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PERIODIC REVIEW BOARD SUBSEQUENT FULL REVIEW, 04 FEB 2020
ZAYN AL-IBIDIN MUHAMMED HUSAYN, ISN 10016
PERSONAL REPRESENTATIVE STATEMENT

Good morning ladies and gentlemen of the Board.

I am the Personal Representative for ISN 10016, Mr. Zayn al-Ibidin Muhammed Husayn. Mr. Husayn and I thank you for the opportunity to present his case for this hearing.

Mr. Husayn is constantly engaged and involved with the PRB process. Mr. Husayn always attends our scheduled meetings, including meetings during Ramadan. Mr. Husayn has been courteous and respectful and on one occasion had lunch prepared for our meeting. Mr. Husayn is highly intelligent and humorous and has been willing to discuss any topic during our meetings.

In our most recent meeting we discussed a recent New York Times article as well as the movie "The Report". I asked if he thought his story was represented correctly and he explained that if you add in the actual Senate Select Committee on Intelligence Report there are bits of truth in all of them but some artistic license had been taken.

We often speak of what Mr. Husayn will do if he is released from GTMO. Mr. Husayn has been awarded approximately 300K Euros which can be used to support himself. Even though he is very educated, has a background in computing, and could operate in a multitude of businesses, Mr. Husayn aspires to be a writer.

Mr. Husayn believes living in Northern Ireland or South Africa would be best for him since those countries understand the struggles he has faced as a Palestinian.

Mr. Husayn would like to reiterate from his initial hearing that he has never been a member of al-Qa'ida, even after multiple invitations including one from Usama Bin Laden. Mr. Husayn has also explained to me that during his initial hearing there were translation issues that led to misrepresented answers to some of the Board's questions.

Mr. Husayn is a proud Palestinian and no longer has the will to be a foot soldier in any conflict. He believes that a non-violent approach using his skills as a writer would be the best way to support his people. This alone shows a change in his mindset from his youth.

Mr. Husayn has decided not to make an opening statement today and feels it is better to answer your questions directly. We thank you for this opportunity and look forward to answering questions from the Board.

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PRS Oral Statement


Abidin Muhammad Husayn ("Abu Zubaydah") is being held incommunicado in order to conceal the truth about the creation of America's torture program.

I speak for Abu Zubaydah, currently held as a high value detainee.

If the truth were known, America would never have a torture program and Abu Zubaydah would have been released years ago. Instead, our history is burdened by having created a torture program and Abu Zubaydah is held incommunicado in order to cover up the circumstances upon which the torture program rests.

The decision by the Office of Legal Counsel to approve the use of Enhanced Interrogation Techniques (EITs) on Abu Zubaydah was allegedly based on intelligence received from the CIA.² One memorandum from Deputy Assistant U.S. Attorney General in the Office of Legal Counsel (OLC), John Yoo, to the Acting General Counsel for the CIA, John A. Rizzo, included a disclaimer concerning the veracity of the statements provided by the CIA:

"Our advice is based upon the following facts, which you have provided to us. We also understand that you do not have any facts in your possession contrary to the facts


² In July of 2002, Yoo contacted John Rizzo at the CIA to personally tell him of the approval for six EITs: attention grasp, walling, facial hold, facial slap, cramped confinement and wall standing. *The Report of the Constitution Project's Task Force on Detainee Treatment*, The Constitution Project 144 (2013) (citing DOJ Office of Prof'l Resp. Report, *Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of 'Enhanced Interrogation Techniques' on Suspected Terrorists* 53 (July 29, 2009), available at <http://cdm266901.cdmhost.com/cdm/ref/collection/p266901coll4/id/2317>).

Yoo was waiting on further CIA information to address other EITs. *Id.*

outlined here, and this opinion is limited to these facts. If the facts were to change, this advice would not necessarily apply.”³

The “facts” provided by the CIA were false and known to be false when written.

Before addressing all the false allegations and the facts that prove their falsity, it is important to make clear the extent to which the CIA has a conflict when it comes to considering the release of Abu Zubaydah. Just prior to the initiation of the torture techniques the CIA sent two cables, as reported by the SSCI in its Executive summary. The first cable sought assurances that if Abu Zubaydah should die during the torture that he would be immediately cremated. The second and most relevant ones for the purpose of this hearing was the assurance that if he did not die, that he be held incommunicado for the rest of his life. Thereafter, he has only be able to speak to his torturers, his jailers and his lawyers. And his lawyers are severely constrained about what information that he provides they may share with the public.

