

ABU ZUBAYDAH TO DOD: CHARGE ME NOW!

Abu Zubaydah's legal team just wrote the Convening Authority for the Military Commissions demanding that it charge Zubaydah.

This letter requests that the Convening Authority immediately commence proceedings against our client, Zayn al-Abidin Muhammad Husayn (abu Zubaydah), ISN # 10016. Failure to act would raise serious questions about the integrity and legitimacy of the Convening Authority and, indeed, of the whole process established to try or release Guantanamo detainees.

[snip]

Nearly six years ago, President Bush announced that abu Zubaydah and thirteen other so-called high-value detainees were to be tried by a military commission:

So I'm announcing today that Khalid Sheikh Mohammed, abu Zubaydah, Ramzi bin al-Shibh, and 11 other terrorists in CIA custody have been transferred to the United States Naval Base at Guantanamo Bay. They are being held in the custody of the Department of Defense. 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. (Cheers, applause).... 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. (Emphasis

added)

It's an interesting legal tactic. If the Convening Authority doesn't charge AZ, it will surely present a Constitutional challenge on speedy trial grounds. But, as the letter makes clear, any charge would fall far short of the claims made about AZ over the last decade.

Furthermore, if the CA doesn't respond here, then the letter's predictions of a lost legitimacy may well bear out.

Abu Zubaydah has not been tried, has not been charged, and has not even had military commission counsel assigned to him. He has requested the appointment of military commission counsel repeatedly but has received no response. This overt failure to prosecute a supposed terrorist leader causes the world to wonder why. One possibility is that the claims, despite their number and decibel level, are simply untrue, so that the government cannot prove all (or any) of them. A second possibility is that the prosecution would be successful but only at the unacceptable cost of exposing the government to worldwide censure for the manner in which Zubaydah was treated and the evidence against him was obtained. The third possibility, worst of all, is both that the claims are not true and that his treatment is too shameful to be revealed to the world.

Curiously, the letter mentions the Bush Administration's efforts to destroy Phillip Zelikow's dissent on the OLC memos. It describes that as "spoilation of evidence. But it doesn't describe the spoilation of the other big piece of evidence (and likely one of the main reasons the government can't charge AZ, in addition to his mental stability): the torture tapes.

In any case, it's a very interesting approach

and one that, if successful, I'd expect more detainees (particularly Mohammed al-Qahtani) to try.