

TriCorner News

from *The Lakeville Journal*,
The Millerton News and *The Winsted Journal*

Published on *TriCornerNews* (<http://tricornernews.com>)

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Will military discipline defeat medical ethics?

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By Charles R. Church

You don't have to look far in the literature arising from Bush's "War on Terror" to find accounts of physicians (including psychiatrists), psychologists and behavioral scientists designing programs tailored to instill "learned helplessness" in prisoners while exploiting their psychological vulnerabilities (e.g., phobias) to break down their resistance to interrogation; monitoring interrogations to calibrate how much abuse a detainee could tolerate; turning over medical records to interrogators, and otherwise participating in prisoner abuse. These perpetrators — and I use the term consciously — may have committed these inhumanities while rationalizing that they were making our nation safer. Or perhaps they simply buckled to military authority. But in my years of study about detention and interrogation practices and those who participated in them, I recall nary a single such professional being punished.

Wholly different behavior came to light last summer, just before the Fourth of July. A Navy nurse stationed at Guantanamo refused to continue participating in force-feedings of hunger-striking detainees at the base, despite the possibility that he would be court-martialed. As Carol Rosenberg of the Miami Times reported on Aug. 28, 2014, such a military trial would have placed at center stage Gitmo's hunger-strike policy and the military's approach to the medical ethics issues inherent in force-feedings. But then Rosenberg told us on Sept. 15 that the Navy had chosen not to court-martial the nurse.

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The unidentified lieutenant, Rosenberg further stated, had claimed conscientious objector status, after handling months of nasogastric feedings of prisoners shackled into a restraint chair. What remains for determination is whether the nurse will be allowed to remain in the Navy and, if not, what his separation will look like. A Board of Inquiry will conduct a secret review over perhaps as long as nine months. The nurse, who is entitled to counsel and to call witnesses, must show cause why he should be allowed to remain in the service (rather than the Navy having to carry such a burden to separate him.)

According to Alex Ely's Nov. 20 report on Lawfareblog, the nurse's counsel emphasized that an early discharge from the Navy could result in the lieutenant's being ineligible for a military pension, since he has only 18 years of service. If discharged dishonorably, he might also be denied GI Bill and other veterans' benefits, while having his reputation damaged irreparably.

When the Navy elected not to court-martial the nurse, my initial satisfaction gave way to cynical musings when I saw that the Board of Inquiry's proceedings would be conducted behind closed doors. Was the service being level-headed, or was the predominant motive to avoid public exploration of its force-feeding practices that a court-martial would have required?

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The lieutenant has a number of powerful advocates behind him, one being President Obama, who stated in a May 23, 2013, speech:

“Look at the current situation, where we are force-feeding detainees who are ... on a hunger strike.... Is this who we are?... Is that the America we want to leave to our children? Our sense of justice is stronger than that.”

Before that, a July 11, 2011, New England Journal of Medicine essay titled “Guantanamo Bay: A Medical Ethics-free Zone?” decried force-feeding thusly:

“[T]he decision to force-feed prisoners [at Gitmo] is made by the base commander. It is a penological decision about how best to run the prison. Physicians [and nurses!] who participate in this nonmedical process become weapons for maintaining prison order.”

The authors then called the medical profession to arms:

“Physicians at Guantanamo cannot permit the military to use them and their medical skills for political purposes and still comply with their ethical obligations. Force-feeding a competent person is not the practice of medicine; it is aggravated assault.... [I]t's time for the medical profession to take constructive political action....”

On Oct. 17, 2014, the American Nurses Association wrote to then-Defense Secretary Hagel pointing out that its Code of Ethics “clearly supports the ethical right of a professional nurse to make an independent judgment about whether he or she should participate (in force-feeding) or any other such activity,” and that the military setting does not affect a nurse's ethical commitments. A month later, Physicians for Human Rights applauded the ANA's position.

And on Nov. 28, the U.N. Committee against Torture issued its observations on U.S. practices, stating:

“[F]orce-feeding of prisoners on hunger strike constitutes ill-treatment in violation of the Convention (Against Torture).”

It called upon our nation to cease force-feeding hunger-striking detainees who are “able to make informed decisions.”

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But wait, doesn't force-feeding prevent a detainee from killing himself? Isn't that a merciful and ethical action? Those questions, of course, ignore how the feedings are performed: the forced cell extractions (Carol Rosenberg calls the procedure “tackle and shackle”) sometimes employed without any need for such violence; the five-point restraining chair in which the captive is totally immobilized; then snaking a feeding tube up a prisoner's nose and into his stomach, with varying degrees of care, hardly qualify as merciful and ethical, especially where there has been no medical finding that a life hangs in the balance.

Most importantly, the questions ignore the powerful point made by Ron Meister, the nurse's counsel, on NPR on Nov. 19, 2014: "There's a distinction, which is recognized throughout the literature, between trying to commit suicide and being willing to risk death in order to make your views and your protests known."

Finally, the way the Navy has dealt with the nurse's situation begs what is becoming a tired question: If its force-feeding procedures are so humane, why insist on keeping them away from the public eye?

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