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Excerpts of Transcripts of the Cross-examination of Abousfian Abdelrazik

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Examination No. 08-1012

Court File No. T-727-08

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FEDERAL COURT

B E T W E E N:

ABOUSFIAN ABDELRAZIK

APPLICANT

- and -

MINISTER OF FOREIGN AFFAIRS and
THE ATTORNEY GENERAL OF CANADA

RESPONDENTS

CROSS-EXAMINATION VIA TELECONFERENCE OF ABOUSFIAN ABDELRAZIK
ON HIS AFFIDAVIT SWORN JUNE 25TH, 2008, pursuant to an
appointment made on consent of the parties, to be reported
by Gillespie Reporting Services, on October 15th, 2008,
commencing at the hour of 9:30 in the forenoon.

APPEARANCES:

Mr. Yavar Hameed, Mr. Khalid Elgazzar, and
Ms. Audrey Brousseau for the Applicant

Mr. Mathew Johnson and
Ms. Donna Blois for Minister of Foreign Affairs

Ms. Anne Turley and Ms. Zoe Oxaal for the Attorney General

This Cross-Examination was monitored by Gillespie Reporting
Services at Ottawa, Ontario, having been duly appointed for the
purpose.

1 A. Which date again?

2 330. Q. December 1, 2003.

3 A. Yes, I was in that jail, yes.

4 331. Q. Now, do you see in the third paragraph of this
5 case note, starting with the second sentence it says "We
6 spoke to the husband, who told us that Mr. Abousfian is
7 visited by his brother on a weekly basis"?

8 A. They spoke to me? The wife spoke to me?

9 332. Q. So are you saying that it's not true that your
10 brother visited you on a weekly basis?

11 A. Not true.

12 MS. TURLEY: If we can have this marked as the
13 next exhibit for identification. Are we at Exhibit D?

14 EXHIBIT NO. D: Case note dated December 1st,
15 2003.

16 MS. TURLEY:

17 333. Q. Mr. Abdelrazik, while you were in detention
18 between 2003 and 2004 you had a number of consular visits
19 with Dave Hutchings?

20 A. Which period of time again?

21 334. Q. When you were in detention the first time?

22 A. Yes, correct.

23 335. Q. And you had an opportunity to speak with him
24 alone on each occasion?

25 A. No.

1 336. Q. No, that's not true?

2 A. No, not true, because all these visits took
3 place in the presence of the intelligence agents.

4 337. Q. So when Mr. Hutchings writes in his case note
5 that he was able to meet with you each time on his own, he
6 is incorrect?

7 A. Hundred percent incorrect.

8 MR. HAMEED: Just for the record, you're asking
9 the witness to comment on someone else's case notes. I
10 don't know, first of all, whether the witness can identify
11 it, whether he's seen the documents or whether he can even
12 speak to that.

O

13 MS. TURLEY: Well, then we'll put them to him.

14 338. Q. Do you recall meeting with Mr. Hutchings the
15 first time was in mid December of 2003, Mr. Abdelrazik?

16 A. Approximately, yes.

17 339. Q. If I can get Mr. Hansen to show you document K
18 like "kangaroo". This is, Mr. Abdelrazik, a case note and
19 includes an email at the bottom of the first page between
20 Mr. Hutchings and another consular official dated December
21 13th, 2003. This is in Joe Wood's Exhibit A.

22 MR. HAMEED: Perhaps we can ask the witness if he
23 can identify the document.

24 MS. TURLEY:

25 340. Q. Have you seen this document before, Mr.

1 we can do that.

2 MR. HAMEED: That's fine.

3 MS. TURLEY:

4 540. Q. Mr. Abdelrazik, when you were -- in all your
5 dealings with consular officials you never told them that
6 you had been abused or mistreated by Sudanese authorities?

7 A. I did tell them.

8 541. Q. You didn't tell them until 2008?

9 A. This is not correct.

10 542. Q. When did you tell them prior to 2008?

