

WHO ARRESTED AND INTERROGATED HUSSEIN ABEBE?

Mary and I both noted the suggestion in Judge Lewis Kaplan's summary opinion refusing to let Hussein Abebe testify against Ahmed Khalfan Ghailani that Abebe himself was coerced to testify.

Kaplan's complete ruling provides more details. At the very least, Kaplan's opinion points to an entire day of Abebe's interrogation—the day on which he first confessed to having provided Ghailani the explosives for the embassy bombing—about which the government is withholding evidence. The unredacted portions of the ruling note that this means the people interrogating Abebe may well have used details from Ghailani's own interrogation to convince Abebe to confess, which would exacerbate the poisoned fruit aspect of Abebe's confession. And while Kaplan doesn't say it in any of the unredacted portions, there is also the possibility that Abebe himself was abused on that day of his interrogation.

But just as interesting is the question of who conducted that interrogation. While the government and the Tanzanian national police claim members of the TNP were present, Kaplan found the TNP weren't in charge the interrogation. So what entity was conducting this potentially coercive interrogation?

Abebe confessed to selling Ghailani explosives in a vaguely-described August 2006 interrogation

Let's start with the chronology.

Late July or early August 2006: Abebe receives call from "Mr. Mazoa" instructing him to meet with some unnamed people in Dar es Salaam on the 13th.

August 12: Valentine Mlowola, then Senior Superintendent of the TNP, first briefed about impending Abebe arrest.

August 13: Two men (whose names and affiliations are redacted) get into Abebe's taxi in Arusha and direct him to the police station. They meet Mlowola there, and apparently all four take a cab to Kilimanjaro Airport and then fly to Zanzibar and from there drive to a location which Abebe described as looking like a hotel.

August 14: Abebe meets a Sadek Majid, whom Abebe knows from Arusha. Tanzanians interrogate him with no Americans present; he does not confess to having sold Ghailani the explosives on that first day.

August 15: Tanzanians interrogate him, again with no Americans present. He confesses to selling Ghailani the explosives.

August 16: Four FBI agents arrive. They Mirandize Abebe, then conduct three interrogation sessions, during which he presumably repeats his description of selling Ghailani the explosives.

August 17: The FBI agents conduct one more interrogation session, then leave.

August 19: Tanzanians fly Abebe to Dar es Salaam and hold him in jail for four additional days.

August 24: Tanzanians release Abebe on a bond accusing him of conspiring to murder and terrorist acts.

Now, much of the narrative describing this chronology—including all but a few sentences describing Abebe's interrogation by Tanzanians—is redacted. But several things are clear.

The Tanzanian Police did not have the lead on Abebe's interrogation

First, while the TNP were involved in Abebe's arrest, they were really only brought in as an afterthought. Kaplan writes:

Mlowola was drawn in only on August 12, primarily because it was thought helpful to have the TNP involved in making the arrest.

Since the TNP were only brought in on August 12, we can be sure that the man who called Abebe two weeks earlier and introduced himself as "Mr. Mazoa" was honest when he indicated that he no longer worked with the TNP.

In late July or early August, roughly two weeks before his arrest, Abebe received a phone call from a man who identified himself as Mr. Mazoa. Mazoa told him that Abebe did not know him, but that he was a well-known person who used to work at the police station in Arusha.

He then instructed Abebe to travel to Dar es Salaam because "there are some people who would like to talk to you [there] on the 13th." When Abebe asked who wanted to speak with him in Dar es Salaam, Mazoa said, "you'll know them when you come." Abebe responded that he could not afford to travel to Arusha, at which point Mazoa suggested that he take out a loan to pay the travel costs and that Abebe later would be reimbursed.

So someone, no longer employed by the TNP, calls Abebe and tells him to take a loan out to travel to Dar es Salaam. When he doesn't do that, on the 13th two guys get in his cab, take him to the police station (which appears to be the first time when the TNP get involved) and from there fly him to an interrogation location.

TNP officers were present at the interrogation

Though at least one TNP officer was present for at least part of the interrogation: Mlowola. Kaplan notes that Abebe and Mlowola's testimony conflicts on this point.

According to Mlowola, he was the lead questioner and there was only one interrogation session involving Tanzanians alone. Abebe, on the other hand, said he was questioned by the Tanzanians alone for two full days and that Mlowola was not present during either of those sessions.

Kaplan resolves this conflict this way:

Having considered all the evidence, the Court finds that Abebe was interrogated by the Tanzanians alone through August 14 and 15, [redacted] that Mlowola was present for at least part of it, and that the testimony of both Mlowola and Abebe as to Mlowola's role and presence was inaccurate in material respects. Abebe was wrong in saying that Mlowola was not there at all and falsely described Abebe's own state of mind and motives. Mlowola was mistaken concerning his role in the questioning and the number of sessions.

