

TriCorner News

from *The Lakeville Journal*,
The Millerton News and *The Winsted Journal*

Published on *TriCornerNews* (<http://tricornernews.com>)

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[Home](#) > Dispatch from Guantanamo

Dispatch from Guantanamo

Wed, 08/10/2016 - 4:49pm [Field Notes From A Battleground](#) [1] [Opinion/Viewpoint](#) [2]

Day 5 of military commission proceedings in the 9/11 case—July 20, 2016

By Charles R. Church

“We spent almost the entire day, July 20, in court, as Judge Pohl and the lawyers grappled with Walid Bin Attash’s latest attempt to rid himself of a key player on his legal team. Why would he want to do that in a case where the government wants to kill him?”

Carol Rosenberg in the July 18 Miami Herald reported Cheryl Bormann’s theory. Bormann, as you’ll recall from my last dispatch, is Bin Attash’s lead counsel. Since she wears a head-to-toe black burkha, I had never before seen her face, but I saw it often today. Bormann, it turned out, did not even sit at the Bin Attash team’s counsel table, because he wants no part of her. She blamed her client’s distrust of the independence of the commission system (a distrust I share, though not to the same extent, and not for the same reasons) and his attorneys, because of a series of episodes (see my last dispatch for examples; there are many more) that would frighten any death penalty defendant, and the secret details of his detention. (Think torture.) Also, his mother died last year in Saudi Arabia, before the prison could get its act together to arrange a monitored video call with her.

Officially, Bin Attash was to ask Judge Pohl to allow him to ditch Bormann’s second in command, Michael Schwartz. But today, even before Judge Pohl was done recording what players were present, Bin Attash jumped up, gesticulating, to air his grievances against his lawyers.

Pohl, a preternaturally calm man, looked out and said: “Mr. Bin Attash, we’ll get to your issue. Mr. Bin Attash, sit down. Sit down. Sit down.” There were a couple more “sit downs,” as I recall. Since a few of the many guards who line the courtroom wall had surrounded him and because Pohl was so unruffled, Bin Attash — a smart fellow — finally sat down.

Pohl confirmed in a colloquy with Bin Attash that he does not want Michael Schwartz as his attorney. Remember, Schwartz has been the second-in-command on the Bin Attash legal team for over four years; his loss would detract enormously from the “institutional memory” of the team.

Bin Attash complained that, since February, he has had neither meetings nor communications

with any of his attorneys. (At whose instance, he failed to say, but I believe he refused to have any contact.) Bin Attash had given them “one more chance to resolve the problems, but they have not.” (Probably, he meant all the problems with the war tribunals.) Since Pohl’s decision last fall that he could not fire Bormann, Bin Attash said, “They feel powerful... Now if I have to meet with attorneys I am afraid I lose control (over his own actions).” He would not attend court with the current team.

“Do you want Ms. Bormann on your case?” Pohl continued. “No.” (As noted, Bin Attash’s ability to fire Bormann was litigated last fall, and Pohl ruled that he had not shown good cause to do so. The loss of Bormann would have a huge impact, since she is the statutorily required “Learned Counsel” — an experienced capital defense attorney — and finding a replacement, according to one informed estimate, might take 3 years.) “Do you want Mr. Perry (a newly detailed junior attorney) to be your lawyer?” Bin Attash didn’t know, since Perry might be under the control of Bormann and Schwartz.

There ensued an arcane debate among lawyers, including Chief Defense Counsel Brigadier General John Baker (who, though not a member of the Bin Attash team, is the only lawyer the prisoner has been speaking to), that only an attorney could love, but probably would not. Needless to say, the prosecution team and the defense lawyers did not agree. Right now, I can’t think of a time when they have agreed on anything remotely controversial.

Pohl then resumed speaking directly with Bin Attash, who wanted to re-litigate the Bormann issue. “There is no way I can sit at table with Bormann. Not to meet with her, not to talk with her.”

But Pohl wouldn’t go there. And, uncharacteristically, since proceedings couldn’t continue until the dispute was resolved, he made his decision immediately from the bench, rather than writing an order with a statement of his reasons that he would issue later on. He brought the focus back to Schwartz, ruling that Bin Attash had not shown good cause to dismiss him. Motion denied.

Humane man that he plainly is, Pohl recessed early, at 3 p.m., “in view of Bin Attash’s ‘emotionalism.’”

Will Bin Attash be able to pull himself together, so he can work with attorneys he claims to loathe? Or will he refuse to come to court? For answers, we must await the morning.

Why do I inflict this account upon you? Because I want to demonstrate one of the reasons why these military commission proceedings may never reach trial. Here, an entire court day was devoted to a dispute that arose solely from shenanigans by the government, including CIA intrusions in the case. And those shenanigans could only have occurred in the war courts.

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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