppress the truth.

In the weeks following the 2006 deaths, the Justice Department decided to use the suicide narrative as leverage against the Guantánamo prisoners and their troublesome lawyers, who were pressing the government to justify its long-term imprisonment of their clients. After the NCIS seized thousands of pages of privileged communications, the Justice Department went to court to defend the action. It argued that such steps were warranted by the extraordinary facts

surrounding the June 9 “suicides.” U.S. District Court Judge James Robertson gave the Justice Department a sympathetic hearing, and he ruled in its favor, but he also noted a curious aspect of the government’s presentation: its “citations supporting the fact of the suicides” were all drawn from media accounts. Why had the Justice Department lawyers who argued the case gone to such lengths to avoid making any statement under oath about the suicides? Did they do so in order to deceive the court? If so, they could face disciplinary proceedings or disbarment.

The Justice Department also faces questions about its larger role in creating the circumstances that lead to the use of so-called enhanced interrogation and restraint techniques at Guantánamo and elsewhere. In 2006, the use of a gagging restraint had already been connected to the death on January 9, 2004, of an Iraqi prisoner, Lieutenant Colonel Abdul Jameel, in the custody of the Army Special Forces. And the bodies of the three men who died at Guantánamo showed signs of torture, including hemorrhages, needle marks, and significant bruising. The removal of their throats made it difficult to determine whether they were already dead when their bodies were suspended by a noose. The Justice Department itself had been deeply involved in the process of approving and setting the conditions for the use of torture techniques, issuing a long series of memoranda that CIA agents and others could use to defend themselves against any subsequent criminal prosecution.

Teresa McHenry, the investigator charged with accounting for the deaths of the three men at Guantánamo, has firsthand knowledge of the Justice Department’s role in auditing such techniques, having served at the Justice Department under Bush and having participated in the preparation of at least one of those memos. As a former war-crimes prosecutor, McHenry knows full well that government officials who attempt to cover up crimes perpetrated against prisoners in wartime face prosecution under the doctrine of command responsibility. (McHenry declined to clarify the role she played in drafting the memos.)

As retired Rear Admiral John Hutson, the former judge advocate general of the Navy, told me, “Filing false reports and making false statements is bad enough, but if a homicide occurs and officials up the chain of command attempt to cover it up, they face serious criminal liability. They may even be viewed as accessories after the fact in the original crime.” With command authority comes command responsibility, he said. “If the heart of the military is obeying orders down the chain of command, then its soul is accountability up the chain. You can’t demand the former without the latter.”

The Justice Department thus faced a dilemma; it could do the politically convenient thing, which was to find no justification for a thorough investigation, leave the NCIS conclusions in place, and hope that the public and the news media would obey the Obama Administration’s dictum to

“look forward, not backward”; or it could pursue a course of action that would implicate the Bush Justice Department in a cover-up of possible homicides.

Nearly 200 men remain imprisoned at Guantánamo. In June 2009, six months after Barack Obama took office, one of them, a thirty-one-year-old Yemeni named Muhammed Abdallah Salih, was found dead in his cell. The exact circumstances of his death, like those of the deaths of the three men from Alpha Block, remain uncertain. Those charged with accounting for what happened—the prison command, the civilian and military investigative agencies, the Justice Department, and ultimately the attorney general himself—all face a choice between the rule of law and the expedience of political silence. Thus far, their choice has been unanimous.

Not everyone who is involved in this matter views it from a political perspective, of course. General Al-Zahrani grieves for his son, but at the end of a lengthy interview he paused and his thoughts turned elsewhere. “The truth is what matters,” he said. “They practiced every form of torture on my son and on many others as well. What was the result? What facts did they find? They found nothing. They learned nothing. They accomplished nothing.”