Kaplan also repeatedly refers to notes taken by a TNP officer (as I'll discuss further below). That would imply that at least one more member of the TNP, in addition to Mlowola, was present. Yet since the government did not submit those notes as evidence (or have that officer testify), that may not be reliable.

No Americans were "present" at the key interrogation

As I said above, Kaplan's unredacted narrative states that no Americans were present for the first two days of Abebe's interrogation, though he footnotes that statement and the footnote (which appears to be two lines long) is entirely

redacted. Later, Kaplan notes,

Whether by design or otherwise, there were no Americans whose presence could be compelled by an American court in the room.

I find that entire construction fascinating. Is Kaplan qualifying “Americans” with “whose presence could be compelled” to suggest there were Americans there whose presence couldn’t be compelled (such as CIA officers)? Or is he distinguishing between Americans “in the room” and Americans who might be observing but not present? If so, all of that is left unsaid. This sentence is followed by a redacted sentence, so Kaplan may have said more about this that got redacted.

In any case, the FBI remarkably swoops in on the day after Abebe confesses, and proceeds to get a Mirandized version of Abebe’s earlier confession. As if they had been waiting just outside the door for the moment when he confessed so as to get a version that would be admissible in a US court.

The government did not submit testimony from those who conducted the interrogation

All of which explains the central questions behind Kaplan’s ruling. The crucial details about whether or not Abebe’s testimony would be admissible took place on August 15, 2006, the second day during which Tanzanians interrogated Abebe with no Americans present. But as Kaplan notes, the government chose not to produce all available testimony about that day; significantly, it did not have any of the people in charge of Abebe’s interrogation appear as witnesses.

The government has not established exactly what happened on the second day of Tanzanian interrogation, but something convinced Abebe finally to tell them that he had sold explosives to Ghailani. Seeing no other options

available to him, he admitted his involvement [redacted]. He cried that night, despondent over what he had told the Tanzanian officials and fearful of what it would mean for his future. The next day, he repeated to the FBI what he had already told [redacted] and agreed to testify wherever and whenever the Tanzanian or American officials wished.

[snip]

The contemporaneous notes taken by a TNP officer who apparently was present were not offered in evidence. And while both Abebe and Mlowola testified in general terms that Abebe was not told about Ghailani's statements, Abebe was not a credible witness, and Mlowola remembered little and was confused [sic] other key points. Moreover, their testimony on this point disregards the contemporaneous, if not complete or entirely satisfactory, evidence that is in the record—[redacted].

[snip]

Abebe assuredly is not a volunteer witness. He sought to avoid discovery for years out of fears of being identified as the supplier of the explosives. He withstood his arrest, his transfer to [redacted] Zanzibar, and a full day of Tanzanian interrogation without admitting to his role, a reticence born of the fear of the consequences of a different course. In the last analysis, he has agreed to testify because he is afraid to do anything else.

What exactly produced this change of heart? Certainly not what Abebe claims produced it. The government has provided no convincing evidence of what accounted for it. As previously discussed, no one who was in the room at the time has been

called to testify except Abebe and, if he was there, Mlowola. The contemporaneous notes that Mlowola said were taken were not offered and their absence was not accounted for.

So the government chose not to submit the TNP notes it claims existed, nor any of the people in charge of the interrogation.

Now, the redacted reference to a contemporaneous account separate from the TNP notes suggests the initial record was probably an intelligence report. And the most obvious people to be conducting this interrogation would be Tanzanian intelligence officers. (Though I'm actually curious whether the interrogation was conducted by official government officials or by some kind of private contractors.)

But that, of course, is the question that never gets addressed in the unredacted portions of Kaplan's ruling. If this was run by intelligence professionals (either governmental or private), then what standards of interrogation did they use? How closely were they tied to the CIA officials who, Kaplan makes clear, had already used torture to get this intelligence? And are the unredacted assertions that no Americans were "present" at the interrogation true?

The government attempted to get an admissible confession from Abebe before Ghailani left CIA custody

Finally, I'm interested in the timing of this: August 2006.

All of this happened just weeks before Ghailani was transferred from a CIA black site to DOD custody at Gitmo on September 6, 2006.

As Kaplan makes clear, the government made efforts—ultimately unsuccessful ones—to get an Abebe confession to the FBI that might be admissible in a court. As Kaplan suggests, it was probably not an accident that the government made sure no witnesses who could be subpoenaed

when Abebe was convinced—by whatever means—to confess. It is rather unsurprising that none of the people in charge of the interrogation will be subjected to Kaplan's scrutiny.

This appears to have been a last minute attempt to clean up evidence relating to Ghailani, just as he was about to be transferred out of CIA custody.