

## The Guantánamo Detainees During Detention: Data from Department of Defense Records

*Mark Denbeaux\**  
*Joshua Denbeaux\*\**  
*David Gratz*  
*John Gregorek*  
*Matthew Darby*  
*Shana Edwards*  
*Daniel Mann*  
*Megan Sassaman*  
*Helen Skinner*

### I. INTRODUCTION

The government has characterized the conduct of the Guantánamo detainees in terms of the threat they pose to their guards and the threat they pose to themselves. Analysis of the government's own data strongly suggests that the former has been greatly overstated and that the latter greatly understated. While some of the details of the detention are undeveloped because of the limitations on the data the government has released, the overall picture of a cowed, unthreatening, depressed, and suicidal detainee population clearly emerges.

#### A. *The Government on Detainee Misconduct*

In any prison—especially in any maximum-security prison—disciplinary problems are a certainty. This could be the result of general despair, mistreatment, or, in the words of Secretary of Defense Donald Rumsfeld, because the prisoners are “very vicious, violent extremist people . . . who have killed people and who will go—

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\* Professor, Seton Hall University School of Law, and Director, Seton Hall University School of Law, Center for Policy and Research. Prof. Denbeaux represents two Guantánamo detainees. This Report also benefited from the research and contributions of Christopher Fox and Lauren Winchester.

\*\* Partner, Denbeaux & Denbeaux. Mr. Denbeaux represents two Guantánamo detainees.

say they'll go right back out and kill Americans again.”<sup>1</sup> According to Brigadier General Jay Hood, the then-Commander of the Joint Task Force Guantánamo, “The vast majority of these detainees we are holding are dangerous men, committed to harming Americans . . . . I know this because of what we have learned about these men, and the threats and assaults that they make against the guard forces and interrogators.”<sup>2</sup> General Hood further noted that “[o]n a typical day or week, it's not unusual for guards walking a cell block to have urine, feces or spit hurled at them, to have their ethnic or racial background slurred or to hear detainees threaten to track them down after being released and kill them and their families.”<sup>3</sup> Rear Admiral Harry B. Harris, Jr., who succeeded General Hood in March 2006 as the Commander of the Joint Task Force Guantánamo, expressed a similar sentiment in the *Chicago Tribune*: “We also provide adequate clothing, including shoes and uniforms, and the normal range of hygiene items, such as a toothbrush, toothpaste, soap and shampoo. Even so, many detainees have taken advantage of this—crafting killing weapons from toothbrushes and garrotes from food wrappers, for example.”<sup>4</sup>

The government has released “Incident Reports of Disciplinary Violations” (IRDVs or “Incident Reports”), which would presumably include such incidents.<sup>5</sup> An examination of these Incident Reports allows a comparison of General Hood's statements with the actual disciplinary infraction record. An exhaustive review of all Incident Reports failed to uncover even a single event of a toothbrush being made into a “killing weapon” or a food wrapper becoming a garrote. When compared with the IRDVs, Admiral Harris's assertion that de-

<sup>1</sup> *Larry King Live: Interview with Donald Rumsfeld* (CNN television broadcast Dec. 19, 2005), available at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=259>.

<sup>2</sup> Donna Miles, *Detainees Treated Humanely as Task Force Supports Terror War*, AM. FORCES PRESS SERV. (June 29, 2005), <http://www.defense.gov/news/newsarticle.aspx?id=16262>.

<sup>3</sup> *Id.*

<sup>4</sup> Harry B. Harris, Jr., *Inside Guantánamo Bay*, CHI. TRIB., May 17, 2006, at C27.

<sup>5</sup> The “Incident Reports of Disciplinary Violations” (IRDVs) were released on June 2, 2006, June 9, 2006, and June 16, 2006. The IRDVs are on file with the Seton Hall University School of Law Center for Policy and Research (the “Center”), which cataloged the reports and assigned each report a specific report number. The cataloging and assignment of numbers was necessary because of the redactions, the absence of government numbering, and the difficulty in identifying each individual report. In this Report, the IRDVs will be referred to as DETAINEE REPORT and will be accompanied by the specific incident report number that the Center assigned to the report.

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tainees regularly craft deadly weapons from hygiene items appears to be untrue.

*B. The Government on Detainee Suicide and Other Threat-to-Self Behavior*

On June 9, 2006, Mani Shaman Turki Al-Habardi Al-Utaybi, Yassar Talal Al-Zahrani, and Ali Abdullah Ahmed committed suicide at the Guantánamo Bay detention center.<sup>6</sup> Rear Admiral Harris immediately proclaimed that these suicides were “not an act of desperation, but an act of asymmetric warfare aimed at us here at Guantánamo.”<sup>7</sup> Other statements also claimed that the deaths “were means and methods for protestation . . . a good PR move to draw attention.”<sup>8</sup>

In the wake of the suicides and these statements, there was renewed attention to the extent to which the detainees were in fact seeking to “escape” from their captives by committing suicide or were trying to make political statements by inflicting injury on themselves, even to the point of risking or suffering death. Admiral Harris stated that asymmetric warfare included suicides and suicide attempts.<sup>9</sup> Asymmetric warfare presumably included hunger strikes as well.

