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In every ointment there's a fly, or so it seems

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By Charles R. Church

The good news came on June 15, 2016. I had been invited for the third time to attend pretrial hearings at the Guantanamo Bay Military Commissions. For the second time, I would observe the proceedings in that most exciting of legal circuses, the 9/11 case. It's not that the proceedings bring to life the Platonic ideal of justice being done that stirs me so. Rather, the excitement exists because one never knows what to expect. Wonderful surprises startle the onlooker at nearly every turn. As I think back, those CIA-implanted listening devices secreted in smoke alarms in the conference room where defendants and their lawyers convened (we had turned them off, came the military's sorry reply) come to mind. Then there was the translator formerly employed in a secret CIA "black site" (think torture, but you probably know that) who — surprise, surprise — somehow became an interpreter for a 9/11 case defendant. Until the fellow recognized him, that is.

Other wonders have appeared, but I'll stop after recalling the FBI's astonishing yet still unexplained decision to infiltrate the legal team of a 9/11 defendant to explore whether any member(s) had committed one or more crimes. That shenanigan shut the 9/11 case down for 18 months. The sworn charges for the case were filed more than four years ago, and one forecast puts the trial date in 2025. I am beginning to think that the real date will be "never," since the well-respected Karen Greenberg, Director of Fordham Law's Center for National Security, recently called on Chief Prosecutor Mark S. Martins to declare the war court experiment a failure, and close the commissions down.

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What's in store this time? First, there's the matter of whether the Military Commissions court building and its environs might soon become a Superfund site on account of the carcinogens in and around Camp Justice. (I'm probably exaggerating, since I've not seen that prediction anywhere). On April 13, Carol Rosenberg reported in the Miami Herald that a Feb. 13 health risk assessment had surfaced for every location where the bulk of my time has been and will be spent. The intention is to explore the link between time spent at Gitmo and an increased likelihood of developing cancer, as Lawfare's Francesca Procaccini put it on June 6. This news

captured my attention, so I sought out the assessment, titled in classic military style: "Preliminary Public Health Screening Risk Assessment Report — Camp Justice." (They still keep the name for that lawyer's nightmare of a venue. Some wag might simply paint "IN" before the second word, but in the military bad things happen to such wags).

Reading the Executive Summary to the Report inspires one to pay close attention. While the buildings, tents and trailers where people live and work preliminarily were deemed habitable, environmental records for the camp were "limited." In sum, "at this time the potential cancer risk and non-cancer health effects associated with Camp Justice and any final conclusions ... cannot be determined." Not exactly comforting, and Ms. Procaccini's reporting didn't help. She pointed to an April report revealing that soil samples tested for benzo(a)pyrene, "a highly carcinogenic material that is linked to scrotal cancer," were 78 percent positive.

Some were taking no chances. According to Rosenberg in the Herald, Marine Brigadier General John Baker, who oversees the war court defense teams, forbade his staff to live in the trailers at the former McCalla airfield, where they had stayed, until he received "a clearer explanation of the health risk associated with living at [the camp], and how any remedial measures will mitigate those risks." His people could, however, work there. And former Major Michael Schwartz, an attorney for one of the 9/11 defendants, said: "[A]bsent further information, I don't anticipate returning to that courtroom."

However, as Rosenberg noted on May 20, Brig. Gen. Baker later lifted his ban, since formaldehyde levels in the trailers' ventilation system had been reduced by about 70 percent. However, Walid bin Attash's defense team wasn't buying it. The team filed a motion advising that its members "are unwilling to be frogs in a pot of water that may very well be boiling. None of the parties to this case should learn 20 years from now that [the camp] turned out to be as toxic as some hypothesized in 2016."

On another sour note, counsel for Khalid Shaikh Muhammad ("KSM") filed a no-holds-barred motion on May 10 asking Judge Pohl to throw himself, BG Martins and the entire prosecution team off the 9/11 case and for a replacement judge to shut it down. The judge, the motion argued, had secretly authorized the prosecutors to destroy important exculpatory evidence, leading KSM to respond: "First they tell us they will not show us the evidence, but they will show our lawyers. Now they don't even show the lawyers. Why don't they just kill us?"

On May 24, the prosecution thundered back that "much of [the motion] is defense-manufactured nonsense, but that does not stop [counsel] from spewing on about prosecutor-judge 'collusion'."

Karen Greenberg, as reported on June 8 by Spencer Ackerman in The Guardian, called the prosecution's filing an indication that the military commission had run aground: "The incensed tone and rhetoric of this document belong more to a schoolyard brawl than a courtroom debate."

I can't miss the fun. I'm going.

Charles Church is a 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

upcoming stay at the base, Church will be sending dispatches describing the events to this newspaper.

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