11 A. Well, I did talk about these things back when
12 I was in the office of the Prosecution for Crimes Against
13 the State and I did talk to David about this more than
14 once and I am wondering whether or not these things are
15 documented in the documents with Mr. Hansen. I wonder in
16 particular about a certain event, and that is when the
17 intelligence arranged for a car to strike the wall of the
18 room in which I was sleeping. In my mind this was an
19 attempt to assassinate me and I talked about this. I
20 wonder if this was ever communicated.

21 543. Q. What I'm talking about is that you had said
22 that when you were in detention you were abused by the
23 Sudanese. You said that you were never able to meet with
24 Mr. Hutchings alone and so you told him about the abuse in
25 front of the Sudanese authorities?

1 A. What I started by saying, and let me clarify
2 this, is that when I talked with David that was in the
3 context of my situation in the Prosecution for Crimes
4 Against the State building. So that was not in the
5 context of my incarceration in the intelligence building
6 or intelligence headquarters.

7 544. Q. Okay, so let's start over then.

8 A. If you would allow me, I wanted to make a
9 correction but I wasn't given the chance and that's in
10 relation to the timing of meeting with Mr. David Hutchings
11 and in terms of the papers that were handled by Mr.
12 Hansen.

13 545. Q. Mr. Abdelrazik, I asked you a particular
14 question and let's focus on the question. The question
15 was, you never told consular officials before 2008 that
16 you were abused or mistreated while in Sudanese detention;
17 is that true?

18 A. I did tell them, yes.

19 546. Q. You told who about it and when?

20 A. David Hutchings. Then I talked with...

21 547. Q. Mr. Abdelrazik, Mr. Abdelrazik, you might
22 recall that we have an interpreter here and Mr. Ghabrial
23 is very good at his job but I don't think he's so quick
24 that he can get everything you're saying. So in order for
25 this to work properly you're going to have to (a) speak

1 slower and (b) say a little bit at a time so he can
2 interpret it.

3 A. The first person that I spoke to was Mr. David
4 Hutchings and that was at the time when I was released
5 from the Kober prison and referred to the division that
6 dealt with the crimes committed against the state.

7 548. Q. And you told him at that time that you had
8 been abused or mistreated by Sudanese authorities?

9 A. Yes.

10 549. Q. Okay. Well, this, Mr. Abdelrazik, is
11 inconsistent with what you've sworn in your Affidavit,
12 which is that if you divulged that information you were
13 going to be afraid for your life and that's indeed why you
14 went into safe haven.

15 A. This is not true. Out of my fear for my life
16 that I talked to Mr. David Hutchings in order to convey my
17 concerns to the Canadian officials, out of concern for my
18 own safety that I did talk to him about this. I would
19 have not asked Mr. Hutchings to publicize what I told him
20 through the newspapers and TV and the reason for my
21 seeking of refuge in the embassy building is the fact that
22 I became aware that these things were going to be
23 published in the media and this way it would become public
24 knowledge, it would be known to the Sudanese officials.

25 550. Q. And the reason why it became public is because

1 you and your counsel made it public?

2 A. Yes, that is true, and I had to take this
3 position because the government was lying to me. So I had
4 no option but to go public so that it would become known
5 to the Canadian citizens, to the Sudanese citizens, that
6 there are crimes committed by this government against
7 humanity and human rights.

8 551. Q. So when you told Mr. Hutchings, you said you
9 told him, this was in what year, in 2004?

10 THE INTERPRETER: Please, you need to speak
11 slowly.

12 THE WITNESS: I would recall to you the situation
13 and the location where I talked to David Hutchings and you
14 would be able, based on my description of the location and
15 circumstances, to pinpoint to the date.

16 MS. TURLEY:

17 552. Q. And you said that you never were able to meet
18 with Mr. Hutchings alone?

19 A. I asked you for correction when you suggested
20 to me that I had met with Hutchings alone, but you did not
21 give me the opportunity to correct these presentations.