In approaching this question, the Incident Reports are of no assistance because they do not report a single instance of hunger strikes, suicide attempts, or similar acts of “asymmetrical warfare.” While this is odd since at least some “incidents” seem to involve conduct that appears similar to threat-to-self behavior, this Report must take the government data at face value. With respect to threat-to-self behavior, this Report draws not from the Incident Reports, which are silent on the topic, but rather from press releases and other public statements made by government officials.

This Report uses the awkward term “threat-to-self” because the government has created an unusual lexicon to describe conduct that

<sup>6</sup> Scott Horton, *The Guantánamo “Suicides”: A Camp Delta Sergeant Blows the Whistle*, HARPER’S MAG (Jan. 18, 2010), <http://www.harpers.org/archive/2010/01/hbc-90006368>.

<sup>7</sup> Sara Wood, *Three Guantanamo Bay Detainees Die of Apparent Suicide*, AM. FORCES PRESS SERV. (June 10, 2006), <http://www.defense.gov/news/newsarticle.aspx?id=16080>.

<sup>8</sup> *The World Today: US Official Calls Guantanamo Suicides a PR Tactic*, THE WORLD TODAY (June 13, 2006), [http://www.bbc.co.uk/worldservice/ondemand/rams/xin24208\\_2006.ram](http://www.bbc.co.uk/worldservice/ondemand/rams/xin24208_2006.ram).

<sup>9</sup> *Nightline: Prison Boss: No Innocent Men in Guantanamo* (ABC television broadcast June 27, 2006), available at <http://abcnews.go.com/Nightline/story?id=2126364&page=1>.

might more intuitively be termed a “suicide attempt.” The government’s lexicon is problematic in a number of respects, but this Report is committed to relying only on the government’s own data, which requires an understanding of the government’s terminology, which is developed more fully below.

## II. THE GOVERNMENT DATA

The data reviewed for this Report are the documents prepared by the government reporting on the disciplinary violations committed by the detainees and the public statements made by governmental officials describing detainee conduct. This Report considers only the government data publicly presented and does not dispute, but rather assumes as true, all such data.

### A. *Government Data for Incident Reports of Disciplinary Violations*

In June 2006, the government released three documents containing 499 incidents of assault, harassment or humiliation of U.S. personnel by detainees at Guantánamo Bay, Cuba.<sup>10</sup> These 499 incidents are referred to as Incident Reports of Disciplinary Violations or IRDVs. The Incident Reports cover the period between December 19, 2002, and July 27, 2005, a total of 952 days. These were the only official releases documenting detainee misconduct at Guantánamo at the time this Report was compiled. For each incident, there is a one-page summary referred to as “Report and/or Recommendation for Disciplinary Action.” The reports serve as summaries of the record of a particular violation committed by a detainee. The government redacted all personal information contained in the summary. Further, the redaction of names and Inmate Security Numbers (ISNs) made it impossible to determine which detainees committed rule violations. Redaction of tracking information also precluded this Report from identifying recidivism rates among disruptive prisoners. The government also consistently redacted a particular field of each Incident Report that could aid in tracking recidivism. It was also impossible, considering the lack of identifying information, to cross-reference violations with other detainee records to compare disciplinary violations with the summaries of evidence or transcripts available for many detainees.

Information in the Incident Reports that was not redacted includes the government’s classification of the incident, the date on which the incident occurred, a description of the incident ostensibly

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<sup>10</sup> See *supra* note 5.

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written by the staff member present at the time of the violation, and for the minority of the incidents, whether the detainee was informed of the Incident Report's filing.<sup>11</sup>

*B. Government Data for Detainee Threat-to-Self*

The data for detainee self-harm is taken entirely from statements by government officials to the press. During 2003, detainees committed 350 acts of "self-harm," otherwise known as "manipulative self-injurious behavior."<sup>12</sup> Of these 350, 120 were classified as "hanging gestures."<sup>13</sup>

During 2004, detainees committed 110 acts of "manipulative self-injurious behavior."<sup>14</sup> The government did not report how many of these 110 were "hanging gestures."<sup>15</sup>

Detainees committed "manipulative self-injurious behavior" more frequently than they committed disciplinary violations. The government reported 460 incidents of "manipulative self-injurious behavior" over two years (731 days), for an average of one incident every 1.59 days. The government reported 499 disciplinary violations over two years and eight months (952 days), for an average of one incident every 1.91 days. Detainees committed 460 acts of "manipulative self-injurious behavior" in 2003 and 2004. In August 2003, twenty-three detainees attempted to hang themselves. The government classified only two of these as "suicide attempts."<sup>16</sup> The other twenty-one were "hanging gestures," a category of "manipulative self-injurious behavior."<sup>17</sup>

The Part entitled "Government Characterization of Detainee Self-Harm" in this Report discusses the manner in which the government created the terms "manipulative self-injurious behavior," "self-harm," and "hanging gestures," as well as their respective meanings.<sup>18</sup>

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<sup>11</sup> See, e.g., DETAINEE REPORT 3 (on file with author).

