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Colin Robinson  
New Press  
38 Greene Street  
New York, NY 10013

Dear Mr. Robinson:

I am now in a position to answer Mr. Goel's initial enquiry regarding endnote 9 of Chapter 18 in The Case For Israel, though I was promised all the fact checks together. First, some background.

Here is the charge Finkelstein has publicly leveled against me on C-SPAN and said will be part of his forthcoming book about me:

“Dershowitz simply conjures things up from thin air. I'll give you one example. There was a famous case in 1995 of a Palestinian who was shaken to death while in detention. And nobody disputed the facts—the Israeli pathologists' office, the forensic pathologists who were brought into the case, eventually it went to the Israeli High Court of Justice—they all agreed. And I'm quoting now from the High Court of Justice Judgment: 'All agree that Harizad (phonetic) died from the shaking.' If you go to Dershowitz's book, he discusses the case and says, quote, 'An independent inquiry found that he didn't die from the shaking, but from a previous illness' (emphasis added). That was just made up. Now that was literally made up.”

Virtually everything in Finkelstein's statement is demonstrably false—including his alleged “quotes.” Let me note first that the statement Finkelstein says I made (he deliberately misquotes it) appears in an endnote, not even a footnote, though Finkelstein makes it appear as if the statement was central to the text of my book. Second, Finkelstein is referring to a different case than the one I describe in the endnote, and he knows that.

Most important, every word I wrote in endnote 9 is absolutely true and there is documentary evidence to support it, including the actual autopsy reports. I made nothing up, and

Finkelstein knows it. Several years ago I was told about a case in which a detainee named Mustafa Akawai died of an unknown, pre-existing heart condition after having been shaken. I was told about this case by a number of sources, including the doctor who conducted the autopsy at the request of Boston's Physicians For Human Rights and the state attorney in charge of the investigation. I also read about this case in the press. I have spoken publicly about the case for several years in speeches and lectures. The official conclusion of the Israeli investigation based on the autopsies was that Mustafa Akawai 's death was caused by a "heart attack" and "no other reason." Dr. Michael Baden, among the most eminent forensic pathologists in the world, flew to Israel to conduct an autopsy on the body of Akawai, who had died following interrogation. The Israelis were accused of having caused his death by the treatment he received while under arrest, including shaking during interrogation. Dr. Baden told me, confirming what I had been told by a high-ranking official in the Israel State Attorney's Office, that Akawai died from a previously undiagnosed heart condition. Baden was, however, quite critical of Israeli authorities and did conclude that their rough treatment of Akawai precipitated the heart attack, but that such treatment would not have precipitated a heart attack in a person without an extremely severe heart condition, and that the Israeli authorities were entirely unaware of his heart condition.<sup>1</sup> Accordingly, the investigation was ultimately closed on the ground that "the pathologist's post-mortem examination did not suggest a connection between the interrogation and/or its character, and the heart attack that caused his death." Nonetheless, the investigator in charge of Akawai's interrogation was disciplined because his actions violated accepted standards "although a connection was not found between his behavior and the death of the deceased." Reasonable people can disagree about this conclusion, but there is no doubt that an independent investigation attributed his death to an unknown pre-existing medical condition, precisely as I wrote.

When I wrote the text of endnote 9,<sup>2</sup> I was referring to the Akawai case, which had received considerable publicity around the world. That was "the famous case." I did not make it up. It is Finkelstein who has made up his alleged quote from the High Court of Justice judgment and a quote from me. There is no statement in the High Court judgment that says "all agree that Harizad [referring to the other case] died from the shaking." What the High Court said is that "all agree that, in one particular case, (HCJ 4054/95) the suspect expired after being shaken" (emphasis added). Finkelstein pretended to be making a direct quote and then made up the words "died from the shaking". The difference between died from the shaking and died "after being shaken" is considerable, especially since the sentence in the High Court judgment is preceded by the following description of the medical literature offered by the state and quoted by the High Court: "medical literature has not, to date, reported a case in which a person died as a

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<sup>1</sup> Baden told me that when he made his announcement, he was greeted with derision by anti-Israel activists who were hoping that he would conclude that Akawai died directly from the shaking. (Another doctor, Derek Pounder, had been called in by anti-Israel groups to examine several cases, and had always blamed Israeli authorities, regardless of the evidence. Dr. Pounder's reputation was very poor in the community of experts and at least one prominent forensic pathologist has called him a fraud and a one-sided political hack.) Because Dr. Baden had previously come to a conclusion in an earlier case that supported the Palestinian account, it was assumed that he would come to a similar conclusion in the Akawai case. But his autopsy revealed the pre-existing coronary condition and that it was unknown to the Israeli authorities.

<sup>2</sup> I not only wrote every word of the book by hand, despite Finkelstein's defamation to the contrary, I also wrote the text of the endnotes. My research assistants did help in finding the authorities cited in support of the textual endnotes.

direct result of having been shaken.” One sentence after saying that the suspect “expired after being shaken”, the High Court said that “death was caused by an extremely rare complication which resulted in pulmonary edema.”