22 553. Q. So now after telling me this morning five
23 different times that you never met with Mr. Hutchings
24 alone, now you want to change that story; is that what
25 you're saying?

1 A. Your problem is that you did not give me a
2 chance to correct my position and he did not interpret to
3 you correctly when I said that I met alone with Mr.
4 Hutchings at the office of the Prosecution for Crimes
5 Against the State. Allow me, please, if you would allow
6 me, please understand me correctly.

7 554. Q. Now you are saying that you did in fact--

8 MR. HAMEED: If you'll allow the witness to
9 complete his answer, please.

10 THE WITNESS: I said that it was not true when you
11 suggested that I met alone with Mr. Hutchings at the
12 intelligence headquarters and in Kober. I said this was
13 not true. The other thing, when it comes to Foreign
14 Affairs, that was not true either. But I wanted to lead
15 you to the point where I would have met alone with David
16 Hutchings and you seemed to cut me off and did not allow
17 me to tell you about that one.

18 MS. TURLEY:

19 555. Q. This morning, Mr. Abdelrazik, I asked you
20 about each time that you met with Mr. Hutchings and asked
21 you whether you met alone and whether when he said he met
22 alone with you whether that was true, and each time you
23 said no that wasn't true. So are you now changing one of
24 those answers?

25 A. It is not that I want to correct what I have

1 told you this morning. What happened is that you
2 specified certain locations in the context of me meeting
3 alone with Hutchings and certain dates, and I answered you
4 that it was not true that I had met alone with him at
5 those locations on those dates.

6 556. Q. So there's another location and another date
7 that you met with Mr. Hutchings and so when was that?

8 A. Yes. Specifically, that's the location that I
9 identified as the Crimes Against the State office or
10 building and that's when I talked to him about the
11 torture. The other location, the other place where I had
12 the chance to tell David about these things was at a
13 different location and I was with Dr. Mudawi and with
14 ["Ani Doshier"?] who is now an MP in the Parliament, and
15 that place it belongs to the police. I was still being
16 watched by the office of the Crimes Against the State and
17 that was when David came. He did not enter into the
18 place. He was in the car and I had the chance to talk to
19 him.

20 557. Q. You spoke to Mr. Hutchings in a car?

21 A. Well, not in the car. He came in the car and
22 he got out of the car and asked about me.

23 558. Q. So you weren't inside a building at the time?

24 A. Well, perhaps if I could help you imagine the
25 physical building. It's a building that its entrance

1 would be directly on the street.

2 559. Q. But what I'm asking you is, when you spoke
3 with Mr. Hutchings it was not inside the building?

4 A. No.

5 560. Q. And what month and year was that?

6 A. It was after the month of April. It was
7 during that period between April and July when I was kept
8 by the office of Prosecution for Crimes Against the State.

9 561. Q. This is April to July of 2004?

10 A. I believe so, yes.

11 562. Q. And you didn't tell your lawyers about any of
12 this?

13 A. I did tell the lawyers, but not in the kind of
14 details that I am providing to you now.

15 563. Q. And so it's not in your Affidavit?

16 A. If I were to narrate everything in the
17 Affidavit I would need 500 pages to cover it all.

18 564. Q. But you agree with me that you didn't put it
19 in the Affidavit?

20 A. I presented in the Affidavit the main events.
21 I talked about my torture incident, I talked about the
22 broad aspects of my story.

23 565. Q. And in paragraph 15 of your Affidavit you say
24 that you were told not to disclose the conditions that
25 you experienced?

1 A. Yes, this is true and it is still true, and
2 that is because to this moment I remain to be -- my life
3 remains to be at risk. I remain to be in danger.

4 566. Q. And so you're saying that even though you were
5 worried you told Mr. Hutchings about it?

6 A. I imagined that the Canadian Government would
7 help me in response. I did not know that the Canadian
8 Government would become the reason for my suffering.

