

Valentine's Day with Khalid Sheikh Mohammad

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By Charles R. Church

Most have seen and been repelled by Khalid Sheikh Mohammad's (KSM) photo on the front of some tabloid or elsewhere. It was taken when he was captured in 2003, before his imprisonment at secret black sites by the CIA, who waterboarded him a record 183 times and otherwise tortured him, before transferring him to Guantanamo in 2006. Round-shouldered and burly, his thick black hair disheveled and his wide-necked shirt revealing still more hair covering his entire upper body, his mustachioed and haggard face projecting defiance, he seemed to be central casting's dream choice for a thuggish villain role. The highest-value detainee of all, KSM confessed at Gitmo to having directed and planned the 9/11 onslaughts "from A to Z." And he made himself over while there. Festooned in a long white robe, his head swathed in a colorful scarf, with a long, henna-dyed beard and an intense though strangely gentle gaze, he now resembles a prophet more than a mass murderer.

I plan to return to Gitmo on Feb. 14 (See "My Week at Guantanamo's War Court" at the Kindle Store to read about my previous trip), to observe and write dispatches about pretrial hearings in the 9/11 case, the capital prosecutions by military commission of KSM and four others allegedly behind the attacks on the World Trade Center and the Pentagon, and the aborted strike by flight United Airlines Flight 93. On my first visit I had attended the war tribunal proceedings for Abd al Rahim al Nashiri, best known as the alleged author of the highly lethal attack on the USS Cole. For this lawyer, that week was special, but the next one will exceed even that. For KSM and I have a personal relationship, though I have yet to see him.

I first met KSM, through his admitted handiwork, on 9/11. I had been called to jury duty, so that morning I rode the IRT down Manhattan's west side toward the courthouse. When I arrived at the Chambers Street stop, a strange scene awaited me. Instead of people crowding onto and off of the train, or hustling up or down the stairs in full rush-hour mode, hundreds packed the platform, moving nowhere, leaving barely enough space for anyone to exit the train. I noticed some folks mounting the stairs, but they shrieked and ran down again. I threaded my way through the crowd and climbed the stairway to look around. Then I saw it. Six blocks south, flames had burst out near the top of the World Trade Center's north tower. Wondering what might have caused that, I

headed east toward the courthouse. Not yet knowing that the flames were nourished by super high-octane jet fuel, I hoped the fire could be put out soon, despite its large expanse. A few moments later, the south tower also was aflame. As I think back, I'm not certain whether I saw the jetliner strike the second tower (though I think I did), but once I beheld those new flames I knew that these were no freakish fires, we were under attack.

Still not grasping the magnitude of what was unfolding, I kept walking to the courthouse. When I had mounted the many steps to the entrance, I told the guard that I was reporting for jury duty. Startled, he smiled and waved me away, saying: "Go home!" Getting the drift at last, I hoofed it north to the Christopher Street loft of a friend, to contact my 12-year-old son's school on West 64th St. It was closing, I was told, so I should come fetch him. But my friend and I climbed to the roof of his building first, and I believe it was then that I beheld the south tower collapse, and the huge dust cloud start rolling uptown. I needed to get to my son at once.

I already knew when I reached the street that the subways had been shut down, and taxis were nowhere to be seen. But the emergency had worked its magic on the town, where people normally rush around, mostly oblivious to each other. Private cars with space were offering rides to strangers, so I jumped into one. When the driver announced he was turning right toward Queens, I climbed out and — mirabili dictu — a cab stopped right before me and the passenger emerged. A quick trip to the school and safety from that toxic cloud suddenly were assured.

My family was safe, but we realized something momentous had befallen our home. The next day or so, we walked over to Engine Company 40, Ladder Company 4's firehouse, where the firefighters generously used to allow Tristan, then age 7 or 8, to climb up into the driver's seat, and work the siren a bit. But this was a condolence call, for the companies had lost five men on that terrible day. Deeply moved, we spoke quietly to a few firefighters out front, and I wrote a check for the bereaved families. New York City, which often feels so heartless, had become a place where people cared deeply about strangers who had suffered such mind-numbing losses.

Part 2 continues below ...

Charles R. Church is an attorney practicing in Salisbury who focuses primarily on Guantánamo Bay, detention, torture, habeas corpus and related issues.

