

THE GITMO SHRINKS FIND THEIR SUPER EGO AND COWBOY UP

As several of you have noted, there has been a rather significant event at the [Gitmo Show Trials](#). Lt. Colonel Diane M. Zierhoffer, a US Army psychologist who ordered the illegal torture of a juvenile, Mohammad Jawad, invoked her right not to incriminate herself and refused to testify in the case of Mohammad Jawad. [She took the Fifth](#).

Her testimony was sought by defense attorney Maj. David Frakt in a hearing on his motion to dismiss charges based upon government misconduct in using prolonged isolation, sleep deprivation, and other torture techniques against his client in an attempt to make him more pliable in interrogations. Following a month-long isolation, apparently recommended by the military psychologist, Mr. Jawad – who entered Guantánamo as a teenager – attempted suicide.

The psychologist's testimony would have marked the first time that a member of the secretive Behavioral Science Consultation Team (known as BSCT or "biscuits") had been called to testify in a detainee hearing. The BSCT program has been highly controversial among psychologists and other health professionals. The psychologist invoked her rights under Article 31 of the Uniform Code of Military Justice, the military equivalent of the 5th amendment right against self-incrimination/right to remain silent.

"The fact that the BSCT Psychologist now apparently recognizes that her conduct was criminal in nature is very

significant," said Maj. Frakt. "We have alleged, based on classified government records that the BSCT psychologist's recommendation led directly to the illegal abuse and inhumane treatment of Mohammad Jawad. This invocation of the right to remain silent seems to confirm that."

"The evidence in this case confirms our worst fears, that military psychologists are working to break down detainee's psyches," said Dr. Stephen Soldz, an expert psychologist who had been called by Maj. Frakt to testify that the BSCT psychologist had violated the professional credo of "Do no harm."

Zierhoffer's, and her fellow colleagues in the BSCT biscuit brigade, apparently have an operational definition of "Do no harm" with which I am not familiar. It would appear that "Do no harm" is fully operational as to her own self interest, but not to the humane interests of the powerless vulnerable souls she, and they, are ethically and morally obligated to protect.

The relevant professional association, the American Psychological Association (APA), has been having a fairly interesting [internal discussion](#) on how stridently the group will disapprove and sanction the gross ethical failings of the biscuit brigade members. There is also a lot of excellent information and background at the blog [Invictus](#) (See: [here](#) and [here](#) for instance). Invictus is run by a chap known as Valtin, a practicing psychologist in Northern California who is very passionate and dedicated on these issues. It is about time that a professional group is serious about policing the lapses of their own; kudos to the APA members standing up on this issue.

For me though, the more germane interest is in what effect Zierhoffer's, and others that will undoubtedly be following in her footsteps, invocation of the right against self

incrimination will have on the Gitmo Show Trial Process, both as to Jawad and subsequent proceedings. I cannot discern that there is any reporting, as of yet, as to how the parties and court are going to deal with the substantial issue of a material fact witness, Zierhoffer, refusing to testify. It *should* create a profound commotion.

The traditional tried and true response from a competent criminal defense lawyer would be to immediately formally demand on the record that the prosecution provide the necessary level of immunity to negate the witness's self incrimination potential (very much the same concept as has been seen in the Congressional hearings with Monica Goodling; remove their criminal exposure, and they no longer have grounds to refuse testimony). The standard prosecution response to this is "No". The next step is to then move the court to immunize the requisite witness and/or compel the prosecution to do so. The standard response from the court to this motion is abject denial on the grounds that the court does not have that authority absent a request by the prosecution and, further, lacks the authority and discretion to order the prosecution to make such a request.

Having laid the prerequisite foundation described immediately above, the defense then moves the court to dismiss the charges against the defendant on the grounds that he has been denied his [Sixth Amendment](#) Confrontation Clause right to confront and cross examine witnesses and right to compulsory process for obtaining witnesses in his favor. There is a fairly high burden for the defendant to prove that the denied testimony is sufficiently material and central to his defense that he cannot adequately defend himself without it. This is a very simplified explanation and description, but hopefully is sufficient to give an indication of what to expect. The other caveat I would make is that my vignette is taken from a traditional Federal or state criminal case and the "relaxed" rules of procedure and evidence in the Gitmo

Show Trials may portend additional problems to the interjection of this type of dismissal motion tactic.

It will be fascinating to see what the full impact of Zierhoffer's refusal to testify is, both as to Jawad and later cases.

One other tangential goody I am going to throw in here just for grins. This again comes from [Valtin at *Invictus*](#).

The depth and depravity with which the Bush/Cheney neocon warhawk aggressor machine has co-opted and corrupted the institutions, associations and professions that compose the fabric of this nation is simply astounding. The DOJ, the judiciary, the regulatory and administrative agencies and framework, private enterprise. They literally consume and soil every thing they touch. Here at Emptywheel, we have focused mainly on the institutions and, lately, the professions as to lawyers and now doctors and psychologists/psychiatrists. How bad is it, and how far have they gone? Well, now they have swallowed up Indiana Jones too. Yep, the Bushco Borg collective has assimilated the anthropologists. From a report by Hugh Gusterson at the [Bulletin of the Atomic Scientists](#):

The Pentagon plans 26 Human Terrain Teams—one for each combat brigade in Iraq and Afghanistan. The five-person teams include three military personnel. Each team also includes an anthropologist—or another social scientist—who will wear a military uniform and receive weapons training. Described as doing "armed social work" by David Kilcullen, an Australian expert in counterinsurgency who advises Gen. David Petraeus in Iraq, the teams elicit information from villagers for Pentagon databases and provide cultural orientation to U.S. military leaders...

Last year, the Executive Board of the American Anthropological Association

(AAA) issued a statement condemning the use of anthropologists in Human Terrain Teams...

One cannot grasp AAA's concerns without understanding that anthropologists have a unique research method that brings with it special ethical responsibilities: We engage in what one anthropologist has called "deep hanging out" with people, passing the time with them, often day after day for months, painstakingly earning their trust and getting them to tell us about their worlds. What distinguishes anthropology from espionage (apart from anthropologists' impenetrable jargon) is that we seek the consent of our subjects, and we follow an injunction to do no harm to those we study. According to the anthropological code of ethics, our obligations to those we study trump all others—to colleagues, funders, and nation.

Marvelous. This ought to present a whole new level and meaning to the concept of rewriting history, even for accomplished rewriters like the Bush/Cheney pack of rats. As [Valtin](#) [observes](#):

Meanwhile, U.S. Army personnel are showing up at meetings of anthropologists and [taking down names](#) and institutional affiliations of anthropologists who had signed a [public pledge](#) not to participate in "counter-insurgency operations in Iraq or in related theaters in the 'war on terror,'" believing that "anthropologists should refrain from directly assisting the US military in combat, be it through torture, interrogation, or tactical advice."

The U.S. ruling class's mobilization of all layers of civil society for the

fear-driven defense of the nation against "terror," is leading to the militarization of the society as a whole. We are already far down this path... too far, such that many sober observers would already call the United States "fascistic."

I would stop short of making that judgment, but we may be closer to it than anyone would like to think.

Our nation is in a world of hurt, and full public accountability for the malefactors that put us there is a large and necessary part of the cure. We need it now Ms. Pelosi; the *sole* substantive requirement of your sworn oath to office is to "support and defend the Constitution of the United States". Either quit being derelict in duty, and start honoring your oath and duty, or get out of the way for somebody that will.