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JUMAH AL-DOSSARI: WHAT INDEFINITE DETENTION WITHOUT CHARGE OR TRIAL LOOKS LIKE

*Joshua Colangelo-Bryan**

I first went to Guantánamo in October of 2004.¹ At that point, only a couple of other lawyers had been there, so these attorney visits happened in somewhat uncharted territory. I, like most of you I imagine, had heard statements from members of the Bush administration about who was being held at Guantánamo. I had heard that they were the worst of the worst. I had heard that they were the best-trained, most vicious killers on the face of the planet.

So, I'll admit that as I was about to walk into my first meeting with a Guantánamo Bay detainee, I had a moment of trepidation. I wondered if I was going to be sitting alone with someone who was dedicated to killing Americans.

I walked into the room and I saw Jumah al-Dossari. Jumah's about 5'6". He probably weighs 140 pounds. Perhaps more importantly, he had a huge smile on his face and, in a mix of English and Arabic, immediately welcomed me and thanked me for coming. That certainly went a long way towards easing my anxiety.

We started talking and it immediately became clear that he was starved for human contact. He talked as if he hadn't seen anyone for a long time. After an hour or so, I was feeling almost entirely comfortable and he certainly seemed to feel the same. Whatever nerves I might have still had were completely calmed when I was about to leave for a break. As I was walking out the door, Jumah smiled and in heavily accented English, said "see you later alligator." It may be naïve, but I figured someone who was intent on killing me probably wouldn't have told me "see you later alligator."

Naturally, during that first meeting we talked about Jumah's experiences at Guantánamo. I tried to listen critically as I do with any client, whether he's at Guantánamo Bay or not. And, I'll admit

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¹ These remarks were delivered at the New York City Law Review symposium, "Guantánamo Bay: The Global Effects of Wrongful Detention, Torture, & Unchecked Executive Power," on March 23, 2007, in New York City.

that there were a couple of things Jumah told me that I felt somewhat skeptical about.

For example, he said that he had been chained to the floor of an interrogation room and that a female interrogator had wiped menstrual blood on his body and face. I don't mean to sound sexist, but it was really hard to imagine a woman doing that. Jumah also told me that he had been beaten unconscious by an immediate response force, the anti-riot squad at Guantánamo. He pointed to a scar on his nose that he said was the result of the beating. Now there had been stories about people being roughed up, but I thought that if detainees were regularly being beaten to the point of unconsciousness, there would have been stories about people dying or at least suffering from very serious injuries.

The interesting thing is that a couple of months later, I was looking through some documents that the military had released as a result of the Freedom of Information Act litigation. I found a memo written by an FBI agent at Guantánamo and the memo reflected the agent's interview of a detainee.² In this memo, the agent recounts a detainee's description of a beating by an immediate response force³ that was just like the description Jumah had given to me about his beating. In the memo, the FBI agent noted that the detainee had a recent wound on the bridge of his nose.⁴ Shortly after that, a book was published by Erik Saar, who had worked for the Army at Guantánamo.⁵ In the book, Saar talks about a detainee, who we know is Jumah, describing his face as being "black and blue" after a beating by an immediate response force.⁶

In that same book, Saar also describes being an interpreter during an interrogation where a female interrogator wiped red dye on a detainee, pretending that it was menstrual blood.⁷ The Pentagon also issued a report later confirming that this technique, if you can call it that, had been used at Guantánamo.⁸ So I'll admit that

² FBI Memo (on file with Author).

³ *Id.*

⁴ *Id.*

⁵ ERIK SAAR & VIVECA NOVAK, *INSIDE THE WIRE: A MILITARY INTELLIGENCE SOLDIER'S EYEWITNESS ACCOUNT OF LIFE AT GUANTÁNAMO* (2005).

⁶ *Id.* at 99–103.

⁷ *Id.* at 225–28.

⁸ Carol D. Leonnig & Dana Priest, *Detainees Accuse Female Interrogators: Pentagon Inquiry Is Said to Confirm Muslims Accounts of Sexual Tactics at Guantanamo*, WASH. POST, Feb. 10, 2005, at A01, available at <http://www.washingtonpost.com/ac2/wp-dyn/A12431-2005Feb9?language=printer>.

subsequent to that first meeting with Jumah, I was much less skeptical about the things he told me.

