

By Andy Worthington

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In the history of the “War on Terror,” few stories are as disturbing as that of Abu Zubaydah. Seized in Pakistan in March 2002, Zubaydah was initially regarded as a “high-value detainee” of such significance that the Bush administration conceived its torture program [specifically for use on him](#), but the case against him has steadily unraveled over the years, as officials — first in the Bush administration, and then under President Obama — have conceded that his significance was monstrously overstated, and that he was not a member of al-Qaeda, was not involved in planning any international terrorist attacks, and had no advance knowledge of the 9/11 attacks.

With this in mind, it is distressing to note that, last month, in the case of Sufyan Barhoumi, an Algerian seized with Zubaydah, who lost his habeas corpus petition last September, the Court of Appeals in Washington D.C. drew on discredited information about Zubaydah to overstate his importance, and to justify Barhoumi’s ongoing detention. The Circuit Court also drew on the diary of a previously unknown associate of Zubaydah’s to present another view of Zubaydah — as the leader of a militia allied with al-Qaeda — to justify Barhoumi’s detention, and, by extension, that of Zubaydah himself, even though there are doubts about the government’s interpretation of the diary, and the whereabouts of the diary’s author are unknown.

On June 22, when a panel of judges led by Judge David S. Tatel upheld Barhoumi's detention, the ruling was superficially unsurprising. Barhoumi was not only seized in the house raid in Faisalabad, Pakistan on March 28, 2002, that led to the capture Abu Zubaydah, along with other alleged terror suspects, but he had also conceded, in publicly available documents from Guantánamo, that he had attended military training camps in Afghanistan.

This, on its own, may not have been sufficient for Barhoumi's detention to be upheld, but last September, when his habeas petition was denied, Judge Rosemary Collyer provided another reason. Although she noted that Barhoumi "said that he is not now and has never been a member of al-Qaeda," and added, "I have no reason not to believe that," she nevertheless concluded that "he was with an associated force that was engaged in hostilities against the United States or its coalition partners and therefore was properly detained."

At the time, Judge Collyer's unclassified opinion was not made publicly available (and has still not been made available), and the quotes above are from the court transcript that was eventually unearthed by researchers at ProPublica ([PDF](#)). It was not, therefore, until the Circuit Court upheld his detention last month ([PDF](#))

) that the details of this "associated force" were revealed as a militia that was allegedly maintained by Abu Zubaydah, and it was also revealed that the Circuit Court was relying on a long-discredited opinion of Zubaydah as the leader of a training camp in Afghanistan and an associate of Osama bin Laden.

How the case against Abu Zubaydah collapsed

What is troubling about this is the fact that, since Zubaydah's capture, when Donald Rumsfeld described it as "well established" that he was "a close associate" of Osama bin Laden, "and if not the number two, very close to the number two person in the organization"), the government has steadily backed away from these claims, as accounts have emerged that thoroughly discredit the allegations.

These include devastating statements by Dan Coleman, the FBI's senior expert on al-Qaeda. Coleman and his FBI colleagues had access to Zubaydah's diaries, in which they found entries in the voices of three people — a boy, a young man and a middle-aged alter ego — which

recorded in numbing detail, over the course of ten years, “what people ate, or wore, or trifling things they said,” and Coleman’s conclusion, which he told his superiors, was, “This guy is insane, certifiable, split personality.”

That was [reported in 2006](#), and in December 2007, Coleman [followed up](#), describing Zubaydah as a “safehouse keeper” who “claimed to know more about al-Qaeda and its inner workings than he really did,” and explaining how he and others at the FBI had concluded not only that he had severe mental problems — particularly because of a head injury that he had suffered in 1992 — but also that this explained why he was regarded with suspicion by the al-Qaeda leadership. “They all knew he was crazy, and they knew he was always on the damn phone,” Coleman said. “You think they’re going to tell him anything?”

This analysis was, essentially, reinforced last March by a Justice Department official who spoke anonymously to the [Washington Post](#). As [I reported at the time](#) :

[Abu Zubaydah] “was not even an official member of al-Qaeda,” and was, instead, “a “kind of travel agent” for would-be jihadists. A former Justice Department official, who knows his case, explained, “He was the above-ground support. He was the guy keeping the safe house, and that’s not someone who gets to know the details of the plans. To make him the mastermind of anything is ridiculous.” What happened, it transpired, was that “because his name often turned up in intelligence traffic linked to al-Qaeda transactions,” some within the intelligence community presumed that he was a significant figure, whereas the truth was that, although committed to the idea of jihad, he did not share Osama bin Laden’s aims, and “regarded the United States as an enemy principally because of its support of Israel.” The officials explained that he “had strained and limited relations with bin Laden and only vague knowledge before the Sept. 11 attacks that something was brewing.”

