

Warfaa v. Ali Legal Monitoring, Day 2

Tuesday, May 14, 2019

Stanford Law School International Human Rights & Conflict Resolution Clinic

This account summarizes what occurred on the second day of trial in the case of *Farhan Mohamoud Tani Warfaa v. Yusuf Abdi Ali*, No. 1:05cv701 (LMB/JFA). The trial is set to continue over the next two days in the Federal Courthouse in Alexandria, Virginia. The Center for Justice and Accountability invited the Stanford Law Human Rights & Conflict Resolution Clinic to conduct neutral trial observation and produce daily reports of the proceedings for interested parties, including the Somali diaspora.¹

Court commenced at 9:33 a.m. with preliminary matters. The jury entered at 9:37 a.m. and confirmed to Judge Leonie M. Brinkema that they had no problems with exposure to information about the case since Court adjourned yesterday. The Plaintiff, examined by Kathy Roberts (Center for Justice & Accountability), Farhan Mohamous Tani Warfaa, then resumed his testimony. He stated that, after returning from the Ethiopia, his village of Jifo was empty and destroyed; his home burned. Questioning returned to experience after getting shot. Plaintiff stated that he thought of **“Death... When you’re in a coma you do not remember... only death. . . [e]ighty percent of my life is gone.”** When asked why he brought the present lawsuit, Plaintiff responded he did so, **“[t]o find justice.”**

At 9:44 a.m. Joseph Peter Drennan (Counsel for the Defendant) began his cross-examination of the Plaintiff. His questioning first focused on an answer that the Plaintiff had given

¹ This report is the product of the students of the Human Rights & Conflict Resolution Clinic and is not attributable to the Center for Justice & Accountability or Stanford Law School.

to the seventh interrogatory answered in 2005. While he had testified yesterday that he had been put in the MiG position at least twenty times (although he could not remember the exact number), his interrogatory answer was that he had been tortured that way six to nine times. Plaintiff responded that he had actually said *sixteen* to *nineteen* times, and that the interpreter could have misinterpreted his response. Drennan then asked if Plaintiff recalled signing the verification page of the interrogatories, where it stated that the answers had been read back to him in Somali and signed under the penalty of perjury. Plaintiff said that he did recall signing the page, but that the translation could still have been faulty.

Drennan then asked about the Defendant's nickname, "Tukeh," which the Plaintiff had used in his prior testimony. Plaintiff said that he called the Defendant that because people who knew the Defendant had told him that's what the Colonel went by.

The next subject of the cross-examination was who, besides his lawyers, Plaintiff had talked to about the content of his testimony. Plaintiff stated that he discussed his testimony with his lawyers and their "representatives." Drennan asked who these "representatives" were, and Mr. Warfaa said they were human rights advocates in Somaliland. Asked if they were members of the War Crimes Commission in Hargeisa, Plaintiff responded that they were "facilitators" of his contact with his lawyer. Judge Brinkema interjected that the discussion was drawing perilously close to privileged discussions, and Drennan moved on.

After this, Drennan turned his questioning to details of Plaintiff's prior testimony. The first was Plaintiff's mention that he had been in a restaurant where people went to chew *khat* just before he saw the Defendant for the first time. Drennan asked the Plaintiff if he had ever chewed *khat*. The Plaintiff responded that he had, but long ago.

The second detail that Drennan focused on was the seventeenth man whom the Plaintiff had said was with the group of detainees under the tree before they were taken to the military base. This man had, Plaintiff stated, been released after his father asked the soldiers to let him go because he was an old man and his wife had died. Drennan highlighted that the Plaintiff had not mentioned this man during his December 2018 deposition.

Third, Drennan asked about the words that the Plaintiff had reportedly heard before becoming unconscious after being shot by the Defendant—“**take him away**”. Mr. Drennan directed the witness’s attention to the expert report of Dr. Keller, who noted that the Plaintiff reported losing consciousness and not regaining it until he was in the hospital. Dr. Keller also reported that people had filled the Plaintiff in on the words, as well as the details of his ransom. The Plaintiff maintained that, as he had said on direct, he became unconscious after hearing the words “**take him away**”, and later regained consciousness while on top of the truck.