One of the issues that we discussed during our first meeting concerned the conditions that Jumah was being held under. He told me that he was in Camp 5, a maximum security prison.⁹ In Camp 5 detainees live in solid-wall cells. They can't see out of the cells. They can't speak to anyone outside of the cells except through a small food tray slot in the door. And they can't even do that when large industrial fans are running in the hallways as they often are. Jumah said that he got out of the cell a couple of times a week for exercise. He said that all he had to read in the cell was the Koran and some censored letters from his family. Essentially, he was spending twenty-three to twenty-four hours a day alone in his cell with nothing other than a single book to occupy himself.

The isolation that he felt and described to me became a theme of our meetings and he talked about it during subsequent trips that I made to Guantánamo. In March of 2005, at the end of another session during which we had talked about these issues, Jumah looked me in the eye and in a very quiet voice asked, "What do I do to keep myself from going crazy?"

Well, the court case, as many of you know, was dragging on at that point as it still is today.¹⁰ As a result, each time I went to Guantánamo, I had to report that very little had happened in terms of our efforts to get Jumah a court hearing.

On October 15, 2005, I was back in Guantánamo, a full year after my first visit. Jumah and I sat talking as we normally did. After about an hour, Jumah said that he needed to use the bathroom. I guess that sounds simple enough, but like everything else at Guantánamo, it isn't. For Jumah to use the bathroom, I had to call MPs [Military Police] into our meeting area. The MPs would unshackle him and move him to a small cell which is located right next to our meeting area. Between the cell and the meeting area is a steel mesh wall. You can see through the wall because it's mesh, but since it's steel, it's very strong. It certainly can't be moved.

When Jumah asked to go to the bathroom, I called the MPs in and I left. The MPs moved Jumah from the little meeting area over

⁹ Kathleen T. Rhem, *Detainees Living in Varied Conditions at Guantánamo*, AMERICAN FORCES PRESS SERVICE, Feb. 16, 2006, <http://www.defenselink.mil/news/newsarticle.aspx?id=25882> (describing Camp 5, completed in May 2004, as a state-of-the-art prison, composed of four wings of 12 to 14 individual cells each).

¹⁰ A petition for *habeas corpus* was filed on Jumah's behalf in July 2004. No court had heard the merits of this petition by the time that Jumah was released from Guantánamo Bay in July 2007.

to the cell where the bathroom is and then they came out and one of them waited with me. Privacy is a big issue for the detainees. Many of them had spent years without having any privacy when they used the bathroom. For that reason, I'm always as conscientious as I can be about not disturbing a client's privacy when he's going to the bathroom. So I waited, expecting to hear Jumah yell out at some point that he was ready. A few minutes passed. I didn't hear anything. Still, I didn't want to intrude because I know that's something that happens to people regularly there. After a few more minutes, still without any word from Jumah, I began to feel a little anxious.

I decided it might be insensitive but I cracked the door to make sure everything was okay. The first thing I saw was a puddle of blood on the floor. I looked up and I saw Jumah hanging by his neck from the top of that steel mesh wall on the cell side of that wall. I ran over to him and yelled his name as loudly as I could, but he didn't respond. At best I could tell he was completely unconscious. His eyes were rolled back in his head, his lips and tongue were swollen and there was blood all over his face. Now you have to remember, I was two inches from him. I could see him perfectly clearly through this mesh wall, but I couldn't get to him because the door to that wall was locked.

I called the MPs, who came in and after fumbling around to find the right set of keys, opened the door to the cell. They cut the noose from around his neck and laid him down on the floor. He didn't seem to be breathing at all. I yelled that somebody should do CPR and at that point was told by the sergeant of the guard that I had to leave. Rather than arguing, I just left. As I was walking out the door, I heard a small gasp from Jumah, which I took to be a good sign at least.

I walked across the camp compound to a small building which was the attorney waiting area. After about twenty minutes I saw Jumah being carried out of the compound on a bloody stretcher. After talking briefly to military investigators, I was sent back to the quarters where lawyers stay at Guantánamo. Later that night I got a phone call from a military lawyer who said that Jumah had been in surgery to close the gash in his arm. The lawyer said that Jumah was stable, but that he was sedated and that I wouldn't be able to see him again during that visit.

When I got back to the States, we immediately sent a request to the military. We asked that Jumah be moved out of isolation. We asked that he be given books to read. We asked that he be

allowed to see a DVD from his family in which they would urge him not to hurt himself. I can't say that I was surprised that the military ignored our request completely.