9 567. Q. You never followed up with Mr. Hutchings about
10 the information that you say you told him?

11 A. Well, it was not David Hutchings alone that I
12 talked to him and also I did not have the means to follow
13 up on what I would have said to Hutchings. I did not have
14 the means to follow up on the kind of process that would
15 have been started as a result of what I would have said to
16 Mr. Hutchings.

17 568. Q. Who else was there besides Mr. Hutchings?

18 A. When I was talking quickly, if you recall when
19 you stopped me because I was talking quickly and not
20 pausing, I would have mentioned several people. Do you
21 recall that?

22 569. Q. That's why I said you had to slow down and
23 repeat it in small chunks for the interpreter.

24 A. Okay. Now, David Hutchings was absent for a
25 period of time during which I was at the office of

1 Prosecution for Crimes Against the State. So I remember
2 somebody by the name of Rudy and he came to me at that
3 location, and I don't know exactly the location where I
4 was kept, and I talked with him. I showed him the place.
5 I explained to him that the place was not fit for putting
6 human beings and I disclosed to him that I had been
7 tortured in Sudanese prison and I showed him that people
8 were being tortured at night in that detention place, and
9 I showed him a ladder that was used as a torture
10 technique.

11 THE INTERPRETER: Please repeat?

12 THE WITNESS: And the other person would be Mobina
13 Jaffer and I met with her and we sat under the tree by the
14 swimming pool and Mobina Jaffer was not alone, she was
15 accompanied by Alan Bones and David Hutchings himself, and
16 I talked to her about my torture and she assured me that
17 these things were being addressed by the politicians.
18 Please, if you would allow me, so that you don't err in
19 translating, so she -- what she said to me is that the
20 politicians were talking about my issue, they were
21 addressing my case in order to deport me to Canada.
22 Secondly, and the other person would be Mike [Clausey?].

23 THE INTERPRETER: And I'm reproducing the last
24 name phonetically.

25 THE WITNESS: And I talked with him and I

1 explained to him about the torture that I would have
2 experienced, and I told him that if the Americans have an
3 issue with me then they might as well bring me to the
4 embassy and discuss it with me. Please translate
5 correctly. I said to them that if the Americans had an
6 issue with me I would be willing to go -- and this is me
7 talking to Mike now and I said that I would be willing to
8 go to the embassy, to the American embassy, and discuss
9 with them any issues that they would have had against me.
10 So if they had something against me I would be willing to
11 surrender myself to the Americans so they can try me. So
12 Mike said to me "Don't do this kind of thing". I reasoned
13 with him that here in Sudan my life was in danger.

14 MS. TURLEY:

15 570. Q. And, Mr. Abdelrazik, none of this is in your
16 Affidavit either?

17 A. Well, I told you that I would probably need a
18 thousand pages to narrate everything that I had gone
19 through from September 12th, 2003 to the date of the
20 Affidavit.

21 MR. HAMEED: Counsel, I'm just wondering how long
22 for today you anticipate continuing with the Cross and if
23 this might be--

24 MS. TURLEY: We can break now but I'm going to be
25 probably at least another 30 minutes.

1 my questions for today, subject to the documents that you
2 and your counsel are going to look at getting for us and
3 subject to a motion being brought before the court on that
4 issue.

5 RE-EXAMINATION BY MR. HAMEED:

6 633. Q. Mr. Abdelrazik, I just have a couple of
7 questions for you in Re-Examination.

8 A. Yes.

9 634. Q. Ms. Turley asked you about several documents
10 and one of those documents Mr. Hansen may have. It's
11 called Exhibit K.

12 MS. TURLEY: Just to be clear, because what we did
13 is we sent them documents, to Mr. Hansen, and we labelled
14 them. So, Mr. Hansen, it won't be the document K that I
15 gave you. It'll be what we entered as Exhibit K, which is
16 a case note dated August 2nd, 2006.