Fourth, Drennan brought up the one million Shilling figure that the Plaintiff had put as his ransom in the interrogatory, but not in his direct testimony. He said that he could not be sure of the exact figure paid for his ransom. Drennan asked if the Plaintiff might have learned this amount and most of his allegations from other people. Mr. Warfaa did not agree.

Next, Drennan returned to his suggestion that the Plaintiff had formulated his testimony with other witnesses in the case and members of the Isaaq community. The questions focused particularly on the occasion of several depositions taken in Djibouti in December 2018, some of which were played later in the courtroom. Drennan asked if the Plaintiff had discussed his testimony with these other witnesses during the trip, which the Plaintiff denied.

Finally, Drennan asked if the Plaintiff would say where he was *really* tortured and shot. Plaintiff said yes, it happened in the Defendant’s office. Mr. Drennan asked if the National Security

Service of Somalia (NSS) had been the ones who tortured the Plaintiff. Mr. Warfaa professed to be ignorant of the role of the NSS, although he had heard of them.

Drennan ended his cross-examination by asking if the Plaintiff was suing Mr. Ali just because the Defendant was subject to the jurisdiction of United States courts. The Plaintiff said he sued because Mr. Ali was the one who subjected him to torture.

Roberts began her redirect examination of the Plaintiff at 11:04 a.m. She asked first if the Plaintiff could understand English. He said that he couldn't; he is dependent on interpreters to understand English-language documents.

Next, Roberts asked the Plaintiff to explain the Somali custom of nicknaming. Plaintiff explained that they are very common; people will give them based on physical traits or deeds, but they are not considered offensive. Plaintiff noted a Somali proverb: **“A man is he who has a nickname.”**

Roberts then asked if the Plaintiff could name the sixteen men with whom he was imprisoned. The Plaintiff said he could name all but two or three, and then listed the names of all those he could remember: Mohamed Ali Bare, Abib Awaf Magan, Farkhad Adan Allamagan, Farhan Muhamed Ali Warfaa (the Plaintiff himself), Omar Tukale Warfaa, Hassan Tukale Warfaa, Awdahir Jama Rodle, Salemun Jama Rodle, Mohamud Awyusuf Magan, Sayid Haji Nur, Mohamed Riiraash Hows, Ibrahim Obsiye Awad, Arab Awahmed Amir. He said that he could remember these names so well because they were part of a “historical event” and he was the “chief” where some of them still lived.

Plaintiff then said that as an elder, he could not order people to give false testimony. He testified that, at the time, he knew about the SNM only what he had heard on the radio. And he

also said that although he lost consciousness, it happened long enough after he was shot for him to hear what Mr. Ali said.

Drennan re-cross-examined the Plaintiff from 11:38 a.m. to 11:46 a.m., focusing on whether he had spoken with people in his community about the abuses alleged in his testimony. The Plaintiff held the rail of the witness box with his right hand while responding that he had not discussed these events with others in his community. When asked why he described these experiences as “historical events,” the Plaintiff responded, **“There are two kinds of history—good one and bad one. Whatever happened on the earth, it is history whether it’s good history or bad events.”**

Ramos (DLA Piper) then read several of the parties’ agreed stipulations into the record, establishing that the Defendant commanded the Fifth Brigade in Gebiley including from May 1987 to July 1988, and as the commander was responsible for the Tog Wajaale and Gebiley regions.

At 11:50 a.m., the video deposition of **Mahamoud Hassan Tukale Warfaa** was played. The Deposition was taken in Djibouti on December 13, 2018 by Nushin Sarkarati (Center for Justice & Accountability) and Drennan. On direct examination, Mr. Tukale provided identifying information including that he is a farmer and the Plaintiff’s cousin.