So, before the torture began the CIA, one of the agencies represented on this panel, had asked for and received an assurance that Abu Zubaydah must be held incommunicado for the rest of his life. And yet the representative of the CIA sits on the very panel charged with determining whether and when he might be released. Thus, the CIA has the most egregious conflict that could be imagined, and its representative must be recused from participating in any decision pertaining to Abu Zubaydah. I ask that the CIA be recused.

³ Memorandum from Jay S. Bybee to John Rizzo, *Interrogation of Al Qaeda Operative* (Aug. 1, 2002), available at dspace.wrlc.org/doc/bitstream/2041/70967/00355_020801_004display.pdf. Note that this memorandum included ten EITs, three more than the six EITs discussed between Yoo and Rizzo. *Id.*; *The Report of the Constitution Project's Task Force on Detainee Treatment*, supra note [], at 144. These ten EITs include attention grasp, walling, facial hold, facial slap, cramped confinement, wall standing, stress positions, sleep deprivation, insects placed in a confinement box and the waterboard. *Memorandum from Jay S. Bybee to John Rizzo*, supra note [].

After all the CIA has a great deal of reason to want Abu Zubaydah to be held incommunicado for the rest of his life. That is because the fabrication of the facts used to justify the creation of the torture program would no longer be held incommunicado.

Before addressing the known falsity of the facts presented by the CIA, I should note that the treatment of Abu Zubaydah subsequent to his capture has soiled everyone who has been involved in his case. That includes this panel's prior consideration. One personal observation is this panel's refusal to adjourn his previous hearing for 10 days when I requested the extension because my wife was dying. She died 4 days later.

The New York Times recently addressed the treatment of Abu Zubaydah in a major editorial which followed a front-page New York Times story about the details of the torture that was inflicted upon him. The editorial admonished all American citizens "Don't Look away" from the pictures of his treatment. The instruction "Don't Look Away" speaks to this panel not only because of how he was treated by why he is still being detained incommunicado.

Please "Don't Look Away" from the UN Security council's decision to unfreeze his assets and especially the report from the UN Reporter which thoroughly and precisely exposed the previous panel's reasoning for refusing to release Abu Zubaydah. The Security Council's report exposed the truth about the previous PRS decision. That decision and its rationale were a mockery of the PRS's own purpose, duty and its procedures

But please also, "Do Not Look Away" from the other entities that also found as the UN did. For instance, "Do Not Look Away" from the EU decision to unfreeze his assets, the two decisions of the European Court of Human Rights awarding Abu Zubaydah over 100,000 Euros against both Poland and Lithuania because they permitted Abu Zubaydah to be tortured there. And of course, the Senate Select Committee on Intelligence's Executive Report which found that the

CIA, and others, allegations against him were false. And finally, please “Don’t Look Away” from the CIA’s own admission, after the SSCI report was completed, but before it was published, that Abu Zubaydah was not a member of Al Qaida.

If the CIA had described Abu Zubaydah accurately, he would have been released long ago. Please “Do Not Look Away” from the extent of the false facts that were alleged against Abu Zubaydah.

What follows is a list of the facts that the CIA presented to the Department of Justice to obtain permission to torture him.

What follows is a list of the “facts” that the CIA presented to justify its request for permission to torture and then the truth refuting the knowing falsity of each of the facts will be addressed thereafter. The basis upon which each of the corrections of the false claims is consistently from government documents.

1. CIA’s purported allegations against Abu Zubaydah:

The numerous allegations against Abu Zubaydah set forth in this memo are generally extracted from the July 24, 2002 Psychological Assessment to John Yoo and are inconsistent with available evidence. The allegations contained in the document include descriptions of Abu Zubaydah as:

1. “third or fourth man in al-Qa’ida”;
2. author of “al Qa’ida’s manual on resistance techniques” and lecturer on the topic;
3. “involved in every major al-Qa’ida terrorist operation”;
4. “operational planner for the millennium plot” and Paris Embassy;
5. “planner of the 11 September hijackings which killed and maimed thousands of Americans”;
6. “senior Usama Bin Laden lieutenant”;

7. A “key role in the movement and training of operatives on behalf of al-Qa’ida, the Egyptian Islamic Jihad, and other terrorist elements inside Pakistan and Afghanistan”;
8. “involved in ongoing terrorism planning against US interests”;
9. manager of a network of jihad training camps and “Deputy Camp Commander for al-Qaida training camps in Afghanistan”;
10. Involved in the USS Cole Bombing and American Embassy attack in Yemen⁴
11. Providing information on a dirty bomb that led to the arrest of Jose Padilla.

