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Dispatch from Guantanamo

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By Charles R. Church

“This is another fine mess you’ve gotten us into,” Oliver Hardy used to tell his pal, Stanley Laurel, in mock disgust. If really pressed, Stanley’s face would crumple, then he’d begin to cry. Day 1 was not really a fine mess, but I and other “NGOs” — people from non-governmental organizations who, some scholar imagined, would cry hosannas to the world about the military commissions if they got to see them — did rise at 5 a.m. at the inaptly named Quality Inn to be picked up by our minder, er, escort, Samantha (“Sam”). She drove us in her capacious van across the drag strip of a highway, through the Main Gate of Andrews AFB, and finally to the air terminal, as we began our journey to witness a week of proceedings (or so we hoped) in the 9/11 death penalty case.

Even before the takeoff was delayed for well over two hours on account of a mysterious “paperwork problem,” like Ishmael, I felt a deep sense of foreboding, as I see the military commissions as a failed experiment. But also like Ishmael, “whenever it is a deep, drizzly November in my soul ... then I account it high time to get to sea as soon as I can.” In my case, to have my third look at a military commission in action is getting back to sea.

Day 1 only counted as that because all counsel convened with Judge Pohl to set up the plan for the week. James (“Jay”) Connell, lead attorney for Ammar al Baluchi, KSM’s nephew, who had invited the NGOs to a Saturday night barbecue, laid out for us the plan just fashioned by the judge. But like many such plans, this one might be knocked into a cocked hat for, at the military commissions, surprises come at nearly every bend in the road.

On Day 2, Sunday, we NGOs actually did something, for not long after high noon (cut to Frankie Laine singing “Do not forsake me....”), we sat down with Brigadier General (“BG”) Mark S. Martins, the vaunted Chief Prosecutor, to hear the latest edition of his upbeat progress report on the 9/11 case. While one has to search hard for any reason to feel optimistic about what’s going on in this case (recall its 18-month shutdown on account of the FBI’s still unexplained but half-witted effort to turn a member of one legal defense team into an informant, or the realization by a defendant that his new, commission-assigned translator had served as a CIA interpreter years before at a secret black site where he was tortured), one can count on the general to come up with something positive. Would he continue in that vein?

Sorry for the tease, but I can't tell you. For the first time in my experience, a precondition to the meeting was that the "Chatham House Rule" would apply. I had never heard of the rule, so I looked it up. I can't attribute any statement to the general, nor can I link any question to an NGO. Strictly speaking, I can't even tell you who imposed the rule. Probably I can describe questions without identifying the NGO, but even if a question suggests an interesting point of view, that's of little value absent the response by BG Martins. So, without my even being aware of it, my hands cleverly had been tied. Well played, general!

Shortly after noon on Day 2, we learned that the cocked hat scenario had prevailed. Walid Bin Attash, who is said to have run a camp where two 9/11 assailants trained, has spent the better part of a year trying to get rid of his lawyers. In a normal case, that's easy. You just fire them and represent yourself, unwise though that may be. But where so much of the evidence is classified, and the defendants have not been and will not be cleared to have access to such information, self-representation is not an option.

Last fall, Judge Pohl decided that Bin Attash had not made a sufficient case for dispensing with his lead counsel, Cheryl Bormann. (Bormann, an excellent advocate, evokes special fascination for onlookers, since she appears in the courtroom dressed in a black burkha. Indeed, I have never seen her face, since the NGOs sit at the rear, and she has not turned around when I've been there.) Now Bin Attash would try to ditch Michael Schwartz, his second-ranking attorney, for reasons I didn't know, but expected to learn the next day, for that attempt had been included in Judge Pohl's plan for what would be heard publicly.

But on Sunday night, we received word that Monday's proceedings for would be closed to the public, and on Monday were told that the closed session had lasted only 20 minutes! Finally, at least for now, late on Monday we learned — on Twitter, no less — from a defense team member and Miami Herald journalist Carol Rosenberg, that Tuesday morning's session would be closed as well. But, it seems, no such session took place.

As of Tuesday noon, we expected to attend court the following morning. Stay tuned, for one never knows.

Charles Church is a Salisbury-based human rights lawyer who travels to observe Guantanamo's military commissions under the auspices of Seton Hall Law's Center for Policy and Research. During his stay at the base, Church is sending dispatches describing the events to this newspaper.

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