

Taking Exception: Abu Zubaida's Clear Ties to al-Qaeda

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In her March 29 op-ed, "Why not try Abu Zubaida?," lawyer Amanda L. Jacobsen argued that the reason the federal government has yet to charge her client after 10 years in U.S. custody is simple: "The government got it wrong." The government based its "hyperbolic assertions" about Abu Zubaida on false allegations, she wrote. In fact, she wrote, "the government has explicitly conceded in Abu Zubaida's habeas corpus case that he was never a member of al-Qaeda and had no knowledge of al-Qaeda operations."

Unfortunately, Jacobsen got it wrong.

True, as late as 2006, U.S. officials described Abu Zubaida as al-Qaeda's third in command -- and they no longer do. That's because our understanding of the relationships between various jihadist elements has developed over time.

Still, the consensus remains that Abu Zubaida was a prominent terrorist. While his title and ties to al-Qaeda may now be better understood than they were in 2006, the activities he is believed to have engaged in remain unchanged. The profile of Abu Zubaida listed among detainee biographies on the Web sites of the Defense Department and the director of national intelligence says that his activities include organizing terror attacks, smuggling terrorist fugitives across state borders, procuring forged documents and funds for terrorists, and more. Zubaida is alleged to have operated guest houses in Peshawar and Islamabad that provided havens for militants traveling to the Khalden camp Zubaida ran in Afghanistan. There, militants received training in explosives, small arms and rocket launchers. According to a 2010 Canadian government account, "The combination of operating a guesthouse, a training camp and collecting passports makes him a participant into the cause of Islamist extremism." In June 2010 the United Nations reviewed and decided to maintain its terrorist designation of Abu Zubaida, describing him as a "close associate" of Osama bin Laden.

As for the habeas corpus case, the U.S. government's recharacterization of Abu Zubaida's al-Qaeda ties was explicitly limited to what it deemed necessary to establish grounds for his continued detention. The government noted in a 2009 factual return filing that, for the purpose of establishing Abu Zubaida's lawful detention, it did not need to assert or prove that he had pledged allegiance to bin Laden. Regardless of whether Abu Zubaida had made such a pledge, the government noted, "he was clearly 'part of' and 'substantially supported' al-Qaida and associated forces."

It is a mischaracterization to say that the federal government's decision to rephrase its description of Abu Zubaida

for the purposes of a specific legal filing amounts to a withdrawal of its allegations that Abu Zubaida was associated with al-Qaeda. "It's simply wrong to suggest that Abu Zubaida wasn't intimately involved with al-Qaeda," a U.S. counterterrorism official told the Post in 2009. "He was one of the terrorist organization's key facilitators, offered new insights into how the organization operated, provided critical information on senior al-Qaeda figures...and identified hundreds of al-Qaeda members. How anyone can minimize that information -- some of the best we had at the time on al-Qaeda -- is beyond me."

Abu Zubaida reportedly revealed critical information about al-Qaeda after his capture. Former FBI agent Ali Soufan has written about how he and others elicited key information about al-Qaeda from Abu Zubaida through traditional interrogation, without resorting to waterboarding. Among other things, they determined that Khalid Sheik Mohammed was the mastermind of the Sept. 11, 2001, attacks and learned about Jose Padilla and a terror plot targeting the U.S. homeland.

I share Jacobsen's concerns about terrorism suspects being held indefinitely without charge. I also appreciate the extenuating circumstances the Defense and Justice Department officials face as they try to close the prison at Guantanamo Bay. But the fact that Jacobsen's client has not been charged does not necessarily mean he is innocent.

Matthew Levitt is director of the Stein Program on Counterterrorism and Intelligence at The Washington Institute. ❖

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