When he was asked if he had ever seen a soldier from the SNA, he reported that he had seen some when they came to arrest his father, his uncle, and the Plaintiff. Sarkarati asked him a series of follow-up questions about this incident. Mr. Tukale recounted the following narrative over the course of his answers to these questions: he was asleep outside by where the goats were kept when the soldiers arrived. He kept his head down to avoid being seen. He saw them take his father, who was on his way to do his morning ablutions (*wadu*), under a tree, where a group of other men was gathered. He put their number at thirteen, three of whom were members of the

Gadabuursi clan, and the rest of the Isaaq clan. He saw the soldiers beat the men with sticks and drive them away “**like a camel.**” He reported further that all efforts to see the men and secure their release were unsuccessful.

Sarkarati next asked about what the witness did after the arrests. He said that he had stayed in Jifo for two months before going with the rest of the villagers to the refugee camp at Dula’d, Ethiopia. They took only their livestock, he said. He also said that there were only Isaaq people in the refugee camp. Sarkarati then asked if he knew anyone who had been involved in the theft of the water truck. Mr. Tukale responded in the negative.

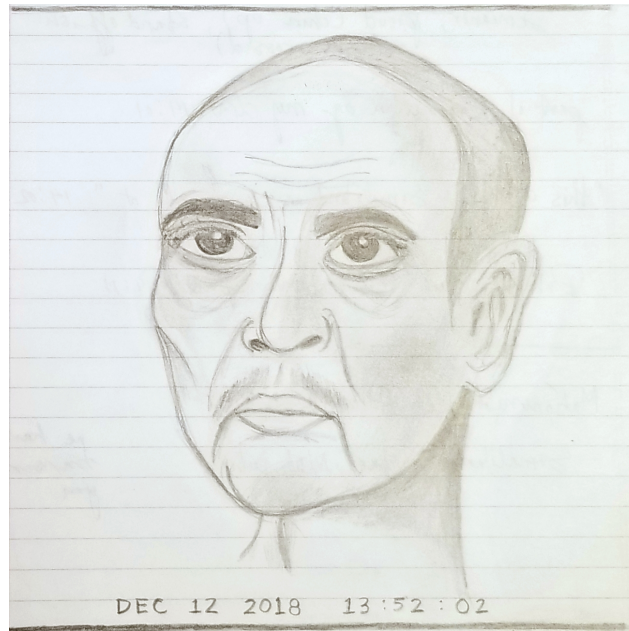
Returning to the subject of the camp at Dula’d, Mr. Tukale said that the next time he saw his father and the Plaintiff was at the camp, when they arrived about two-and-a-half or three years after his family first arrived. Mr. Tukale recalls that both of them arrived very weak, especially the Plaintiff, who was injured. He said that he never saw his uncle again because he died in jail.

At 12:11 p.m., Drennan began cross-examination. He asked most of his questions about what contact Mr. Tukale had had with Mr. Warfaa leading up to his testimony. Mr. Tukale testified that, although he lives in the same territory as the Plaintiff, and sees him regularly the two have never discussed the case. Drennan also asked if Mr. Tukale considered the case to be important to the Isaaq clan, and Mr. Tukale said yes.

On redirect, beginning at 12:18 p.m., Sarkarati asked if the Plaintiff could, drawing on his authority as an elder, instruct Mr. Tukale to give false testimony. Mr. Tukale said no; he wouldn’t do anything that the Plaintiff said to do if it were wrong. He also said that he had only talked to his lawyers about his testimony.

The video deposition of the Plaintiff’s fourth witness, **Abdi Abdilahi Ahmed**, began at 12:21 p.m. He was examined by Ramos (DLA Piper). Mr. Ahmed said that he was born in 1954

in Gebiley, and is currently a major in the armed forces of Somaliland. He reported having met the Defendant who was his commanding officer in the SNA. Mr. Ahmed said he served in the Fifth Brigade until he deserted the SNA to join the SNM in 1988. He then said that he met the Plaintiff when he was an elder in Gebiley in 2005.



Courtroom Sketch of Abdi Abdilahi Ahmed

Mr. Ahmed then discussed the training he received as part of the SNA, including on the chain of command, the duties of soldiers towards civilians, and the responsibilities of commanding officers who violated those duties. He mentioned also that the Defendant was commander of the Fifth Brigade from 1987 to 1988.