The Circuit Court’s reliance on discredited intelligence

Alarming, despite these concessions on the government’s part, both the District Court and the Circuit Court drew on another source in Barhoumi’s habeas petition in an attempt to demonstrate that Zubaydah was “the person in charge” of the Khaldan training camp, and that he was “an associate of [Osama bin Laden]” who “coordinates and cooperates with [bin Laden] in the conduct of training and trainee movements between [redacted] camps and al-Qaeda camps.”



As the judges explained, the source of this information, which also fooled the authors of the *9/11 Commission Report*

, who referred to “Abu Zubaydah’s Khaldan Camp” (

[PDF](#)

, p. 175), was Ahmed Ressam, the failed “Millennium Bomber” who is currently serving a 22-year sentence in the US. The problem with Ressam’s evidence is that, although he initially cooperated with the authorities in exchange for a reduced sentence, and provided information about dozens of alleged terrorist suspects, including Zubaydah, he then stopped cooperating and

[withdrew his statements](#)

. As a result, numerous cases involving Ressam’s statements have collapsed — including that of Ahcene Zemiri (aka Hassan Zemiri),

[falsely fingered by Ressam](#)

as an associate in the bomb plot, who was

[freed from Guantánamo](#)

in January this year — and the portrayal of Zubaydah accepted by the judges is fundamentally at odds with the one now accepted by the Obama administration.

The government concedes that Abu Zubaydah was not a member of al-Qaeda

As Jason Leopold explained in [an article for Truthout](#) in March this year, in a federal court filing the government officially endorsed the view put forward by the anonymous Justice Department official to the

Washington Post in March

2009, “back[ing] away from the Bush administration’s statements that Zubaydah was the No. 2 or No. 3 official in al-Qaeda who had helped plan the 9/11 attacks, as well as even earlier claims from the Clinton administration that he was directly involved in planning the 1998 embassy bombings in East Africa,” and admitting for the first time that “Zubaydah did not have ‘any direct role in or advance knowledge of the terrorist attacks of September 11, 2001,’ and was neither a ‘member’ of al-Qaeda nor ‘formally’ identified with the terrorist organization.”

The government also appeared to have accepted that that “the military camp he was alleged to be affiliated with, Khaldan, was closed by the Afghan Taliban after refusing to let it go under the formal control of bin Laden and al-Qaeda,” conceding, in its court filing, that Khaldan was “organizationally and operationally independent” of al-Qaeda’s camps.

This corresponds with Zubaydah’s own revelation, during his Combatant Status Review Tribunal at Guantánamo in 2007 (in a passage that was [only unclassified in June 2009](#) , in response to a lawsuit filed by the ACLU), that, after his extensive torture, his interrogators told him, “sorry we discover that you are not number three [in al-Qaeda], not a partner, even not a fighter.” It also confirms other accounts about Khaldan, which was actually run by Ibn al-Shaykh al-Libi,

[a former CIA “ghost prisoner,”](#)

who

[died in mysterious circumstances](#)

in a Libyan jail last year. Al-Libi, notoriously, was tortured in Egypt, on behalf of the CIA, until he produced a false confession about links between al-Qaeda and Saddam Hussein that was

[used to justify the invasion of Iraq](#)

, and his death means that a key witness has been lost who might have been able to explain the strained relationship he had with bin Laden, and how Khaldan was closed in 2000 after he refused to allow it to come under bin Laden’s control.

Dubious allegations about Abu Zubaydah’s “militia”

While these revelations indicate that the Circuit Court is lamentably out-of-date in its consideration of Abu Zubaydah, it is also noticeable that the judges relied on another document, the diary of an alleged associate of Zubaydah, Abu Kamil al-Suri, to demonstrate that Zubaydah was in charge of a militia, which included Sufyan Barhoumi. Whether there is any truth in this is difficult to ascertain, as Abu Kamil al-Suri is not available to ask about his diary, His whereabouts are unknown, but he may have died in the raid that led to Zubaydah’s capture, or he may be one of a handful of men — and boys — seized with Zubaydah who were [rendered to Syria](#) ,

and have never been heard of since.

