

ABU ZUBAYDAH'S HABEAS DOODLE

I want to make one more point about the interview Jason Leopold did with Jon Kiriakou last week. Jason asks Kiriakou about Dan Coleman's judgment that Abu Zubaydah's diaries reveal him to be mentally ill. Kiriakou agrees with Coleman that the diaries were written in multiple voices, but dismisses that by saying they were a creative outlet. (my transcription, starting around 24:00)

Those weren't diaries. ... They were journals and doodle books. He would write these letters to himself. They weren't **really** letters to himself. It was like a work of fiction. It was just something to relieve some stress and to be creative. Now if you read this as a diary, sure you're gonna say the guy's schizophrenic, he has split personalities, he's writing letters to himself. But they weren't diaries.

[Jason asks whether Suskind's description of the diary having three different voices is correct]

No, completely true. They were written, like I say, to himself, each personality to the other. But it was a creative outlet. It wasn't, they weren't the ramblings of a lunatic. It wasn't some insane guy that couldn't control insane voices in his head and had to get it all down on paper. It was a creative outlet, nothing more.

For someone critical of the CIA's waterboarding but still needing to rationalize his treatment, the claim the diaries are fictional offers a nice explanation for what—Kiriakou confirms—are multiple voices in the diary.

But that introduces a problem. As the government

stated repeatedly in a filing last year, they base most of their case for holding Abu Zubaydah on his diaries.

The Government filed a factual return and supporting material in this case on April 3, 2009. The Government's factual return included six volumes of diaries written by [Zubaydah] before his capture, in which [Zubaydah] recounts detailed information about his activities and plans. It also included a propaganda video recorded by Petitioner before his capture in which Petitioner appears on camera expressing his solidarity with Usama Bin Ladin and al-Qaida. The factual return does not rely on any statements made by Petitioner after his capture.

[snip]

Additional searches also would not be likely to produce significant additional information that would demonstrate that Petitioner's detention is unlawful, especially given that a large part of the Government's case for detaining Petitioner is drawn from diaries and a propaganda video that [redacted].

[snip]

The Government has satisfied the terms of CMO § I.E. 1(2) by providing Petitioner's counsel with copies of all statements by the Petitioner that the Government relies on to justify detention: specifically, a propaganda video and certified English translations of six volumes of diaries recorded by [Zubaydah] before his capture.

[snip]

Respondent acknowledged in the factual return that [Zubaydah] diaries indicate that he suffered cognitive impairment from a shrapnel injury for a number of

years. Factual Return ~ 23. Respondent has also searched for information materially undermining the reliability of the diary as required by CMO § LD.1, including any information that suggests that the passages relied upon by the Government did not recount true events, were not written by Petitioner before his capture as described in the factual return, or had a meaning other than the meaning accorded to them in the factual return.

If the diaries are meant to be transparently truthful, then then multiple voices suggest some mental instability on Abu Zubaydah's part. But if they're meant to be fiction, then the details the government has now cited as factual themselves must be treated as fiction.

And one of the few Americans to spend significant amounts of time with Abu Zubaydah before he was tortured has now stated, on the record, that he believes the diaries—or rather, doodles—are fictional.

A pity for Kiriakou. Elsewhere in the video he complains about being called to testify in the Scooter Libby case. I'm guessing, after this exchange, he's going to be asked to testify in Abu Zubaydah's habeas hearings in the very near future.