He reported having interactions with the Defendant, but not receiving any particular orders. He also reported that he, as a member of the Isaaq clan, was excluded from a large number of the operations of the Brigade because they were against Isaaq people, including operations to round up suspected SNM members.

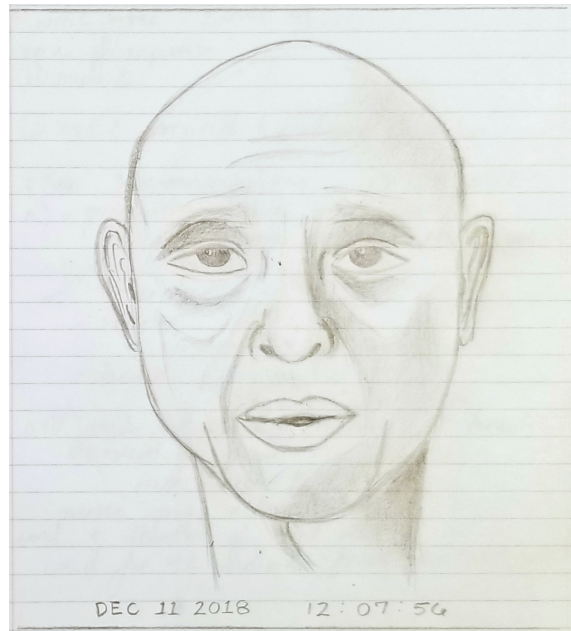
The jury was dismissed for lunch at 1:01 p.m.; court remained in session while the judge expressed concern that Mr. Ahmed's deposition had included some cumulative evidence. Court recessed for lunch at 1:04 p.m. and resumed at 2:02 p.m. with further direct examination by Ramos. Mr. Ahmed described how prisoners at the Gebiley base were tortured, including by keeping them in darkness and playing loud sounds in their cells and subjecting them to the MiG position. Describing the MiG position, he said the soldiers declared they looked like airplanes and **"would tell them, you are an airplane, now you need to fly."**

At 2:31 p.m., Drennan began his cross-examination. His line of questioning emphasized that the witness had deserted and subsequently fought the SNA. Drennan asked if he was sent to Djibouti to give testimony by his Superior, General Tani, asking, **"he wants you here today, doesn't he?"** Mr. Ahmed responded that **"he gave me permission to come here. I am here on my own."** Mr. Ahmed stated that he spoke about the roundup of civilians from personal knowledge, he did not meet the Plaintiff until 2005, and he did not consider the Plaintiff a friend. When asked why he wasn't in uniform, Mr. Ahmed replied that it was because he was on leave.

On re-direct Mr. Ahmed stated that if he did not leave the SNA in 1988, he believed the Fifth Brigade would capture him as they did the other soldiers. On re-cross-examination, Drennan asked how he knew the captured soldiers were Isaaq, and Mr. Ahmed stated the uniforms did not identify the tribe of the soldiers. On the second re-direct, Mr. Ahmed clarified that he knew the soldiers on the base, and personally knew the majority of the Isaaq soldiers captured.

The video deposition of Plaintiff's fifth witness, **Mohamed Areye Ali Sugale** began at 2:47 p.m. Mr. Sugale testified to the following details: he was a member of the Somaliland National Police and had previously served under the Defendant in the SNA. He stated that as the highest Commander in Gebiley, the Defendant gave orders, and said that, **"[y]ou cannot ask him**

what the superiors above him told him.” He added that Isaaq soldiers were excluded from normal orders out of a fear that they would join the people whom the army was persecuting. The Defendant would only order the people he had confidence in to conduct “wrong operations”: *i.e.*, going armed to slaughter Isaaq livestock and detain Isaaq people.