This is deeply troubling, of course, in the wider context of “disappearances” in the “War on Terror,” but its relevance to Sufyan Barhoumi’s case — and to that of Abu Zubaydah — is also significant. The diary purports to identify the movements of various men, including Barhoumi, to

and from Tora Bora, where a showdown between al-Qaeda and the US took place in December 2001, and from Afghanistan to Pakistan, although it should be noted that, in Guantánamo, Barhoumi strenuously and repeatedly denied ever being in Tora Bora. Al-Suri's diary also identifies 15 members of what is described as "Zubaydah's militia," although, in the translation of al-Suri's own words, it is described, less spectacularly, as a "group," and a fractious one, moreover, with al-Suri noting that several of the members were "trying to take over this group," to "lead us to join Sheikh Osama bin Laden."

The interpretation of the diary is clearly of importance not only to Sufyan Barhoumi, but also to Abu Zubaydah, as it seems to form part of the government's revised claims about Zubaydah, mentioned in the court filing in March, in which the Justice Department maintained that Zubaydah should still be detained based on his "actions" as an "affiliate" of al-Qaeda, and alleged that he "supported enemy forces and participated in hostilities" and "facilitat[ed] the retreat and escape of enemy forces" after the US-led invasion of Afghanistan in October 2001.

His lawyers have countered this by stating that "the persons whom [Zubaydah] assisted in escaping Afghanistan in 2001 included 'women, children, and/or other non-combatants'" and that the government has "evidence to support those assertions," which contrasts starkly with the Circuit Court's conclusions about both Sufyan Barhoumi and Abu Zubaydah. The scope of Zubaydah's involvement with securing the escape of non-combatants from Afghanistan is unknown, because the government has not provided any information about this publicly, and Zubaydah's lawyers are prevented from discussing almost anything about their client's case because of sweeping classification rules relating to the "high-value detainees."



However, it seems clear that one non-combatant whose escape from Afghanistan was facilitated by a network in which Zubaydah played a part is Ravil Mingazov, a Russian seized in a guest house in Faisalabad (with over a dozen other men, [mostly students](#)) on the night

Zubaydah was seized. Mingazov recently [won his habeas corpus petition](#)

, and he explained in Guantánamo that, after fleeing Afghanistan, where he had traveled in search of a new life free from religious persecution, he had spent three months at a religious center in Lahore run by the missionary organization Jamaat-al-Tablighi, until he and two other men accepted an offer of safe passage to a house in Faisalabad, where, they were told, it would be easier for them to leave the country.

This example of a civilian helped out of Afghanistan as part of some sort of loose transportation network, in which Zubaydah was involved, is starkly at odds with the Circuit Court's assertion of Zubaydah's role as the head of a militia, in which Barhoumi was implicated. In their ruling, the judges noted that Barhoumi does not "dispute that Zubaydah's militia qualifies as an 'associated force' that engaged in hostilities against US or coalition forces. The only dispute, then, is whether Barhoumi was, as the district court found, 'part of' Zubaydah's organization."

Ulterior motives?

In light of the failed claims about Zubaydah's status as a senior figure in al-Qaeda, and the government's revised analysis of him as someone who "supported enemy forces and participated in hostilities" and "facilitat[ed] the retreat and escape of enemy forces," it is obviously alarming that the Circuit Court clung to a discredited view of Zubaydah's role in upholding Sufyan Barhoumi's detention, and it is, moreover, no less alarming that the allegation about Zubaydah's purported "militia" was allowed to pass unchallenged.

In contrast to this claim, all the evidence suggests that, in its desperation to find charges that will stick to Zubaydah, the government has every incentive to dress up a fractious group of men, nominally led by Zubaydah, as an organized "militia," and to ignore counter-claims that he was not involved in fighting US forces, but was involved in facilitating the escape from Afghanistan of a variety of individuals, including "women, children, and/or other non-combatants."

In establishing this picture of Zubaydah as the leader of a militia — based on a translation of a diary by a man who appears to have vanished off the face of the earth — the government, with the support of the Circuit Court, appears determined to use it in a last-ditch attempt to cover up the much more distressing fact that the US government [brutally tortured someone](#) who was never part of al-Qaeda at all.

