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Attorneys defending Abu Zubaydah, a Guantanamo prisoner designated as the first "high-value" detainee by the Bush administration, have finally gained access to three volumes of diaries he wrote while he was in the custody of the CIA and brutally tortured by agency interrogators and contractors at a secret "black site" prison.

The diaries, identified as volumes 7, 8 and 9, were written between 2002 and 2006 and total a little more than 300 pages. They were turned over to defense attorneys by the government late last year after [a lengthy legal battle](#), and are believed to contain detailed descriptions of the torture techniques to which Zubaydah was subjected.

The diaries are crucial to the defense, said one of Zubaydah's attorneys, Brent Mickum, because they will reveal locations of where Zubaydah was detained and identify people with whom he spoke, contradicting previous government assertions that Zubaydah was connected to and involved in the planning of terrorist plots against the United States. Zubaydah began keeping a diary in 1992 after he suffered a severe head injury while fighting communist insurgents in Afghanistan. The injury left "significantly impaired both his long- and short-term memory," states a January 14, 2009, court motion filed by Mickum.

"The information [in volumes 7, 8 and 9] is hugely important to us from an exculpatory perspective," Mickum said in an interview. "It will help establish that [Zubaydah] is not the person the government claimed he was. The diaries will allow us to ask for specific, targeted discovery that will prevent the Government from claiming that we're on a fishing expedition or that they shouldn't be inconvenienced and be forced to search for things that do not exist. These diaries will lend credibility to the fact that we are not on a fishing expedition. We believe that Zubaydah's diary, for example, will identify individuals who made exculpatory statements to Zubaydah and that there will be specific descriptions about that. Among other things, that is evidence to which we are entitled and we certainly will seek its production."

However, because the diaries are written in Arabic and US District Court Judge John Roberts' ruling did not state that the government was required to have the diaries translated, it is unlikely the defense will learn what Zubaydah wrote about his torture any time soon. A clerk who works for Roberts would not discuss any aspect of the judge's ruling.

Mickum said Roberts had previously ordered the government to provide translations of volumes 1 through 6 of Zubaydah's diaries, written before his March 2002 arrest in Pakistan. The government's case against Zubaydah is based heavily on entries contained in the first six volumes of his diaries, according to court papers.

While Mickum said he was concerned about the veracity of the government's translations, a translator he had previously hired reviewed it and thought they were good. However, there were "some issues" that arose, the extent of which Mickum cannot discuss because those early volumes of Zubaydah's diaries, while unclassified, have been designated by the government as "protected," thus preventing the public from seeing any of this information.

"Frankly, it's just another, in a long litany of classification abuses that the judicial system, for whatever reason, refuses to address," Mickum said.

It is unclear why Roberts did not require the government to provide translations for volumes 7, 8, and 9, which are top secret because they describe specific torture techniques and may also describe the interrogators who administered the torture, Mickum said.

Zubaydah has written 12 volumes of diaries thus far. Volumes 1 to 6 have been completely translated, while there are only partial translations for volumes 10, 11 and 12, which were written while Zubaydah was transferred to Guantanamo.

"The cost of translating these volumes is exorbitant," Mickum said. "I'm talking hundreds of thousands of dollars. There is only one translator who has top-secret security clearance and he is working on 30 other cases and goes to Guantanamo every week. It would cost us about \$1,300 for a six-hour day, a cost that does not include travel expenses."

Mickum said he received a \$253,000 grant from the JEHT Foundation that was used, in part, to help pay for the translations of earlier volumes of Zubaydah's diaries. However, Mickum could not obtain additional funds from JEHT, a charity that backed juvenile and criminal justice system reforms, because the organization had a majority of its assets invested with Bernie Madoff, and was forced to shut down. Madoff ran what government prosecutors described as the biggest Ponzi scheme in history and is now serving a 150-year sentence in federal prison.

The Special Prosecutor and Zubaydah's Drawings

Zubaydah was one of two high-value detainees whose interrogations between April and August of 2002 were captured on 90 videotapes that the CIA destroyed in November 2005 as public attention began focusing on allegations that the Bush administration had subjected "war on terror" prisoners to brutal interrogations that crossed the line into torture.

The destruction of the videotapes has been the subject of an ongoing investigation led by John Durham, a US attorney from Connecticut, who was appointed special prosecutor in 2008 by former Attorney General Michael Mukasey to probe whether crimes were committed by CIA personnel and others in connection with the destruction of the tapes.

During a recent meeting with Durham, Mickum said he learned that the special prosecutor had obtained drawings during the course of his probe that Mickum believed were Zubaydah's. In addition to the diaries, Mickum had previously sought from the Justice Department drawings Zubaydah made while in CIA custody. But the Justice Department told Mickum they could not locate the drawings.

"When I met with John Durham I discovered he had drawings, which, based on my review I believed were my client's," Mickum said. "The drawings were ultimately produced to us in late 2009."

