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Charles R. Church is an attorney who devotes most of his efforts to human rights issues: detention, torture, the facility at Guantanamo Bay, habeas corpus, etc.
His website is: www.churchlawllc.com
Email him at: charleschurchllc@gmail.com

The 9/11Capital Prosecution at Guantanamo: Reflections on my week at its war court

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By Charles R. Church

Part 1 of 2

Four hours of open court time hardly seem to warrant all the arranging and traveling that went into my recent week at Guantanamo to observe and write about pretrial proceedings in the 9/11 case. Especially given the characteristics of the wasteland in which we lived, and where Camp Justice resides:

Extreme heat; arid and almost featureless terrain, save for scattered scrub growth; high chain-link fences topped by razor wire; sniper towers; Quonset-shaped tents for sleeping (frigidly, even with several clothing layers including long johns, a winter jacket, my ski hat and a winter blanket I purchased at the Navy Exchange), or where latrines or showers were housed, also with arctic-like temperatures. (The gigantic, roaring ACs with 3-foot-across flexible ducts traversing the length of the tents were installed to keep out the banana rats.) A few military buildings, designed for function, aesthetics be damned. The ugliest of these was the court complex, consisting of modular units filled with electronic gear transported to the Naval base, bolted together to resemble a squat warehouse, then surrounded by holding cells, checkpoints and more fencing and razor wire. An abandoned airfield, with an obsolete hangar nearby, standing vacant save for a media center for press conferences and our "Internet Cafe," two spare rooms with a fridge for beer, a couple of tables, and ledges along the walls for laptops, so that (very slow) Internet connections might be used.

My experience was enriched, however, by time spent with the lead defense attorneys for four out of the five 9/11 detainees. The night we arrived, Jay Connell hosted a barbecue at his home for other defense lawyers and our group of observers. (Connell is so whip-smart, that one of his team swore he's got a computer chip in his head, and another believes Connell must be a cyborg). Walter Ruiz, with his legal team, devoted almost two hours to a Q&A session with us.

I happened to share a shuttle bus seat during our trip from the plane to the ferry with a laconic gent. He turned out to be David Nevin, chief counsel for Khalid Shaikh Muhammad

(KSM), who thanked me for coming. (I figured he had it backwards; I should have thanked him.) And one evening, at O'Kelly's pub, my friends and I sat next to the avuncular James Harrington, who had just spent hours in court debating whether he could remain in the case. Only Cheryl Bormann was missing from the list. The wraithlike Bormann (her head-to-toe black abaya made her seem so, especially because—seated behind her—I never saw her face), I heard, is not the sociable type.

From these scattered encounters with the war tribunals and the lawyers who toil in them, I came home with new, deeper understandings about life at the war courts.

The attorney-client relationships are fragile in the extreme, no matter how much effort the lawyers put into developing trust with their clients, and how skillfully and tenaciously they advocate in their behalf. Consider, for example, the challenges Walter Ruiz faced when he was appointed chief counsel for Mustafa al Hawsawi, an alleged co-conspirator in the 9/11 case who was captured in 2003, then dispatched to a series of CIA black sites, where he was tortured.

Ruiz, a reservist Navy Commander, first visited Hawsawi while decked out in his uniform — the uniform of the prisoner's enemy. (Later, Ruiz obtained permission to wear a civilian suit.) His goal was to start building trust with Hawsawi, trust that was essential to Ruiz's ethical duty zealously to endeavor to save his client's life. The lawyer began by telling Hawsawi he would never lie to him. Not once, no matter what. Later, when Ruiz introduced a new team member to Hawsawi, the captive asked him various questions, some of which dealt with personal matters.

After the meeting, Ruiz confronted the new member, saying he had lied to Hawsawi to protect personal details. He directed the new addition to return to the cell, and confess the lie to Hawsawi, which he did. The incident ended well: of the defense team members, Ruiz told us, that person now enjoys the closest relationship with Hawsawi.

Next time, Church will continue his description of the fragility of attorney-client relationships at the military commissions; even after trust has been created, external events conspire to extinguish it.

Charles R. Church is a human rights lawyer who, as a Senior Fellow at the Center for Policy and Research, Seton Hall Law, recently spent a week at Guantanamo, serving as an observer/journalist at pretrial proceedings for the 9/11 case.