<sup>12</sup> Paisley Dodds, *Terror Suspects at Guantanamo Attempted Mass Hanging and Strangling Protest in 2003*, U.S. Military Reports, ARMY TIMES (Jan. 25, 2005), <http://www.armytimes.com/legacy/new/1-292925-617306.php>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See discussion *infra* Part IV.

## III. ANALYSIS OF GOVERNMENT DATA

A. *Analysis of Detainee Misconduct Data*

Due to the manner in which the government releases the Incident Reports, it is impossible to determine which prisoner committed which disciplinary violation. Thus, it is also impossible to know whether one detainee, or a relatively few detainees, committed multiple violations. If each detainee committed one of the reported disciplinary violations, and none committed two (an extremely unlikely scenario), then one-third of the detainees never committed a disciplinary violation of any kind. Taking into account the reports of spitting, and again assuming one violation per detainee, then almost two-thirds of the detainees either never committed a disciplinary violation or, on one occasion, were reported to have spit at a guard.

Forty-six percent of the disciplinary violations occurred during a three-month hunger strike. It is a virtual certainty that some detainees committed multiple violations. If that is the case, the number of detainees who have never been cited for any disciplinary violation is much greater than the one-third reported above.

Taken on average, there is one disciplinary violation every other day (an average of one incident every 1.91 days). We know from the Incident Reports that 46% of the disciplinary violations occurred during a three-month period. A more accurate picture of Guantánamo prison life is that there were no disciplinary violations of any kind for 736 of the 952 days for which data is available.

Data regarding the number of days on which incidents were reported suggests that an accurate portrait of the camp is that a minority of the detainees engaged in repeated disciplinary violations, which were concentrated in a relatively small number of days. Of the days at Guantánamo covered by the IRDVs, 77% were free of any Incident Reports of Disciplinary Violations and an unknown—but certainly large—percentage of the detainees posed no disciplinary problems at all.

B. *Disciplinary Violation Categories In Incident Reports*

The government used twenty-three classifications for disciplinary violations, although it appears that there could be at least twenty-eight possible classification types, with subtypes available for each violation. The twenty-three classifications were not defined, and the categories seem simultaneously over-inclusive and under-inclusive. Additionally, many classifications seem inconsistent with the act de-

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scribed in the Incident Report for that disciplinary violation and with the other Incident Reports reflecting the same or similar misconduct.

Because of these inconsistencies, this Report uses three classifications of incidents to track more accurately the conduct underlying the disciplinary violations: “throwing” violations, “assault” violations, and “regulatory” violations.<sup>19</sup> Each category of violation—throwing, assault, and regulatory—includes conduct ranging from serious to truly petty. Most actions of all three categories were offensive rather than injurious to the Guantánamo staff. The most egregious violations were not assaults or batteries in the classic sense but incidents in which the detainee allegedly threw feces or urine at guards and staff.<sup>20</sup> The four dozen acts of this nature, however revolting, are in sharp contrast to the much more common scenarios—spitting or throwing food. Even these lesser acts were relatively infrequent.

By far, the largest percentage of incidents consists of “throwing” (69%); the next largest category is “assaults,” including attempted assaults (23%); and the third category, violations of rules and regulations of the camp, accounts for 7%. An analysis of each of the three categories is necessary to present a clear picture of the actual violations committed by the detainees.

### 1. Throwing Incidents

Of the 499 total Incident Reports, there were 346 incidents that this Report classifies as “throwing” violations, which represent 69% of the Incident Reports. Spitting is by far the most common “throwing” violation, accounting for 217 (62.7%) of all throwing incidents. Of the 499 IRDVs, almost half (43.5%) were confined only to spitting. There were forty-eight instances of throwing feces (7.8%) or urine (6.1%). There were forty-three instances of throwing food or beverages (12.4%). Finally, there were thirty-eight instances of throwing objects (11%)—primarily flip-flops, and occasionally meal trays or stones.

These numbers and percentages give only part of the picture. The events underlying the classifications of the different types of “throwing” fail to fully portray the detainee conduct upon which the

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<sup>19</sup> When in doubt, or in the case of multiple acts, this Report applies the most serious classification available.

<sup>20</sup> The government data describes such offensive acts forty-eight times. The government, however, did not report who from the detainees committed these acts. It is possible that most of these acts were committed by a handful of very angry detainees, but this Report cannot confirm or deny that possibility with the data available at the time the Report was compiled.

