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Open the lid on US torture

The public deserves to know what the CIA did in its name

Joseph Margulies

9/24/2015

In January, Barack Obama's administration announced what seemed to be a major change in policy: Henceforth, former prisoners of the Central Intelligence Agency would be allowed to describe their life in custody. Though they could not identify CIA personnel or disclose where they were tortured, the new rule allowed them to provide "information regarding [their] treatment" and "conditions of confinement."

That was a big deal, and those of us who represent the men tortured by the CIA welcomed the news. Attorneys for Majid Khan, a former CIA prisoner, promptly sought permission to disclose his description of his torture. Among other abuses, he was subjected to what the CIA euphemistically calls rectal infusions but what prosecutors all over the country call anal rape.

After some back and forth, the government allowed Khan's lawyers to release his account to the public. Reuters published the account, and for the next 24 hours, the article was one of the most popular stories on Reuters' 17 websites worldwide, which gives some indication of the public interest in this information.

And that was apparently the end of the administration's very brief dalliance with transparency.

My colleagues and I represent Zain Abidin Mohammed Husain Abu Zubaydah, who was the first person subjected to so-called enhanced interrogation techniques. In fact, he is the person for whom the techniques were devised. Like Khan's lawyers, we sought permission to disclose Abu Zubaydah's description of his torture.

Abu Zubaydah's treatment was considerably more brutal than Khan's and went on for a substantially longer period. The public already knows he was waterboarded 83 times in August 2002 alone. In fact, according to the Senate Select Committee on Intelligence, Abu Zubaydah's torture was so appalling that when it began, seasoned CIA agents asked to be transferred rather than be forced to watch it take place. It was sufficiently grotesque that the CIA sought assurances that his treatment would never come to light and that he would be held incommunicado for the rest of his life.

And that is precisely why it should be known. Four people represent Abu Zubaydah: Mark Denbeaux, a law professor at Seton Hall; Amy Jacobsen, an American lawyer now living in Copenhagen, Denmark; Brent Mickum, an attorney in Washington, D.C.; and me. We are among the few people in the world who know what happened to him at the CIA black sites. And the facts of his treatment would make people sick. Literally physically sick.

In response to the new rule, we submitted 136 pages of notes and drawings in 17 submissions — some written by us, most by our client. In these pages, Abu Zubaydah described in great detail the treatment and conditions he endured. We followed the government's requirements to the letter, carefully removing all prohibited information.

The government authorized us to release a grand total of four pages. Here they are:

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IN THE NAME OF GOD THE BENEFICENT THE MOST MERCIFUL
PRAYERS UPON ALL GOD'S MESSENGERS

I had a hard time, a very hard time opening my eyes, I would say my only eye that was still there, since the other one, the left one, I had already lost it. Or is it just a dream, a horrible nightmare that was filled with blood, screams and fire shots, and what else? Medical equipment and tube feeding and blood transfer... Many physicians and many nurses [...] Soldiers, yes soldiers, soldiers [...] Yes, now I remember everything but I am still hoping that it was just a dream or a nightmare, no matter how bad they both are; they definitely would be better than this reality. I was forcing myself to open my eye wider and keep it open albeit I was heavily moving my head to keep more awake and get rid of this stubborn headache. I was dazzled and the first thing that dazzled me was the very strong light that was focused on me. I tried to cover my eye with my hands yet I found myself unable to move them, it feels like it was tied up, yes the other one was tied up too. I raised my head with difficulties. Where am I? What is this? I am totally naked on stretchers that look more like a tight metal bed that felt colder than ice, and it felt like I was lying down on ice... But I am not in a hospital. It is a large room, totally empty except for the walls; I could only see three walls, shiny white that reflected the lights in a very annoying way. So, maybe, I might still be in the hospital. Yet the room where I was looked different, even the bed itself was different. I was totally restrained to that bed there, yet I am not sure here. The headache is still there, I felt weak. Oh! The injection!! That was the last thing I remembered from the hospital. I moved my hand once again, but to no avail. I looked at it. Oh! I am handcuffed, my feet too. There is also a large white medical bandage wrapped around my entire left leg, it felt like another shackle too. So? It was not a dream or a nightmare. It's the new reality that I have to face from now on.

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Timeline after arrest:

- maybe 1-3 days before being taken to [. . .]
- 20 days – 1 month in the hospital
- Then it was the white room, tied down in bed
- Weeks or maybe a month in the chair. Maybe two months or more
- Then he was left alone for approx 1 month

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TOTAL P.02

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UNCLASSIFIEDJAN. 19, 2012

I am writing to you to tell you about another one of the many troubles I have here in Guantanamo. Dear Counsel: Today, I will tell you about the medical problems, how, and here in this letter about merely one of them.

Since I was taken into U.S. custody, nearly 10 years ago, up until today, I have been suffering from pain in my left knee. With time, pain has developed in my right knee as well. This pain plagues me on a daily basis and despite my repeated requests, the operation that is needed to stop the pain has been denied to me.

When I was in CIA custody, I saw 3 or 4 different doctors, and each one said there was a problem with the cartilage in my knee and that I would need an operation to fix it, but because they said "of the circumstances here" (by which I understand them to mean being CIA custody) they could not help me and give me the operation I needed.

Since I was brought to Guantanamo in 2006, I saw 2 specialists for this problem. The first one tried to tell me there was no problem, but I am in pain, so I know this cannot be true. The second one told me that, yes, there was a problem, if I were a patient in her practice at home, that she would operate, but that here in Guantanamo, she did not know how this could be done.

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I realize that for some people, it might make a difference whether the government was right about Abu Zubaydah, whether he really was the terrorist mastermind that officials thought he was when the CIA was torturing him. That's not my view — I think torture is always wrong — but I know many people disagree with me. I respect their view but would suggest that, at this stage of the debate, the question is not whether he should have been tortured but whether the facts surrounding his torture should remain secret.

In any case — and I add this only because it matters to a lot of people — the Senate Select Committee on Intelligence found what we and a number of intelligence officials have said for years: The government was horribly mistaken about Abu Zubaydah. He was never a member of Al-Qaeda, let alone the No. 3 man, as he was often portrayed. What's more, he had no knowledge of or role in any Al-Qaeda plot, including 9/11. In fact, the Senate found there was no support for any of the claims made by the CIA, claims that the agency used to justify his torture. He has not been charged in the military commission system, let alone a real court, and probably never will be.

Abu Zubaydah is the poster child for the torture program, which is why the government wants to bury him at Guantánamo. You want to know what we did to him? You want to get beyond the sterile bureaucratic blather that deliberately conjures no image — empty expressions such as “stress position” and “enhanced interrogation”?

His account sits in a carefully marked folder, in a specific drawer, locked in a certain room of a particular building. Should the content of this folder be the subject of public discussion? I think so, and if the reaction to the disclosure of Khan's account is any indication, so do a great many other people.

You want to see it? Don't ask me. Don't ask my co-counsel. We're not allowed to disclose it. Ask the government.