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Field Notes From A Battleground

By Charles R. Church

Perhaps you have heard about abu Zubaydah in the past, but I hope you will be learning far more about him soon, whichever way the story ends. A so-called "high value detainee," Zubaydah (I'll spare you his quite long real name) is back in the news, since his lead counsel, famed detainee lawyer Joseph Margulies, wrote on May 10 to the Convening Authority, the Pentagon legal official who presides over the military commissions at Guantanamo, to request that criminal proceedings against his client be commenced immediately. An accused person demanding a trial? What's going on here?

(Note: Deep thanks are due to investigative journalist and author Jane Mayer for her invaluable "The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals," from which I have drawn details about Zubaydah's capture and the horrific treatment inflicted afterward.)

CIA officer John Kiriakou never imagined he would see so much blood. It was all over Zubaydah and his bed, and lay in pools beneath it. This was in March 2002, in a Pakistani hospital room, after dozens of armed CIA, FBI and Pakistani law-enforcement and intelligence officers raided the compound where he was staying. Attempting to escape, Zubaydah leapt from the roof to that of a neighboring house, and in the gun battle that ensued he dropped 25 feet to the ground. When it was over, he had been shot in the thigh, stomach and groin.

As soon as his condition was stabilized, Zubaydah was removed by the Rendition Team from Pakistan to a CIA black site in Thailand. He was interrogated first by the FBI, but within days a CIA team took over, freezing the FBI out. The CIA team was led by a retired military psychologist and then-consultant, who decreed that Zubaydah had to be treated "like a dog in a cage." An International Committee of the Red Cross investigative report released in 2007 described his treatment as torture, and warned that the abuse constituted war crimes.

He became the first person to be waterboarded at the command of the president, 83 times according to Zubaydah. He was locked into a "tiny coffin" — painted black inside and out, and so small Zubaydah said he had to double up his limbs in a fetal position — for extended periods, including overnight. The one definitive account of what happened to him — hundreds of hours of videotapes — were withheld from both a federal court judge and the 9/11 Commission, then destroyed by the CIA.

Shortly after Zubaydah's capture in 2002, President George W. Bush, speaking in Greenwich, said: "The other day, we hauled in a guy named abu Zubaydah. He's one of the top [al-Qaeda] operatives plotting and planning death and destruction on the United States. He's not plotting and planning anymore. He's where he belongs."

In September 2006, Bush announced that Khalid Sheikh Mohammed, Zubaydah and 12 other terrorists in CIA custody had been transferred to Guantanamo. "As soon as Congress acts to authorize the military commissions I have proposed, the men our intelligence officials believe orchestrated the deaths of nearly

3,000 Americans on September the 11th, 2001, can face justice.... With these prosecutions, we will send a clear message to those who kill Americans: No matter how long it takes, we will find you and we will bring you to justice.”

Bush spoke at the same time about the existence of secret CIA prisons. “Within months of September the 11th ... , we captured a man known as abu Zubaydah. We believe that Zubaydah was a senior terrorist leader and a trusted associate of Osama bin Laden.” Zubaydah, he claimed, ran a terrorist training camp in Afghanistan where some of the 9/11 hijackers trained, and “helped smuggle al Qaeda leaders out of that country after coalition forces arrived to liberate it.” Cheney, Rumsfeld, Michael Hayden and Acting CIA General Counsel John Rizzo all chimed in.

Were even a fraction of the repeated assertions by top officials in the Bush government supported by evidence, Margulies noted, the most straightforward course would be to convene a military commission, produce the evidence under the relaxed commission standards, obtain the conviction the government asserts is a “foregone conclusion,” and administer the resulting punishment. Yet this has not been done. Rather, Zubaydah has not been tried, has not been charged and has not even had military commission counsel assigned to him despite his repeated requests, which were not even answered.

Why not? As the Margulies letter points out, even as Bush was making those statements, he was being briefed privately about misgivings within the intelligence community regarding Zubaydah’s significance — and mental stability. So Bush was likely concerned about the consequences for his own reputation.

The Margulies letter closed with Zubaydah asking only for what he was promised by President Bush: a military commission hearing. He has been detained without such a hearing for 10 years. Zubaydah requests the opportunity to test the government’s evidence, and to demonstrate in a legitimate setting that he is innocent of any crimes. Most eloquently of all, Margulies added for Zubaydah: “[L]et the chips fall where they may.”

Time may be short. Margulies stated in a press release that “[w]e are very concerned about (Zubaydah’s) welfare, about his mental health.” He is experiencing gradual memory loss and no longer remembers the names of his parents or his birth date “as the result of his treatment in custody.”

I say to the Convening Authority: Grant Zubaydah’s request. You have been urging the world to recognize the commissions as legitimate. How can you expect that recognition if you fail to charge and try this man, thus seeming complicit in suppressing the truth?

Charles R. Church is an attorney practicing in Salisbury who for years has studied Guantanamo Bay detention, torture, habeas corpus and related issues. Email him at charlesrchurchllc@gmail.com [3].

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