Incident Reports rested. While there were forty-eight acts of throwing offensive substances, the vast majority (298 acts) were neither offensive nor serious. Examples of typical “throwing” acts included:

- “On 29 May 2004 . . . detainee spit at MP for not giving him additional toilet paper.”<sup>21</sup>
- “On 06 July 2005 . . . detainee was sleeping and MP woke detainee up to tell him that his chow was here. Detainee got angry and spit at the MP and made gestures of poking his finger in the MP’s eye. No spit/body fluids hit the MP.”<sup>22</sup>
- “On 13 May 05 . . . detainee threw a cup of tea on a block guard and then tried to hit the guard with his flip flop. The block guard shut the bean hole and walked off the tier.”<sup>23</sup>
- “On 11 July 2005 . . . detainee assaulted an MP by throwing his shower shoes, a cup of water, and two tubes of toothpaste.”<sup>24</sup>
- “Detainee threw a pear core from his food tray slot and struck the Block Guard on the Shoulder.”<sup>25</sup>

## 2. Assault Violations

Of the reported incidents, 23% were for some form of assault, attempted battery, or battery of staff. Assaults can be classified into three types of conduct: (1) striking; (2) grabbing, or (3) attempted striking or grabbing. “Striking” includes hitting, kicking, head-butting, and stabbing and comprises 56% of the reported assault incidents, or 13% of all Incident Reports. “Grabbing” includes reported incidents where clothing, whistles, radios, or staff were grabbed, and account for roughly one-quarter (24.8%) of the reported assault incidents. Attempted assaults in which there was no contact account for 19% of the total assault incidents.

Assaults by detainees were committed in one of three reported ways: (1) during shackling; (2) through the “bean hole”; or (3) in “other” or unspecified contexts. Assaults during shackling account

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<sup>21</sup> DETAINEE REPORT 218 (on file with author).

<sup>22</sup> DETAINEE REPORT 2 (on file with author). This incident occurred during the 2005 hunger strike.

<sup>23</sup> DETAINEE REPORT 186 (on file with author). This incident occurred during the 2005 hunger strike.

<sup>24</sup> DETAINEE REPORT 73 (on file with author). This incident occurred during the 2005 hunger strike.

<sup>25</sup> DETAINEE REPORT 3 (on file with author).



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for 22% of all reported assault incidents. Thirty assaults could not be classified as having occurred either during shackling or through “bean holes,” and thus are listed in this Report as “other”; they represent 26% of all assault deliveries. More than half of the assaults occurred through the “bean hole” (52%). The “bean hole” is a small aperture in the cell wall through which the guards pass meals to the detainees. The opening is small with doors that the guards can close.

While there are a handful of cuts and scratches described, the Incident Reports do not reflect a single assault in which any guard or staff member suffered a reported injury requiring medical attention.

Perhaps the most serious incident report of an assault occurred on December 21, 2004, when a detainee stabbed the MP guard in the hand with his “spork,” a plastic eating utensil combining a spoon and a fork.<sup>26</sup> This incident occurred when the guard attempted to collect utensils after the morning meal.<sup>27</sup> After jabbing the MP, the spork fell to the floor, and the MP secured the bean hole.<sup>28</sup> The detainee came to the cell door window, made a slicing motion across his neck, loudly yelled, “I will kill you,” and made other threats while the MP guards finished collecting the utensils.<sup>29</sup>

Perhaps the second most severe act of assault occurred on April 4, 2004, when a detainee assaulted an MP who was unshackling the detainee.<sup>30</sup> The detainee reached through the bean hole with his good hand while being unshackled and grabbed the MP by the neck.<sup>31</sup> The MP pulled away, and the detainee grabbed the front of his jacket and t-shirt, ripping buttons off the uniform and tearing the shirt.<sup>32</sup> Neither the detainee nor the MP required medical care.<sup>33</sup>

There were two main categories of assaults: those in which the detainee resisted being shackled, and all others. The more common examples of assaults were unrelated to shackling and were also the least threatening. For example:

- “On 25 Jun 2004 at approx[imately] 0720 the detainee refused to give up the cup in his cell, then proceeded to grab the MP’s arm and spit on the MP. During a random

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<sup>26</sup> DETAINEE REPORT 336 (on file with author).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> DETAINEE REPORT 288 (on file with author).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

cell search he was found to have one orange and 2 MRE wrappers.”<sup>34</sup>

- “On 05 May 2005 at 2105 Detainee grabbed the MP’s arm while he was handing out linen.”<sup>35</sup>
- “Detainee . . . grabbed the block NCO’s whistle on 20 1310R May 04.”<sup>36</sup>
- “On 6 June 2004 at approx[imately] 1305 detainee . . . assaulted an MP by grabbing his arm while he was taking up the lunch plates. The MP pulled his arm out from the bean hole and closed it.”<sup>37</sup>
- “On 24 June 2005 detainee swung his flip flop at MP three times hitting the MP once on the brim of his cover and twice on the left side of his face because [detainee] believed the MP did not bring him a pear and some salt during the dinner meal.”<sup>38</sup>
- “On 15 Jun 05, Detainee grabbed the Guard’s arm while the Guard was retrieving the lunch tray and immediately released it. The detainee wanted to talk to the Block NOCO about getting some water. Detainee grabbed a female MP’s hands through the bean hole and did not let go until he was told to do so four times.”<sup>39</sup>
- “On 24 June 2004 at approx 0630 detainee in cell [ISN redacted] reached through bean hole swung his hand towards MP and grabbed MP’s whistle. Detainee refused to give back whistle until SOG arrived.”<sup>40</sup>

Examples of assaults while the military police shackled detainees include the following:

- “During the Force Cell Extraction of Detainee . . . for refusing Intel reservation, the Detainee resisted the IRF team as they entered . . . The detainee continued to resist during the shackling procedures of the move. No injuries were received by the Guards or the Detainee.”<sup>41</sup>

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<sup>34</sup> DETAINEE REPORT 309 (on file with author).