Courtroom Sketch of Mohamed Areye Ali Sugale

When asked about the water truck incident in 1987, Mr. Sugale stated that the Defendant ordered the Somali border with Ethiopia closed. He then recounted how he left the SNA in June 1988 because, after the Defendant discovered some Isaaq soldiers to be missing, he ordered the remainder of the assembled Isaaq soldiers to lay down their weapons and run. As their superior, Mr. Sugale stayed with the weapons, and refused to leave. He stated that the Defendant told Mr. Sugale’s commanding officer that **“this guy is going to escape, and don’t tell me later that he escaped from here.”** He added that all of the approximately seventy five Isaaq soldiers of the Fifth Brigade **“are still missing as of today.”** Mr. Sugale also accused the SNA of killing civilians,

claiming he saw bodies and that the SNA put civilians in cars and some soldiers would tell the Isaaq soldiers that “[t]hey are going to kill some people.”

Defense began cross-examination by asking if Mr. Sugale’s testimony was motivated by his desire for Somaliland to receive state recognition, which the witness denied. Mr. Sugale stated that he indeed fought against the SNA after defecting from it, and that his accommodation, airfare, and meals during the travel for the deposition were paid for by the Plaintiff’s attorneys.

On re-direct, Mr. Sugale stated that he chose to testify because he was present and knew what had happened. On re-cross-examination, he clarified that he did not see what happened to Mr. Warfaa. Mr. Sugale’s deposition concluded at 3:11 p.m.

Plaintiff’s counsel Sarkarati read several stipulations into the record, establishing that, as the commander of the Fifth Brigade, the Defendant had had authority over the Fifth Brigade headquarters at Gebiley where his responsibilities included command and control of his units, training, and health, and welfare.

At 3:12 p.m. the video deposition of the Plaintiff’s final fact witness, **Ahmed Muse Madar**, began. In his direct examination by Ramos, taken on December 11, 2018, Mr. Madar testified that he is of the Isaaq clan and lives in the town of Arabiyso, which is 37 kilometers from Hargeisa and within the region controlled by Defendant in the 1980s. He claimed that his brother, Abdi Muse Madar, was “**captured, tortured, burned, and, at the end, he was shot to dead,**” along with seven others in 1988. Abdi Ahmed was a member of the SNA from 1976-1988. According to Mr. Madar, in either late 1987 or early 1988, he, his brother, and five other family members were arrested by the Defendant’s forces and spent over two months separated from his brother in various overcrowded jails in the area. When he saw his brother again for the first time, Mr. Madar claimed Abdi was ostensibly tortured, with burns on his face, hands, arms, and legs,

and expressed fear and knew he would be killed. **“They already beat him, and there’s nothing left [...] What he’s been through, death would be better.”** Mr. Madar stated he and his family were questioned without a lawyer and declared innocent and released in Arabyso, but his brother Abdi was declared guilty, tied to a wall, and shot in front of his family. At the end of direct examination, Mr. Madar identified the Defendant from a photo (this positive identification was confirmed in a stipulation).

During cross-examination beginning at 3:47 p.m., Drennan expressed skepticism over the specificity of Mr. Madar’s claims given that he never wrote anything down. When asked about whether he knew of the Commission for Grievances against the SNA in Hargeisa, Mr. Madar said that he had heard of them, but had no relationship with the organization. Finally, when asked about if he personally saw or heard the Defendant give the orders to kill his brother, Mr. Madar said that he did not, but that he knew the Defendant ordered his soldiers **“released to the community”** to commit these acts. Mr. Madar’s deposition concluded at 3:52 p.m.

At 4:12 p.m., the Plaintiff called his second expert witness, **Dr. Allen S. Keller** of New York University and Bellevue Hospital. Dr. Keller is accepted by the parties and the Court as an expert witness in the medical evaluation and treatment of victims and survivors of torture. In his direct examination by Benjamin Klein (DLA Piper), Dr. Keller described his analysis of the physical, psychological, and social harm the Plaintiff has suffered as a result of the abuses he alleged. In his more than twenty-five years of experience evaluating and treating torture victims and survivors, including as the founding director of the NYU/Bellevue Program for Survivors of Torture, Dr. Allen estimates that he has assessed about 4,000 individuals from more than ninety countries. He typically follows an internationally recognized standard called the Istanbul Protocol,

which is the procedure he applied during his assessment of the Plaintiff and that formed the basis of his expert report.