The Justice Department would not discuss the drawings, diaries, or other issues related to Zubaydah's case.

Mickum said in lieu of the torture tapes, the drawings Zubaydah made contain the best description of the torture techniques CIA interrogators used against Zubaydah while he was being held at the agency's black site prison facilities. Mickum said he could not disclose how many drawings Zubaydah made nor could he discuss the content.

"These are a good group of drawings and he is a pretty good artist," Mickum said. "The depictions would be of interest. [Zubaydah] can draw and with great detail."

One of the lingering questions about the torture tapes is whether it showed CIA interrogators using techniques on Zubaydah that had not yet been approved by the Justice Department's Office of Legal Counsel (OLC). The OLC is where attorneys John Yoo and Jay Bybee had worked.

Yoo was the principal author of two August 2002 torture memos that Bybee signed, which gave the CIA the legal authority to torture Zubaydah using ten techniques, such as waterboarding, slamming his head repeatedly against a wall and forcing him to remain awake for as long as 11 consecutive days. Documents released last year showed that Zubaydah was [waterboarded 83 times](#) during the month of August 2002.

Mickum said he always contended the tapes showed Zubaydah being subjected to torture methods - particularly waterboarding - prior to the legal authorization issued by the Justice Department and that was one of the primary reasons the CIA destroyed the videotapes.

He said he's discussed this, as well as other issues, with Durham on at least four occasions. He described the special prosecutor as "professional" and "thoroughly engaged."

"Anytime I feel I have information that is relevant to his investigation I let him know and if he feels it's important he meets with me," Mickum said. "He never discloses anything to me. But he listens to what I have to say. I believe, based on my discussions with him, that he believes there was motive to destroy the videotapes. He did not tell me that. I also believe he has come to the conclusion that Zubaydah was tortured before [the August 2002] memo [was issued]. And I believe he has determined that the CIA exceeded directives in the torture memo. For all of those reasons, I believe [Durham] already concluded there was motive to support destruction of

those tapes."

Durham's office did not respond to several requests for comment.

"An Experiment"

Mickum's hunch appears to be correct. Several tapes that were destroyed showed CIA interrogators using a combination of brutal torture techniques against Zubaydah beginning in mid-April 2002, four months before these techniques were legally authorized in the notorious torture memos issued by OLC. Additionally, there were at least three videotapes that showed Zubaydah being waterboarded in late May and early June 2002.

That information is based on interviews conducted over the past 14 months with three dozen current and former officials at the CIA, the FBI, the Department of Defense, the National Security Council, the State Department and the Justice Department, who have intimate knowledge about Zubaydah, have seen classified documents related to his torture, as well as the raw intelligence reports leading up to his capture. Many of these current and former officials are also familiar with the Guantanamo Review Task Force's conclusions about Zubaydah. (An in-depth investigative report based on these interviews will be published at a later date.)

These sources, all of whom spoke on condition of anonymity because details remain classified, said one of the main reasons Zubaydah's early torture sessions were videotaped was to gain insight into his "physical reaction" to the techniques used against him, which was then shared with officials at the CIA and the Justice Department, who used that information to help draft the August 2002 torture memo stating what interrogation methods could be legally used, how often the methods could be employed and how it should be administered without crossing the line into torture.

For example, one current and three former CIA officials said some videotapes showed Zubaydah being sleep deprived for more than two weeks. Contractors hired by the CIA studied how he responded psychologically and physically to being kept awake for that amount of time. By looking at videotapes, they concluded that after the 11th consecutive day of being kept awake Zubaydah started to "severely break down." So, the torture memo concluded that 11 days of sleep deprivation was legal and did not meet the definition of torture.

"I would describe it this way," said one former National Security official. "[Zubaydah] was an experiment. A guinea pig. I'm sure you've heard that a lot. There were many enhanced interrogation [methods] tested on him that have never been discussed before we settled on the 10 [techniques]."

These officials claim that while there is some concern within the Justice Department about the details of Zubaydah's interrogations prior to August 2002 being revealed and leading to renewed calls for an investigation, there is greater unease with the fact that if the case moved forward it would expose the massive intelligence failure that took place in the last months of the Clinton administration and during George W. Bush's first term that resulted in Zubaydah at one point being named the No. 3 official in al-Qaeda and one of the planners of the 9/11 attacks.

The Justice Department, in its factual return, has since abandoned every major claim that the Bush administration made about Zubaydah being a high-level al-Qaeda official and no longer believes or contends that he was ever connected to the terrorist organization or was involved in the planning of any terrorist plots, according to Mickum.

Separately, the Senate Intelligence Committee is close to completing a yearlong review of the Bush administration's so-called "enhanced interrogation" program and may soon issue a report that contains the most detailed information to date about Zubaydah, which intelligence sources interviewed over the past two weeks said will "embarrass" Bush administration officials who continue to maintain that he was an important figure in al-Qaeda, and will debunk assertions from the likes of Dick Cheney that his torture produced actionable intelligence.