<sup>35</sup> DETAINEE REPORT 113 (on file with author).

<sup>36</sup> DETAINEE REPORT 292 (on file with author).

<sup>37</sup> DETAINEE REPORT 311 (on file with author).

<sup>38</sup> DETAINEE REPORT 201 (on file with author).

<sup>39</sup> DETAINEE REPORT 225 (on file with author).

<sup>40</sup> DETAINEE REPORT 326 (on file with author).

<sup>41</sup> DETAINEE REPORT 404 (on file with author).

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- “On 15 Jun 05 at approximately 0907 detainee . . . hit [redacted] in the stomach and [redacted] in the hand while they were attempting to shackle him in the shower.”<sup>42</sup>
- “On 26 July 2005 at 1515 Detainee . . . spit on the block guard . . . while he was being handcuffed and said fuck you 3 times. As [redacted] was being escorted out of the shower he pushed the shower door into the block guards hitting [redacted] with the door.”<sup>43</sup>

*C. Regulatory Violations*

There were thirty-six incidents classified in this Report as “regulatory” violations. These comprise 7% of the total Incident Reports. Violations of rules and regulations appear petty in almost all instances. Some examples follow:

- “On 20 June 05 . . . Detainee requested to be moved to isolation . . . . [When refused] the Detainee stated that we . . . had one week to move him or he would grab an MP’s arm and break it. . . . Detainee stated that he is angry at America for holding him there . . . . *I think he is acting out in frustration. No further action required.*”<sup>44</sup>
- “On 04 Feb 2005 at 0835 Detainee was cross block talking with [Redacted].”<sup>45</sup>
- “On 16 Jan 05 at 1325 hrs detainee was in possession of 6 different pieces of white and orange string of varying length.”<sup>46</sup>

**IV. GOVERNMENT CHARACTERIZATION OF DETAINEE SELF-HARM**

When trying to work with government data on detainee self-harm, the threshold problem is terminological, since the government employs categories that are neither intuitively obvious nor defined in terms of objective criteria. For example, from August 18 to August 26, 2003, twenty-three prisoners attempted to hang themselves.<sup>47</sup>

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<sup>42</sup> DETAINEE REPORT 200(on file with author).

<sup>43</sup> DETAINEE REPORT 387(on file with author).

<sup>44</sup> DETAINEE REPORT 41 (emphasis added)(on file with author).

<sup>45</sup> DETAINEE REPORT 345(on file with author).

<sup>46</sup> DETAINEE REPORT 347(on file with author).

<sup>47</sup> Charlie Savage, *Detainees Attempted to Hang Selves: Scrutiny Widens at Guantánamo*, BOS. GLOBE, Jan. 25, 2005, at A1.

Those unfamiliar with the Guantánamo lexicon might view such actions as suicide attempts—but this would be incorrect.

The government did not report the attempted mass hanging to the public until January 2005, when a Guantánamo Naval Hospital administrator, Captain John S. Edmondson,<sup>48</sup> speaking to a *Los Angeles Times* reporter, casually referred to “the mass hanging incident.”<sup>49</sup> The government immediately denied that the event was a mass suicide attempt,<sup>50</sup> but rather described it as “a coordinated effort to disrupt camp operations. . . .”<sup>51</sup> In a statement, Lieutenant Colonel Leon Sumpter explained that only two of the hangings were suicide attempts since only those two resulted in hospitalization combined with psychiatric treatment.<sup>52</sup> The government described the other twenty-one as “hanging gestures,” without any explanation of what that term might mean.<sup>53</sup> In the same statement, the government revealed that there had been 350 “self-harm” incidents, including 120 “hanging gestures,” in 2003 and 110 “self-harm” incidents in 2004.<sup>54</sup> Therefore, 460 self-harm incidents occurred in the two-year period of 2003 to 2004.

At first, there seemed to be three categories of such conduct: suicide attempts, self-harm incidents, and a subdivision of self-harm incidents called hanging gestures. In September 2003, the government created a new category for detainee actions called “manipulative self-injurious behavior.”<sup>55</sup> According to Captain Edmondson, this category includes acts of self-harm in which “the individual’s state of mind is such that they [sic] did not sincerely want to end their own life” but instead wanted to obtain release or better treatment.<sup>56</sup> This designation has no apparent basis in psychiatry.<sup>57</sup>

<sup>48</sup> Captain John S. Edmondson is identified as both Capt. Stephen Edmundson and Capt. John Edmondson in various news articles.