The authoritative official government documents make clear that these are all false. By way of example consider the claim of his membership and rank in Al Qaida.

Third or Fourth in al-Qa’ida

Prior to the capture of Abu Zubaydah, the CIA acquired intelligence based on single-source reporting that he was “the third or fourth” highest ranking al-Qa’ida leader.”⁵ That information was retracted in July 2002, prior to using EIT’s on Abu Zubaydah.⁶ Other CIA databases indicated the Abu Zubaydah was not a senior member of al-Qa’ida.⁷ After Abu Zubaydah was subjected to EITs, the chief of the base wrote, “I do not believe that Abu Zubaydah was as wired with al-Qa’ida

⁴ Detainee Assessment 2008. Note that the information provided by the CIA to the OLC that “Zubaydah is one of the highest ranking members of the al Qaeda terrorist organization,” the OLC condoned the use of ten EITs, including waterboarding. *Memorandum from Jay S. Bybee to John Rizzo*, supra note [5].

⁵ SIC Report at 465; Fax from [Redacted to John Yoo, *Draft Psychological Assessment of Zain al-‘Abodin al-Abideen Muhammad Hassan, a.k.a. Abu Zubaydah* (July 24, 2002), available at <https://www.aclu.org/torturefoia/released/082409/olcremand/2004olc4.pdf>.

⁶ Id.

⁷ Id.

as we believed him to be prior to his capture.”⁸ An August 2006 CIA assessment stated that the reporting, “miscast Abu Zubaydah as a ‘senior al-Qa’ida lieutenant.” The assessment further stated “al-Qa’ida rejected Abu Zubaydah’s request in 1993 to join the group.”

FBI interrogator Ali Soufan wrote, in reaction to the psychological assessment listing Abu Zubaydah as a high-ranking al Qaeda operative, “To this day, I don’t understand how anyone could write such a profile. Not only did we know this to be false before we captured Abu Zubaydah, but it was patently false from information obtained after we captured him.”⁹

The CIA Office of the Inspector General commented on the lack of quality CIA information prior to interrogation:

The Agency lacked adequate linguists or subject matter experts and had very little hard knowledge of what particular Al-Qa’ida leaders – who later became detainees – knew. This lack of knowledge led analysts to speculate about what a detainee ‘should know,’ [versus] information the analyst could objectively demonstrate the detainee did know. [REDACTED] When a detainee did not respond to a question posed to him, the assumption at Headquarters was that the detainee was holding back and knew more; consequently, Headquarters recommended resumption of EITs.¹⁰

“Soufan said that he saw this play out during his interrogations of Abu Zubaydah: ‘Abu Zubaydah is not an al-Qaeda member. We knew that at the time, but the moment we arrested Abu Zubaydah,

⁸ Id. at 466; *See also*, Ali Soufan, *Black Banners*, 411 (“To people who knew what they were talking about, the insistence that Abu Zubaydah was the number three or four in al-Qaeda was flatly ridiculous.”)

⁹ ALI SOUFAN, *BLACK BANNERS* 428 (2011).

¹⁰ CIA, Office of the Inspector General, *Special Review, Counterterrorism Detention and Interrogation Activities* 83 (May 7, 2004), available at <https://www.aclu.org/human-rights-national-security/cia-office-inspector-generals-may-2004-counterterrorism-detention-and>.

the President was saying he's the number three guy in al-Qaeda.' According to Soufan, this contradicted both the intelligence about Abu Zubaydah from the investigation of the millennium plot, and documents captured with Abu Zubaydah. But CIA analysts 'convinced themselves he's number three' and that '[if] he's not admitting he's number three, then he's not cooperating. Well, 83 sessions [of waterboarding] and he admitted he's number three.'" Abu Zubaydah stated the following after the torture in his Guantanamo Bay combatant status review tribunal: "I say, 'yes, I was partner of BIN LADEN. I'm his number three in al Qaida and I'm his partner of RESSAM.' I say okay but leave me. So, they write but they want what's after, more information about more operations, so I can't. They keep torturing me."¹¹ Abu Zubaydah said that later, "they told me sorry we discover that you are not number three, not a partner even not a fighter."¹²

It is these false facts that are the reason that Abu Zubaydah is still detained and held incommunicado.