17 MR. HANSEN: And what would be the letter that you
18 labelled it with when you sent it to me?

19 MS. TURLEY: That's a good question, because I
20 don't have that any more. It said case note number 228 on
21 it.

22 MR. HAMEED: It may be U, the letter U.

23 MS. TURLEY: It may be letter U.

24 MR. HANSEN: Case note 228 of the 2nd of August
25 2006?

1 MR. HAMEED: That's correct.

2 MR. HANSEN: I am handing it to him now.

3 MR. HAMEED: Thank you.

4 635. Q. So, Mr. Abdelrazik, this document relates to a
5 note regarding medical exam tests and comments by a
6 physician. When Ms. Turley was asking questions on this
7 you had something that you wanted to add. Please clarify
8 your evidence with respect to this document.

9 A. First of all, this document was completed at
10 the Doctors Hospital in Khartoum. Excuse me. So this
11 document is referring to a medical examination that would
12 have taken place at the Doctors Hospital in Khartoum and
13 let me just explain a little bit about that particular
14 hospital. This is a hospital for diplomats. It's not
15 exclusive to diplomats but diplomats do frequent the
16 hospital, also UN officials. So the Sudanese intelligence
17 has doctors that work for this hospital that spy on
18 diplomats and UN mission officials that would go to the
19 hospital. So at the time when I went to the hospital with
20 Samia there were two cars belonging to Sudanese
21 intelligence following the Canadian car that I was taken
22 to the hospital into.

23 THE INTERPRETER: He'll have to repeat it.

24 THE WITNESS: And it was motioned to me that I
25 should be very careful not to say anything inappropriate,

1 otherwise I would be returned. In fact, even when Samia
2 talked to the doctor in charge of the hospital about the
3 fact that I had been detained he himself felt afraid,
4 uncomfortable, and one of the doctors that I was seen by
5 also worked for the security hospital, and, again, that is
6 a hospital that is affiliated with Sudanese intelligence
7 and I was not free to say any of these things to whomever
8 because I would be concerned that that person would
9 probably be an agent for the Sudanese intelligence. In
10 fact, I did not volunteer to talk about the marks with the
11 doctor. He himself asked me about those marks. So that
12 hospital I was very careful with whatever I said inside
13 that hospital because it was well known that that hospital
14 is used by Sudanese intelligence to spy on diplomats, on
15 UN officials, on other foreigners. It was known to be a
16 hospital that provided better service for those kinds of
17 people. But that particular report was not a neutral
18 report. It was manipulated, it was a manipulated report,
19 because if the doctor dared to write things that were not
20 the kind of things... So the doctor in charge of the
21 hospital, the director of the hospital, if he were to
22 write things that were not the kind of things that the
23 intelligence wanted he himself could get in trouble
24 with intelligence.

25 MR. HAMEED:

1 636. Q. Mr. Abdelrazik, I just have one question on
2 that. In the explanation you gave you mentioned -- you
3 said "those marks". You said you didn't comment on "those
4 marks", the doctor mentioned it. What do you mean?

5 A. I'm talking about the bodily marks of torture
6 that I had on my body that I had an opportunity to show to
7 some people, including the minister, the government
8 minister. I do not recall his name but I know that he
9 would have come here in the month of March.

10 MR. HAMEED: Thank you, Mr. Abdelrazik, those are
11 my questions for you.

12 MS. TURLEY: I just have a follow-up question, Mr.
13 Abdelrazik, on this exhibit that you have before you. You
14 didn't mention any of--

15 MR. HAMEED: I'm just wondering, how does this
16 supplementary re-examination result? The witness
17 clarified his evidence from cross-examination. So I'm
18 just wondering how a new right of re-examination results. *O*

19 MS. TURLEY: He brought up something new and I
20 think -- it's something he didn't say before. So I think
21 I have the right to examine him.

22 MR. HAMEED: But there's no right of--

23 THE WITNESS: Will you please provide an
24 interpretation of this exchange?

25 MR. HAMEED: My understanding of the way that