<sup>49</sup> Carol J. Williams, Editorial, *Covering Gitmo*, L.A. TIMES, June 18, 2006, at M1.

<sup>50</sup> Adam Fresco, *Mass Suicide Bids at Guantánamo Bay Dismissed as Only a Gesture*, TIMES (London) (Jan. 25, 2005), <http://www.timesonline.co.uk/tol/news/uk/article506147.ece>.

<sup>51</sup> *Guantanamo Detainees Attempted Hangings*, UNITED PRESS INT’L, Jan. 25, 2005, [http://www.upi.com/Top\\_News/2005/01/25/Guantanamo\\_detainees\\_attempted\\_hangings/UPI-71171106667157/](http://www.upi.com/Top_News/2005/01/25/Guantanamo_detainees_attempted_hangings/UPI-71171106667157/) [hereinafter *Attempted Hangings*].

<sup>52</sup> Dodds, *supra* note 12.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> David Rose, *Guantanamo Bay on Trial*, PBS FRONTLINE, Apr. 22, 2004, *available at* <http://www.pbs.org/wgbh/pages/frontline/shows/khadr/readings/gitmo.html>.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

Since the government refers to the 2003 mass hanging incident both as “manipulative self-injurious behavior” and as a “self-harm” incident, the former seems virtually synonymous with the latter. This Report, therefore, treats the two labels as interchangeable. But this leaves the question as to what conduct, other than “hanging gestures,” is included in “self-harm” or “manipulative self-injurious behavior.” There is evidence that detainees have attempted to slit their wrists on the bars of their cells,<sup>58</sup> and have attempted to overdose on medication.<sup>59</sup> It is not clear whether the government would categorize these as suicide attempts or as some kind of manipulative behavior or gesture. It is possible that the government also counts other kinds of detainee actions as “manipulative self-injurious behavior.” Hunger strikes have been endemic to Guantánamo since its opening.<sup>60</sup> There have also been reports of detainees banging their heads on the walls of their cells.<sup>61</sup>

The government appears to have created the category “manipulative self-injurious conduct” in response to the August 2003 attempted mass hangings. Although the government did not coin the label until September 2003, it then retroactively classified twenty-one of the twenty-three hanging attempts as “manipulative self-injurious behavior.”<sup>62</sup> At that point, including the two suicide attempts just added, their total count was thirty-two.<sup>63</sup> By June 10, 2006, the count had increased by only nine, totaling forty-one suicide attempts.<sup>64</sup> Thus, in the twenty-one month time period between January 2002 and September 2003, the government reported thirty-two suicide attempts, and in the thirty-two month time period between October 2003 and June 2006, the government reported nine suicide attempts.

<sup>58</sup> See David S. Cloud & Neil A. Lewis, *Prisoners' Ruse Is Inquiry Focus at Guantánamo*, N.Y. TIMES, June 12, 2006, at A1.

<sup>59</sup> See Carol J. Williams, *4 Guantánamo Prisoners Attempt Suicide in One Day*, L.A. TIMES, May 19, 2006, at A10.

<sup>60</sup> See, e.g., Editorial, *Detainees' Hunger Strike in Month 2*, WASH. POST, Sept. 10, 2005, at A6; Paul Harris & Burhan Wazir, *Prisoners at Camp X-Ray Go on Hunger Strike*, N.Z. HERALD, Mar. 1, 2002, at 6; Paul Harris & Burhan Wazir, *Distant Voices Tell of Life for Britons Caged in Camp Delta*, THE OBSERVER (London), Nov. 3, 2002, at 3; Jim Loney, *Hunger Strike by 52 Terror Suspects*, COURIER MAIL (Queensland, Austl.), July 23, 2005, at 20; Jane Sutton, *75 Prisoners Join in Hunger Strike at U.S. Base at Guantánamo Bay*, WASH. POST, May 30, 2006, at A7.

<sup>61</sup> Stevenson Jacobs, *Guantánamo Bay Suicide Prisoners 'Showed No Sign of Being Depressed*, INDEPENDENT (London), June 28, 2006, at 24.

<sup>62</sup> *Attempted Hangings*, *supra* note 51.

<sup>63</sup> See Rose, *supra* note 55.

<sup>64</sup> James Risen & Tim Golden, *Three Prisoners Commit Suicide at Guantánamo*, N.Y. TIMES, June 11, 2006, at A22.

Either the frequency of suicide attempts decreased dramatically since September 2003 or the government began classifying acts that would have previously been reported as suicide attempts as “manipulative self-injurious behavior.” It is not likely that the frequency of suicide attempts decreased. In fact, given the suicide attempts that occurred in May 2006<sup>65</sup> and the three successful suicides in June 2006, the frequency seemed to have increased. Various journalists have asserted that “manipulative self-injurious behavior” is simply a reclassification of suicide attempts.<sup>66</sup> Although the decline in the number of reported suicide attempts and the subjectivity of the categories suggest that this may be correct, the data does not allow a conclusive confirmation of this claim.