In conclusion, I end where I began with the Department of Justice admonishment to the CIA:

"Our advice is based upon the following facts, which you have provided to us. We also understand that you do not have any facts in your possession contrary to the facts outlined here, and this opinion is limited to these facts. If the facts were to change, this advice would not necessarily apply."¹³

The facts upon which he was tortured and detained were all wrong and that made all the difference.

Truth requires that Abu Zubaydah be set free.

¹¹ Transcript of Combatant Status Review Tribunal Hearing for Abu Zubaydah, ISN #10016 (Mar. 27, 2007), available at http://www.defense.gov/news/transcript_isn10016.pdf.

¹² Transcript of Combatant Status Review Tribunal Hearing for Abu Zubaydah, supra note [13].

¹³ Memorandum from Jay S. Bybee to John Rizzo, *Interrogation of Al Qaeda Operative* (Aug. 1, 2002), available at dspace.wrlc.org/doc/bitstream/2041/70967/00355_020801_004display.pdf. Note that this memorandum included ten

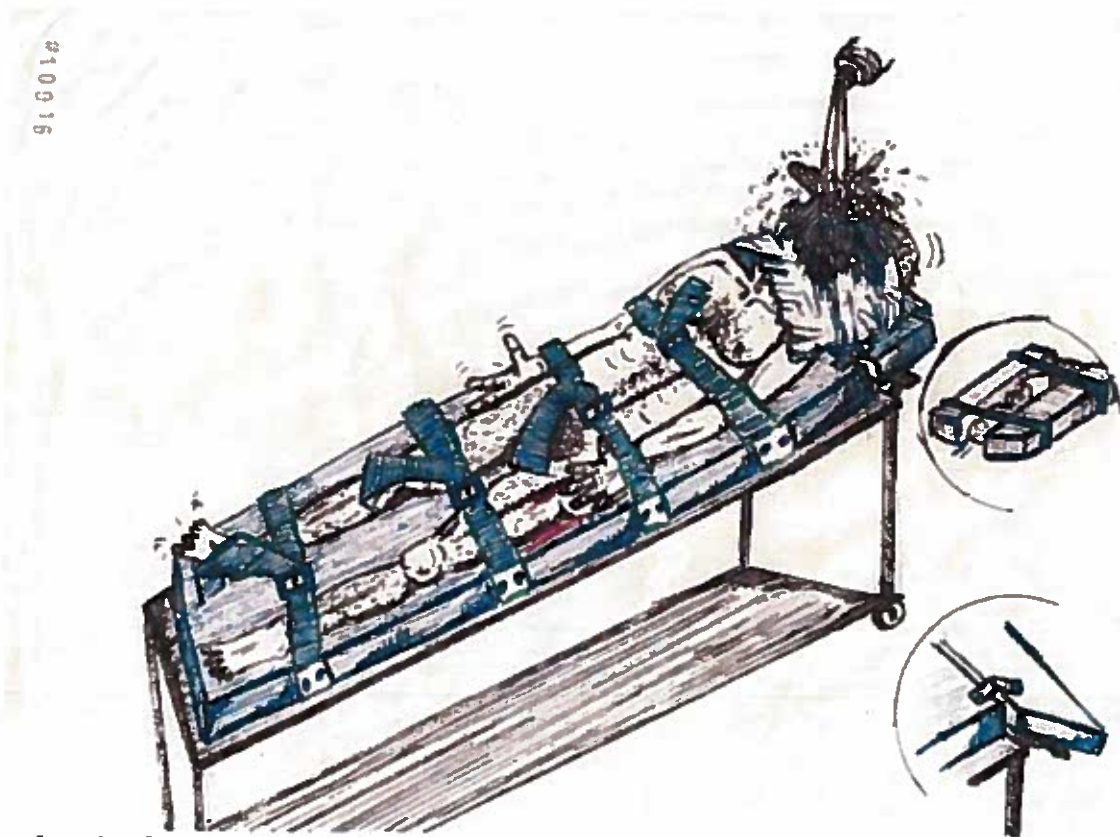
Don't Look Away

Abu Zubaydah's drawings of torture at the hands of American agents are a sickening reminder of what this country is capable of.