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Reflections on my week at the war court

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The 9/11 Capital Prosecution at Guantanamo
By Charles R. Church

Part 2 of 2

Last time (12/24/15), Church described how fragile attorney-client relationships are at the military commissions, even after great effort has been put into nurturing a feeling of trust. Now he tells how, despite those efforts, external events may destroy that trust.

Despite the efforts by the attorneys to create trust between the accused and themselves, external events threaten that trust at every turn. CIA listening devices disguised as smoke alarms were discovered in the conference room where lawyers confer with their clients. The CIA secretly was monitoring all proceedings until Judge Pohl ordered its connection dismantled. A former CIA translator at a black site somehow was appointed as the personal interpreter for a 9/11 defendant. FBI agents infiltrated another defense team in the 9/11 case, to interrogate members and then force them to sign non-disclosure agreements to cover up the stunning intrusions. Then the tribunal shut down all hearings for more than 18 months, so the consequences of the FBI's invasions might be sorted out.

A prisoner's everyday life compounds the difficulty. Solitary confinement, standing alone, is no picnic; some deem it torture, when extended for a time, and these prisoners have endured that isolation for years. Surprising — sometimes shocking — events disrupt the war tribunal's schedule. We learned that straightaway, as the first matter on the court's calendar that week was never even reached. (See below).

On one occasion, when Judge Pohl scheduled a rare weekend session in the 9/11 case, a defendant failed to receive notice, so he couldn't attend. The reason? A government contractor refused to work on weekends, so word never was sent to the prisoner.

When I was there, bin Attash complained that the temperature in his holding cell nearby the courtroom had been set too low; he was becoming hypothermic. When he asked the guards to adjust the thermostat higher, they laughed.

Jay Harrington has raised with Pohl numerous times that his client, Ramzi bin al Shibh, feels vibrations and hears noises in his cell at night which prevent his getting sleep. As a

result, he feels so debilitated that at times he cannot make it to court.

These never-ending threats to the lawyer-client relationship can inflict real damage. Capital defense lawyer Richard Kammen had represented Abd al Rahim al Nashiri, the alleged ringleader of the infamous attack on the U.S.S. Cole, as his lead counsel for years — brilliantly, in my view — when Nashiri decided to fire him. Only later did he relent. Then, in the opening minutes of the first hearing in the 9/11 case in over 18 months, Walid bin Attash startled all present by asking Pohl directly how the commission would conduct its business, should he decide to represent himself.

According to chief counsel Bormann, bin Attash had lost trust in his attorneys because life in the detention camp feels like a continuation of his torture. Bin Attash took over: “We have so many problems in the [detention] camp that take precedence over anything we are discussing here in court. We are still in the [CIA] black sites.” Bormann said bin Attash believes that “everything is orchestrated by the [U.S.] Government [to take] away his ability to make voluntary decisions.” He thinks the government wants “to push him to stop challenging what’s going on in this commission.”

He doesn’t know whether a CIA or FBI member might be part of his legal team. Bin Attash’s question about self-representation threw Pohl’s plans for the week into the dustbin. (Later, Pohl would deny bin Attash’s request to fire Bormann, since he was not able to prove good cause for doing so. However, with few exceptions, his defense counsel will have to do bin Attash’s bidding.)

Humor bursts forth even in the seemingly endless, troubled and at times even “snake bit” prosecution seeking to kill the five men claimed to have conspired to inflict the horrendous 9/11 attacks. That’s what I learned from speaking with Harrington over drinks.

In the courtroom, his client, Walid bin al Shibh, and the legal team occupy a counsel table immediately behind that of the notorious KSM, the alleged mastermind behind the 9/11 attack, who has boasted of personally beheading the journalist Daniel Pearl. Harrington described the banter that goes on between KSM and him.

When Harrington argues a point to his liking, KSM congratulates him, saying something like “My lawyers should be as good.” Or when Harrington disappoints KSM, making an argument he disagrees with, the featured defendant playfully derides his performance.

In sum, life at the war courts resembles a brutal version of Alice’s world in the rabbit hole — outlandish beyond measure.

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