The government appears to use both subjective and objective elements to distinguish “manipulative self-injurious behavior” from a “suicide attempt.” The objective element is the extent of the detainee’s injury. The subjective element is the government’s interpretation of the detainee’s attempt. Apparently, if a detainee does not sustain serious injury, the government does not consider his act a suicide attempt. If a detainee does sustain serious injury, the government determines that the detainee’s intent was either to kill himself or to attain improved treatment or release.

To understand the two factors, it is important to note that the government’s categorization could focus either on objective facts, for example, the seriousness of the detainee’s self-inflicted injury, or on subjective facts, for example, the detainee’s perceived state of mind. The government stated that the difference between a “suicide attempt” and “manipulative self-injurious behavior” is that, in a “suicide attempt,” a detainee could die without intervention, whereas in “manipulative self-injurious behavior,” a detainee seeks only to gain attention.<sup>67</sup>

The August 2003 attempted hangings illustrate the application of both the objective and the subjective factors. When Captain Edmondson revealed the August 2003 attempted mass hanging, he did so to clarify that the incident was the only time when the forty-eight-bed hospital ward was at or near capacity.<sup>68</sup> The government re-

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<sup>65</sup> David S. Cloud & Neil A. Lewis, *U.S. Reviews Guantanamo Jail Security*, CHI. TRIB., June 12, 2006, at 1.

<sup>66</sup> See, e.g., Jason Oddy, *Living With the Enemy*, INDEPENDENT (London), Dec. 7, 2003, at 25; David Rose, *How US Hid the Suicide Secrets of Guantanamo*, THE OBSERVER (London), June 18, 2006, at 30.

<sup>67</sup> Fresco, *supra* note 50.

<sup>68</sup> Rose, *supra* note 55.

ported that only two of the hangings resulted in hospitalization, even though many more detainees filled hospital beds as a result of their hangings. The government called the other twenty-one incidents “hanging gestures,” a type of manipulative “self-injurious behavior.”<sup>69</sup> Yet the government reported only two of the attempted hangings that resulted in hospitalization as “suicide attempts.”<sup>70</sup> The government could have utilized either test. The government may have meant that only two detainees required hospitalization and that their injuries mandated more care than the injuries of the others (the objective factor). Alternatively, the government may have decided that hospitalization was not the deciding factor in determining the presence of a “suicide attempt,” and instead, considered the detainee’s motive in hanging himself (the subjective factor). The hospitalization of so many of the detainees was not a sufficient basis to conclude that any single detainee had attempted suicide. The government may have used both factors in making this distinction as well.

More recently, on May 18, 2006, at least four detainees engaged in what might have been classified as attempts to commit suicide, resulting in a detainee riot. In a statement released the following day, Rear Admiral Harry B. Harris Jr. revealed that only two of these efforts were counted as suicide attempts, apparently because only two detainees lost consciousness as a result.<sup>71</sup> Two other detainees complained of dizziness and nausea, one claiming that he had attempted suicide but did not have enough pills. These latter two received a medical and psychiatric evaluation, but Rear Admiral Harris called these detainees “attention-seeking sympathizers who were not trying to actually commit suicide.”<sup>72</sup> Because this quote is a concise restatement of the definition for “manipulative self-injurious behavior,” the government probably classified the latter two detainees as having exhibited such behavior, even though they received psychological and medical examination and one of them claimed that he was trying to kill himself.<sup>73</sup>

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<sup>69</sup> Dodds, *supra* note 12.

<sup>70</sup> Rose, *supra* note 55.

<sup>71</sup> Harry B. Harris, Jr., Commander, Joint Task Force Guantanamo Cloud & Lewis, Statement on Suicide Attempts in Guantanamo (May, 19, 2006), *available at* [http://www.pegc.us/archive/DoD/docs/JTF-GTMO\\_harris\\_20060519.pdf](http://www.pegc.us/archive/DoD/docs/JTF-GTMO_harris_20060519.pdf).

<sup>72</sup> Harris, *supra* note 4.

<sup>73</sup> Harris, *supra* note 71 (stating that one of the detainees claimed he tried to kill himself).

As for subjectivity, the government defines “manipulative self-injurious behavior” as an insincere effort to end life.<sup>74</sup> Thus, the classification of a given act depends on the classifier’s assessment of the detainee’s real purpose in engaging in the self-injurious conduct. Only if the government concludes that the behavior was “sincere,” however, does the act become a “suicide attempt.” In all other cases, it is classified as merely “manipulative self-injurious behavior,” even if the act resulted in injury sufficient to require hospitalization.

Given the sheer number of “manipulative self-injurious behavior” incidents, combined with the paucity of governmental detail as to why particular actions were classified as insincere and thus counted as such behavior, it is impossible to definitively conclude that the 460 incidents of “manipulative self-injurious behavior” are, or are not, “suicide attempts.” To the extent that there is any bias in the system, however, it tilts toward under-counting “suicide attempts.”

