

HOW TO STAGE MANAGE A SHOW TRIAL

Michelle Shephard reports on an effort Omar Khadr's military lawyers are making to win clemency for their client. (h/t JL) Much of it focuses on the role psychiatrist Michael Welner, who testified that his interview with Khadr proved he'd never give up violence, played. As Jeff Kaye showed at the time, Welner's report on Khadr showed an anti-Muslim bias. Khadr's lawyers were able to rip Welner's testimony to some degree.

Thus far, the defense has shown Welner didn't read one of the studies he relied on for his Khadr profile, shown his work was not peer reviewed, and challenged Welner on his research methods: "Your sample size was Omar Khadr?"

But they're apparently arguing that they were told not to challenge Welner's expertise more generally (presumably to exclude his testimony), because if they did it would endanger the plea deal they had negotiated for Khadr.

In a 40-page motion obtained by the *Toronto Star*, Khadr's lawyers argue that testimony from Dr. Michael Welner was "unscientific" and "designed solely to inflame and mislead the jury."

Lawyer Army Col. Jon Jackson and Air Force Maj. Matthew Schwartz also claim that prosecutors threatened to revoke Khadr's plea deal if they challenged Welner's credentials as an expert witness.

[snip]

At a time when Guantanamo's military commissions are under renewed scrutiny concerning the upcoming trial of the alleged 9/11 conspirators, one of the

most damning allegations is a claim that the prosecutors had the convening authority's permission to rescind Khadr's plea deal, if defence lawyers tried to get Welner's testimony excluded as unreliable.

In a separate memo, obtained by the *Star*, the convening authority denies any discussions or agreements were made with the prosecution. "Please provide a response limited to this allegation of prosecutorial misconduct," states the March 29 memo to Navy Capt. John Murphy, Guantanamo's Chief Prosecutor, written by Michael Chapman, the legal advisor to the convening authority.

So here's what this suggests: The government made a plea deal with Khadr's lawyers (eight more years, but after one year he'd be transferred to Canada, if they'll take him). Then it had a show trial featuring a frothing psychiatrist arguing that Khadr would never give up his allegedly Muslim aggression. Normally, defense attorneys could easily exclude such testimony from a trial based on key scientific issues like peer review. But Khadr's lawyers, allegedly, were put in the position such that if they wanted to preserve Khadr's 8 year deal, they would have to limit their complaints about Welner.

In other words, the government made a deal: it'd release Khadr to Canada after a year, if his lawyers would pretend to go along with the trial at which a psychiatrist could make claims about Khadr's innate violence, leading jurors to give Khadr 40 years. It wasn't just the fake sentence: much of the trial was all for show. It was the appearance of antagonistic sides and the credentials of the frothing psychologist.

Can you imagine what fantastic frothing witnesses we'll get to see in the 9/11 trial?

Update: Welner's spelling and credential fixed,

per JMinIA.