

THE US GOVERNMENT OWNS ABU-ZUBAIDA'S THOUGHTS

I just found an interesting article by Walter Pincus tucked away in the lower half of the Washington Post website. It contains no new or breaking news, but is an interesting description of just how far the government has run amok in their over-classification and demand to control information flow to the American people and the world.

Abu Zubaida's writings are being used against him but being withheld from the public. For example, within days of the Sept. 11, 2001, attacks, according to a summary of his diary entry read aloud at his military tribunal hearing on March 27, 2007, the Palestinian detainee wrote that he was buying and storing weapons as part of a plan that Osama bin Laden devised in expectation of U.S. military action.

At the tribunal hearing, which was designed to inform Abu Zubaida of the charges against him, a summary was read of an entry from early 2002 in which he wrote that he would wage war against the United States, using explosive attacks, attacking gas stations and fuel trucks.

In all, Abu Zubaida has nine handwritten volumes of diaries. Six of them, totaling about 1,500 pages, were written before he was captured, and three were composed after his capture. So far, the government has kept all nine volumes sealed, though they are apparently considered unclassified. Even the government's court motion on their status has remained sealed.

Marcy discussed the initial rumblings of this

back in May when Abu Zubaida's attorneys first raised the matter. It was at that point the government admitted it could not or would not produce key volumes of Abu Zubaydah's diaries in preparation for his Combat Status Review Tribunal hearing. As Marcy noted:

The whole filing is worth reading for the Kafkaesque situation it describes, in which AZ, whose memory is described to be completely dysfunctional, has been refused the sole record he has of the events of which he has been accused, even though at least three of those accusations come directly from his diary.

Abu-Zubaida's attorneys, because of the hyper degree of over-classification by the government, cannot fully discuss their case with their client, cannot discuss information learned from their client with their own investigators, experts and other potential witnesses, and cannot correct lies and misinformation the government has put in the public record about their client. This is a gross and intentional invasion of the attorney-client relationship and a denial of full and effective assistance of counsel.

How exactly has the government (yes, again it is *both* Bush *and* Obama, a oneness no longer shocking) effected this information and thought seizure?

While the executive order authorizing classification requires the information to be "owned," "produced," or "controlled" by the U.S. government, Abu Zubaida's attorneys say the Justice Department has made a novel argument, that "to detain a prisoner creates a new, parallel authority to classify any and all utterances made by that prisoner for the period he is incarcerated." "Control" means government control over the agency that originates the

information, not control over Abu Zubaida "by virtue of its power as a jailer," say his attorneys.

They acknowledge that the government controls access to their client and can limit his access to third parties but say that "authority to make information within a prisoner's knowledge secret does not similarly follow."

The critical implication here is on the ability of Abu Zubaida (and presumably other detainees) to form a defense, participate in their defense, and obtain a fair hearing in any forum, whether it is a Habeas action, a CSRT, military tribunal or federal court prosecution. This restriction of information and, literally to some extent thought control, by the government completely destroys any meaningful interaction with his attorney and places a choke hold on the ability of the attorney to represent his client. This is antithetical to the edicts the United States, and its justice system, is founded upon. Courts across the United States daily dismiss cases, sometimes at the behest of the government such as in the Ted Stevens prosecution, because the government is not forthcoming with evidence *they* possess. What does it say when the government blocks the ability of a detainee to use information *he* possesses? Kafka indeed.

Basically the US Government is of the opinion that it owns and controls the thoughts of Abu Zubaida and, presumably, anyone else within its dominion and control. The government feels free to use Mr. Zubaida's own information against him, yet will not let him use it in his defense. These are interesting times we live in.

UPDATE: I have just found the pleading just made public causing Pincus to write his article. It is a damning explanation of what is going on here and the deleterious effects upon Abu Zubaida, his attorneys and their ability to represent his interests under even nominal norms of justice. Here is the document as retrieved

from PACER. It is a very instructive read. A couple of key passages:

The Government is plainly attempting to prevent or delay the public recognition of exculpatory evidence. Indeed, as Petitioner has previously argued in its pleadings, and as has also been redacted from the public, Petitioner's post-arrest diaries, drawings, and other writings are a trove of exculpatory evidence.

and

According to information recently revealed by the Obama Administration, however, abu Zubaydah was not waterboarded once, but rather was waterboarded "at least 83 times during August 2002." Why shouldn't Petitioner be permitted to respond? There is no valid reason. The real explanation behind the Government's stance is merely the desire is to conceal violation of law, prevent embarrassment, and prevent or delay the release of information that does not require protection: for instance, if Petitioner were able to respond, he would inform the public that [redacted]...

How is Mr. Zubaida supposed to defend himself and how are his attorneys supposed to represent him under these conditions?