This is underscored by the fact that the government has from the outset recognized the high risk of detainee suicide. One factor in determining whether to transfer a person to Guantánamo Bay is propensity for self-injury. A U.S. military official familiar with the assignment process said, “Right from the start, it was known there were individuals capable and willing to harm themselves . . . . One of the reasons they were brought there was because it was thought they would be a harm to themselves.”<sup>75</sup>

Reflecting that reality, Guantánamo officials have taken precautions against detainees committing suicide and prepared for that eventuality for years. For example, in a Navy email dated August 2003, the month of the attempted mass hanging, an officer asked what should be done in the event of a successful suicide.<sup>76</sup> Former Captain James Yee served as the Muslim chaplain at Guantánamo in 2002 and 2003, and in this capacity, he helped develop detailed burial protocols.<sup>77</sup> In the summer of 2005, in response to an increased number of hunger strikes, the military again considered procedures in the event of a successful detainee suicide.<sup>78</sup> In February 2006, offi-

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<sup>74</sup> Rose, *supra* note 55.

<sup>75</sup> Manuel Roig-Franzia, *Guantánamo Was Prepared for Suicide Attempts*, WASH. POST, Mar. 2, 2003, at A7.

<sup>76</sup> Dodds, *supra* note 12.

<sup>77</sup> Ray Rivera, *Muslim Chaplain James Yee to Leave Army*, SEATTLE TIMES, Aug. 3, 2004, [available at](http://seattletimes.nwsourc.com/html/localnews/2001995341_yee03m.html) [http://seattletimes.nwsourc.com/html/localnews/2001995341\\_yee03m.html](http://seattletimes.nwsourc.com/html/localnews/2001995341_yee03m.html).

<sup>78</sup> Risen & Golden, *supra* note 64.



cials began reciting to detainees passages from the Koran that forbid suicide.<sup>79</sup>

## V. CONCLUSION

The Incident Reports do not mention detainee acts of “asymmetrical warfare” by that name or any of the lexicons the Department of Defense has developed for actions related to self-harm. A system that records a detainee’s act of spitting or throwing a glass of water, however, would be expected to include acts of “asymmetrical warfare” against the Guantánamo detention authorities. This suggests, but does not prove, that the government did not regard these acts of self-harm as “asymmetrical warfare” until the government’s own public relations concerns were implicated.

The failure to cite suicide attempts and hunger strikes in the Incident Reports cannot be the result of inadvertence. This is especially true since the greatest concentration of Incident Reports coincided with the occurrence of hunger strikes and mass hangings. The ninety-two days of May, June, and July 2005 encompassed a major hunger strike.<sup>80</sup> During that time, 46% of all violations occurred.<sup>81</sup> The omission of any reference to the hunger strikes during this period of turmoil of Incident Reports makes it clear that the camp did not treat such acts as “asymmetric warfare” at that time.

The content of the Incident Reports during the August 18–26, 2003, “mass hanging” attempt by a number of inmates is the starkest example that attempted suicides were not considered to be disciplinary violations. The thirteen Incident Reports of events that occurred on August 18, 2003, are most revealing—they make no mention of any suicide attempts or attempted “mass hangings.”

The August 18, 2003, Incident Reports describe “block disturbances” and “riots” but no acts of self-harm, manipulative self-injurious behavior, attempted suicide, or suicide. The thirteen reports cite as disciplinary violations twelve instances of detainees throwing water. Only two descriptions of the twelve incidents exist, with duplicate descriptions present in the Incident Reports. The two reports of the events for that day were written by the Military Police—

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<sup>79</sup> *Id.*

<sup>80</sup> See CTR. FOR CONSTITUTIONAL RIGHTS, THE GUANTÁNAMO PRISONER HUNGER STRIKES & PROTESTS: FEBRUARY 2002–AUGUST 2005 9 (2005), *available at* <http://ccrjustice.org/files/Final%20Hunger%20Strike%20Report%20Sept%202005.pdf>. The Center has verified the hunger strike dates by analyzing released detainee weight data. This data is on file with the author.

<sup>81</sup> The thirty other months account for 53.5% of the violations.

one at 12:20 p.m., and another at 12:30 p.m. One states as follows: "On 18 Aug 03 @ 1220 hrs the detainee on [Redacted] block rioted over a complaint of a MP touching a Koran. The riot carried over to Charlie block, and detainee threw water/fluids on the MP guards. Medical was not needed."<sup>82</sup> The second report continues:

On 18 Aug 03 at approximately 1230 hours, detainee [redacted] was involved in a block disturbance in reaction to an MP accidentally knocking the Koran out of detainee [redacted] surgical mask while searching the cell. During the disturbance, [redacted] through [sic] cups of water on the MP staff. One MP reported to medical to be decontaminated as she suspected there to be body fluids in the fluid thrown.<sup>83</sup>

The reports make clear that throwing water is recorded as a disciplinary violation, yet, attempted suicide is not.

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<sup>82</sup> DETAINEE REPORT 521 (on file with author).

<sup>83</sup> DETAINEE REPORT 520 (on file with author).