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Missed Valentine's Day with Khalid Sheikh Mohammad

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By Charles R. Church

NOTE: Hours before I was to depart for Andrews Air Force Base early Friday, Feb. 13, an email arrived from the Office of Military Commissions. Judge Pohl had cut short the scheduled two weeks of hearings in the 9/11 case, recessing it until April. The case already had been stalled for seven months due to the stunning discovery that the FBI secretly had been interrogating members of Ramzi Bin al Shihb's defense team, causing his attorneys to cry foul. Depending on the reason for the FBI's investigation, the lawyers might have a conflict of interest, being themselves jeopardized for representing their client zealously.

Early Monday, Feb. 9, 2015, when hearings at last resumed, before resolution of the conflict of interest question could even begin, another shocker disrupted the case further. Bin al Shihb declared that his translator was untrustworthy, since he recognized him from his imprisonment at a secret CIA black site. The man had worked for the CIA as an interpreter! Three other defendants backed up Bin al Shihb's claim. That set the prosecution and defense lawyers to angrily pointing fingers at each other. Judge Pohl ordered the recess so this new predicament could be sorted out. For me, given the 9/11 case's history of unusual troubles, this cancellation did not come as a total surprise. I hope to attend hearings in the near future.

After a week, I felt a compelling need to see the devastation at the World Trade Center. Even though I knew that yellow tape circumscribed ground zero to keep people blocks away, the worst of the toxic dust had dispersed, so down I went, a protective face mask in my pocket. Finding a block where no police were around, I slipped the mask on and walked over to the site, thinking up excuses I might give if intercepted. I arrived and beheld the heap of rubble in the crater where the towers had stood, and where my wife and I recently had enjoyed an anniversary dinner at Windows on the World, the tony restaurant 107 stories above. I gazed upon the carnage for a time, then headed for home.

But I still didn't fathom how deeply and lastingly the attack had affected me until several years later, around 2009. I had recently begun my second legal career as a human rights lawyer,

focused on Guantanamo, detention, torture and the like, and was networking feverishly. Joe Margulies replied to my letter to him, and we spoke on the phone. Margulies was a star among lawyers representing detainees, for he was among the first to join the struggle to ensure that they would receive fair and legal treatment, whatever they might have done. When Gitmo opened, Bush and his people insisted that the prisoners had no legal rights, hence they could have no contact with attorneys. Margulies and others challenged that and beginning in 2004 the Supreme Court agreed with them. Hence, he already was a hero to me. Margulies referred me to a lawyer at the Center for Constitutional Rights, whom he thought might need help. I telephoned her with modest expectations, since I had no experience in the field. I was thrilled when she offered what seemed a golden chance to join the legal team representing Mohammed al Qahtani, a name scarcely known to the public but a very big deal to human-rights types.

Readers may recall that one of the four planes hijacked on 9/11 — United Airlines Flight 93, the one that crashed into a Pennsylvania field — was shy a man. Twenty jihadists, five for each of the four aircraft, were assigned to the attacks, but one never made it. Al Qahtani had tried to enter the U.S. at Orlando Airport just a few weeks before, but was turned back. Some claim that Mohammed Atta, later one of the best-known hijackers, awaited him beyond customs. Al Qahtani, therefore, has been dubbed the “20th hijacker.” Not long after 9/11, al Qahtani was captured, when the government realized whom they had let go. He was dispatched to Gitmo, where the specially devised torture visited upon him was so ghoulish that a madman could have conceived it. As a predictable result, al Qahtani was reduced to a psychotic state, lying naked in a fetal position in the corner of his cell, speaking aloud to no one.

The offer to be on the team representing him was so unexpected and exciting that I agreed at once. I would be in the thick of the battle to ensure fair treatment for detainees. But that night I began to wonder whether I had been so fortunate after all. If al Qahtani meant to join the very 9/11 assaults that had wrought so much havoc on my home, how could I represent him with the zeal that lawyers owe their clients? No matter that his assigned plane did not attack Manhattan, he was a part of the 9/11 team, he was my enemy. The next morning, deeply chagrined, I called the CCR attorney to explain that I couldn't do what I had committed to the day before.

I have little doubt that finally meeting Khalid Sheikh Mohammad — though we will be separated by bullet-proof glass — will affect me. I only wish he were being prosecuted in a federal court, as had once been the plan, rather than by a military commission which can only dispense an inferior kind of justice: “Victor's justice.” And the legal issues spawned by the novel war tribunals are so numerous and complex that even that “victor's justice” will be delayed years longer, while the families of the dead and wounded yearn for long overdue resolution.

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