Dr. Keller evaluated the Plaintiff over two days—for approximately ten or twelve hours total—in December 2018, and also re-evaluated him last week. Dr. Keller’s examination first sought to establish a baseline describing the Plaintiff’s condition before the abuses alleged. At this baseline the Plaintiff was in **“excellent health,”** socially outgoing, **“the life of the party.”** During much of Dr. Keller’s evaluation, however, Plaintiff’s demeanor was flat and distant.

Dr. Keller described the Plaintiff as generally **“friendly and gregarious,”** but was struck by the **“flat affect”** the Plaintiff **“assumed . . . when describing his trauma.”** The Plaintiff had a very short attention span, Dr. Keller said, requiring frequent breaks and being easily distracted. **“His memory, with the appropriate prodding and questioning, was quite, quite impressive,”** Dr. Keller recounted, though the Plaintiff was often reluctant to speak about traumatic memories and experiences.

Dr. Keller **“diagnosed [the Plaintiff] with severe Post Traumatic Stress Disorder,”** which **“is a severe form of anxiety, often debilitating,”** characterized by intrusive thoughts, avoidance of disturbing memories, variations in mood and cognition, and hyperarousal. According to Dr. Keller’s evaluation, the Plaintiff has had disrupted sleep for decades and has experienced dissociative symptoms so severe that he can no longer drive. He added that the Plaintiff has difficulty praying, because kneeling causes muscle aches that trigger flashback memories of torture. The Plaintiff sleeps separately from his wife because of his frequent nightmares, and told Dr. Keller, **“I have dreams and nightmares a lot. Sometimes I can’t count them. Sometimes I can go a couple days without them, but not more than a week.”**

Dr. Keller's evaluation found that **"[Plaintiff] had some the most marked symptoms of avoidance that I have seen in my over twenty-five years of conducting these evaluations."** When the Plaintiff was describing his trauma to Dr. Keller, **"it was as if he was looking around like something bad was about to happen."** Plaintiff had such difficulty recounting his trauma that Dr. Keller suggested they continue their conversation on a walk. **"I actually had to take a part of the trauma history on the National Mall,"** Keller testified.

"In my opinion, his PTSD is debilitating. It is severe. He suffers from a wide range of symptoms which impede and impair his everyday life [...] He suffers immensely." In Dr. Keller's **"professional opinion . . . [Plaintiff's] moderately severe depression, along with his PTSD, is the direct result of the torture, imprisonment and attempted killing he experienced at Gebiley."** Among the depressive symptoms Dr. Keller assessed was Plaintiff's preoccupation with death. Quoting from an interview with the Plaintiff, Dr. Keller read, **"I am not able to feel emotions, but I think about death a lot. It's like I got used to death."**

In his physical analysis, Dr. Keller noted several consistencies between Plaintiff's scarring and bullet wounds. Using photographs and X-Rays of Plaintiff's body, Dr. Keller identified for the jury the well-demarcated, hyperpigmented scars on Plaintiff's right wrist and right leg consistent with scars from entry wounds. On the top of Plaintiff's right wrist, Dr. Keller identified a scar with a large depression, consistent with an exit wound; and on the back of Plaintiff's right calf, the witness identified a much larger scar where he believes two bullets exited. Dr. Keller also noted bullet shrapnel in the Plaintiff's limbs.

Dr. Keller also noted two lighter scars on the Plaintiff's hand which the Plaintiff had readily explained as unrelated to the torture he alleges, one of which was caused by a camel bite. When

Klein asked whether Dr. Keller found it important that the Plaintiff had volunteered this information, the witness replied positively.

Dr. Keller's testimony ended at 5:28 p.m. when the jury was dismissed. Court remained in session while the judge sought further information about the nature of the Plaintiff's third and final expert witness. The trial will resume at 9:30 a.m. with continued testimony from Dr. Keller. Defendant Yusuf Abdi Ali is expected to testify by tomorrow afternoon.