By The Editorial Board

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- Dec. 5, 2019
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A drawing by a Guantánamo Bay prisoner, Abu Zubaydah, shows the torture technique called waterboarding. .Credit Courtesy of Mark P. Denbeaux

EITs, three more than the six EITs discussed between Yoo and Rizzo. *Id.*; *The Report of the Constitution Project's Task Force on Detainee Treatment*, supra note [], at 144. These ten EITs include attention grasp, walling, facial hold, facial slap, cramped confinement, wall standing, stress positions, sleep deprivation, insects placed in a confinement box and the waterboard. *Memorandum from Jay S. Bybee to John Rizzo*, supra note [].

The sketches should be seen only by adults, but they must be seen. Drawn by a victim of torture, they show, in raw and agonizing detail, the methods that Americans — soldiers, psychologists, spies, women and men — have devised to break down prisoners through pain, panic, brainwashing and other barbaric and illegal tools.

There is nothing in the crude drawings by Abu Zubaydah, a prisoner captured in 2002 and still held by the United States in the Guantánamo Bay detention camp, that hasn't been described before in the various official and unofficial investigations into the moral travesty that was the C.I.A.'s program of "enhanced interrogation," one of the more devious euphemisms ever devised. We've read of the waterboarding and sleep deprivation and humiliation and all the other horrors, and of the lasting effect they had, often on innocent men.

But as with the infamous photographs of prisoner abuse at the Abu Ghraib prison in Iraq, the images strip away the euphemisms, justifications, lies and legalisms. They are published in a study titled "How America Tortures" by one of his lawyers and the lawyer's students. Mr. Zubaydah was the first of the captives after the attacks of Sept. 11, 2001, to be subjected to prolonged torture, and he holds the dubious distinction of having been waterboarded 83 times. Many of the C.I.A. tortures were devised for him and first tested on him by psychologists whose previous job had been to train American soldiers who might one day be tortured. He provided interrogators with considerable information — but that was to F.B.I. agents who questioned him before he was turned over to the C.I.A. for torture.

The drawings speak for themselves. They are in a Times article and the report by Mark P. Denbeaux, a professor at the Seton Hall University School of Law and a lawyer for several Guantánamo detainees, including Mr. Zubaydah. What is important not to forget is the deeply shameful and disturbing fact that the United States, admittedly at a moment of national confusion and panic following the 9/11 attacks, but unnecessarily, secretly and extensively, adopted barbaric practices banned by domestic and international law.

The current director of the C.I.A., Gina Haspel, was a leading participant in the program and helped the agency destroy more than 90 videotapes of a brutal interrogation. But she, at least, has vowed not to restart the torture program, even if ordered to by the president. Whether that amounts to a realigned moral compass is an open question, but it is important to know that the agency that developed and applied "enhanced interrogation" has renounced it.

No such enlightenment for President Trump. On the contrary, the commander in chief has ordered Guantánamo to be kept open and to "load it up with some bad dudes." He has insisted that "torture works" and that he'd bring back waterboarding "and I'd bring back a hell of a lot worse than waterboarding." These are outrageous sentiments calling for blatantly unlawful action by the intelligence and security services of the United States.

For Mr. Trump and those who think like him, torture is not only a technique for extracting information, which it doesn't do very well, but also a form of revenge. "If it doesn't work, they deserve it anyway," he has said, "for what they're doing to us."

This same thinking was evident in his recent [pardons](#) granted to military commanders convicted of war crimes. True warriors have a code of behavior that proclaims acts of savagery against unarmed civilians or prisoners to be dishonorable and immoral. Their code distinguishes between killing on the battlefield and murder, which the president and his cheerleaders seem not to understand. "We train our boys to be killing machines, then prosecute them when they kill!" [he tweeted in October](#), displaying total and insulting ignorance of the honorable calling of a soldier.

#10016

