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## Dispatch one: 9/11 military commission proceedings, Day 1, Oct. 19 The 9/11 capital prosecution at Guantanamo: yet another surprise

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By Charles R. Church

Onlookers who did their homework had to be keyed up by what they read on the docket sheet for today. First on the list of matters to be argued would be the effects of the astonishing April 2014 infiltration of at least two legal defense teams by the FBI, which interviewed staffers on those teams, then insisted that they sign non-disclosure agreements which forbade them to discuss the intrusions with anyone. Fortunately, at least one interviewed staffer, who no doubt recognized the seriousness of the attorney-client and related privilege trampling that had taken place, revealed the transgression to his/her superior on the team.

This brought the case to a standstill, as attorneys asserted that a conflict of interest had just been thrust upon them: zealously protect their clients, as they ethically are required to do, or (even unconsciously) ease up, since they themselves might be targeted criminally. Though to me the delay has been both unwarranted and unconscionable (consider the victims and their families seeking closure), no pretrial hearings have taken place in this critically important case for 18 months while this problem was being sorted out.

A Special Review Team (SRT) had been appointed, and first thing today the SRT did was to present its findings. Would that resolve the conflict-of-interest so, at long last, the case could proceed, or — and little money backed this possibility — might Judge Pohl decide that the case had been inalterably compromised and could not continue?

When the military commission last convened in this case (over 18 months ago, as said), the week began with a stunner. Ramzi Bin al Shibh stood up at once, declaring that he didn't trust his new personal interpreter, whom he recognized as a CIA translator from his interrogation under torture at a black site. Another defendant backed him up. How could that be imagined, even in the never-never land of the war courts? They're still sorting the matter out with, no surprise, much finger-pointing involved.

This morning opened with a different surprise that brought proceedings to a halt after a mere 58 minutes of court time. Mubarak Bin Attash blind-sided even his own counsel by inquiring of Judge Pohl what commission procedures would apply, should he decide to represent himself, rather than be represented by the legal team that had defended his life for years. Learned Counsel (a lawyer with capital-case expertise, required for each defense team by commission rules) Cheryl Bormann told Judge Pohl that her client had not spoken to her in weeks, and that he had lost confidence in his attorneys. (Bormann, a civilian, attained a certain notoriety long ago by wearing a black abaya — a garment covering the body head-to-toe, excepting the face, worn by Islamic women — to court so as not to offend the defendants and enhance her ability to build trust with her client. Today, every civilian woman at the counsel tables had covered her hair, at the least). The 18-month delay in hearings played a major role in that loss of confidence, she believed, even though his lawyers had no control over that.

After a 30-minute break for Bin Attash to consult with his legal team, Bormann took the position that she felt unable to advise her client because of the obvious conflict of interest, and threw the problem back to Pohl. The judge, in turn, adjourned the proceedings so he and the various legal teams could consider what his colloquy with Bin Attash, in which the court would attempt to ensure that the defendant understood the pitfalls of self-representation, should look like.

Of course, zero progress had been made on the matters expected to be dealt with, including the crucial argument over what impact the FBI's intrusions would have on the case.

*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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