We then went to the court and moved for the same relief. In late 2005, after we fully briefed and argued the motion, a law called the Detainee Treatment Act was passed.¹¹ The Act, arguably, deprived courts of jurisdiction over habeas claims by Guantánamo detainees. As a result, the judge in our case said he didn't know if he had jurisdiction over the case and he wasn't going to make any ruling on our motion at all.

A few weeks later I went back to Guantánamo and met with Jumah. He apologized to me. He said that he really had wanted to die because life at Guantánamo was so intolerable. He said that he wanted to kill himself while I was there so that I could be a witness. He said that otherwise nobody would ever know what had happened to him.

We were supposed to see Jumah for three straight days during that trip. On the morning of the third day, we were told that we wouldn't be allowed to see him. We protested that this was not a good idea in the context of someone who was suicidal, but were told that nothing could be done. The following day, Jumah tried to kill himself by slashing open his arm.

I saw Jumah again in January 2006. I was allowed only a one-day visit with him. He said the purpose of Guantánamo was to destroy people and that he'd been destroyed. He said he didn't trust anyone any more. He said that he couldn't take any more isolation. He said that he had done his best and just wanted to rest.

I spent seven hours with Jumah that day, using every argument I could think of as to why he shouldn't kill himself—as to why he should retain some hope. While he understood what I was saying, I left that meeting thinking that Jumah would try again to end his life.

On March 11, 2006, he did. He jammed the lock to his cell door, took a razor and slashed open his leg and his throat, leaving deep scars.

When I saw him a month later, I did everything I could to convince him not to hurt himself. Ultimately, though, it's hard to make arguments like that to people who've been held for five years, who've been told they may be held for the next fifty years,

¹¹ Detainee Treatment Act of 2005, Pub. L. No. 109-48, § 1005, 119 Stat. 2739, 2742 (2005).

who've been told that they'll never see their families again, and who've been told that they'll die at Guantánamo. Certainly the promise of a fair hearing, which is what we brought with us when we first went to Guantánamo in October of 2004, was hardly something we could say much about two years later.

When the military reported there had been detainees at Guantánamo who had committed suicide in June 2006,¹² naturally my first thought was of Jumah. I soon learned that he was not one of the people who had died. Still I was struck by the comments made by commanders at Guantánamo. Admiral Harris,¹³ who is the head of the Joint Task Force-Guantánamo, said that the suicides were acts of "asymmetrical warfare."¹⁴ A State Department official said that the suicides were good public relations.¹⁵

I don't know what drove those three men to commit suicide if, in fact, that is what happened. But I certainly know, from personal experience, that if you hold people indefinitely, and tell them that they'll never leave Guantánamo, tell them that they'll never have a fair hearing, tell them that they have absolutely no rights at all, you are creating circumstances under which, inevitably, people will become hopeless and desperate. You create circumstances where inevitably people will try to harm themselves. Certainly that concern has never been greater for me than when it comes to Jumah.

¹² James Risen & Tim Golden, *3 Prisoners Commit Suicide at Guantánamo*, N.Y. TIMES, June 11, 2006, <http://www.nytimes.com/2006/06/11/us/11gitmo.html?ex=1307678400&en=e52b7beeedb32be1&ei=5090&partner=rssuserland&emc=rss>.

¹³ Rear Admiral Harry B. Harris, Jr., J-3 Director of Operations, U.S. Southern Command, <http://www.navy.mil/navydata/bios/navybio.asp?bioID=136> (last updated Sept. 6, 2007).

¹⁴ Barbara Starr, *Admiral: Gitmo Suicides a 'Planned Event'*, CNN, June 11, 2006, <http://edition.cnn.com/2006/WORLD/americas/06/10/guantanamo.suicides/index.html>.

¹⁵ David S. Cloud, *State Dept. Disavows Statement on Suicides*, N.Y. TIMES, June 13, 2006, www.nytimes.com/2006/06/13/us/13gitmo.html?_r=18&pagewanted=print&oref=slogin ("Taking their own lives was not necessary, but it certainly is a good P.R. move." Ms. [Colleen P.] Graffy [deputy assistant secretary of state for public diplomacy] said, 'It does sound like this is part of a strategy—in that they don't value their own lives, and they certainly don't value ours; and they use suicide bombings as a tactic.'").