Finkelstein then proceeds to distort a quote about me, putting the following words between quotation marks and in my mouth “an independent enquiry found that he didn’t die from the shaking, but from a previous illness.” What I in fact said in endnote 9 was the following: “one person died following shaking, but an independent investigation attributed his death to an unknown pre-existing medical condition.” Even though the substance is similar, the very fact that he would falsely describe it as a direct quote is typical of Finkelstein. Although I was referring to the Akawai case, and Finkelstein was referring to the Harizad case, my description—as it turns out—comes much closer to what actually occurred in the Harizad case than does Finkelstein’s, because Finkelstein deliberately distorted the quote from the Israel High Court to serve his ideological interests.

In any event, the fact is—and I can prove this by external evidence—that I was referring to the Akawai case when I wrote the text of endnote 9. I have spoken about the Akawai case repeatedly and saw the documentation in that case. I was unaware of the Harizad case Finkelstein refers to. Accordingly, Finkelstein’s allegation that I literally made up what I wrote in endnote 9 is false and defamatory.

After reading my one sentence textual endnote, my research assistant cited to the opinion of the high court in general (“See Public Committee”, etc.) which includes the language that the “medical literature has not, to date, reported a case in which a person died as a direct result of having been shaken”—language that supports my text. According to *The Bluebook: A Uniform System of Citation* (17<sup>th</sup> ed. 2000), a citation preceded by “see” is designed to indicate that “the proposition is not directly stated by the cited authority but obviously follows from it; there is an inferential step between the authority cited and the proposition it supports.” Where the citation does not direct the reader to a particular page (as mine does not), it is citing the entire case as inferential support. In this instance, the proposition is inferentially supported by at least two statements in the opinion quoted previously.

The opinion also refers to a case by number, not by name, in which a person died after being shaken. I was aware of only one case involving a death following shaking, the Akawai case. That is the case I wrote about. To accuse me of making something up on this basis is both irresponsible and defamatory. If it were anyone else but Finkelstein, I would be prepared to accept his mistake as an honest one, but because of his pattern of lies, it seems more likely that he is aware of his error, yet persists in his irresponsible politically motivated accusation.

I am, of course, not surprised that Finkelstein would make this charge in light of other false and defamatory charges he makes. For example, he alleges that “the first two chapters [of *The Case for Israel*] are lifted practically whole cloth from Peters....” Yet he knows that I cite Peters numerous times and explicitly mention that I disagree with her conclusions. There is not a single idea or phrase in my book that is lifted from Peters. (I did, mistakenly believe that the word “turnspeak” had come from Huxley. I confused turnspeak with newspeak. This honest

mistake has been corrected in the forthcoming paperback edition, along with several other honest mistakes of little consequence.) I did originally find several historical quotes used by Peters in her book and, after checking the originals when I could, I used those quotes, citing them to the original, as the *Chicago Style Manual* mandates. Every author who does research finds useful quotes in other books; it's called research. No one disputes their accuracy or the fact they are cited to the original. Whatever one may think of Peters' conclusions—which I explicitly reject in my book—no one has questioned the accuracy of the quotes I found in her book. No one says she made up the quotes I used! Moreover, I checked them independently whenever possible. What then is the issue? As every responsible person who has been shown this—including the former president of the American Academy of Arts and Sciences, Dartmouth, and the University of Iowa—agrees, this is not plagiarism; it is scholarship. At most, it is a disagreement about proper citation styles, a disagreement about which the authorities clearly support me. But under no conceivable understanding of the term plagiarism, is this even close to plagiarism. What is it Finkelstein claims I “plagiarized,” if not Peters' words or ideas—her ellipses? Even those are different in the major quote from Mark Twain he claims (erroneously) I first found in her book. (I have been using the Twain quote since before the Peters book was written.)

The proof of the pudding of Finkelstein's malice and selective criticism only of pro-Israel writers is his acknowledgement on C-SPAN that “I don't get too excited about the plagiarism issue”—except apparently when he can use it to throw mud at pro-Israel writers.

Another example of a categorical and demonstrable lie by Finkelstein is the following, from his C-SPAN talk:

If you look at it, about three-quarters [of *The Case for Israel*] is given over to discussing human rights issues: house demolitions, torture, so on and so forth. About three quarters is given over to discussing it. And if you look at the footnotes for the book, he never once—I mean literally, not once—mentions any mainstream human rights organization. Never a mention of Amnesty's findings, never a mention of Human Rights Watch's findings, never a mention of B'Tselem's findings, Public Committee Against Torture, Physicians for Human Rights—none. (emphasis added)

Yet a simple review of my book reveals that I cite Amnesty on at least five occasions, B'Tselem on three occasions and numerous other human rights groups and individuals (such as Chomsky, Said and Boyle) who are extremely critical of Israel's human rights policies. (Amnesty and B'Tselem even appear in the index!) Again, Finkelstein simply looks his audience in the face and deliberately lies after assuring them that he is purporting to be “literal.” This is his standard modus operandi, of which you are on notice.

None of this surprises me since I recently learned from one of the several universities that fired Finkelstein, that he was fired for three reasons: 1) serious questions about his scholarship; 2) his “abuse” of students who disagreed with his politics and 3) his “mental instability”. A recent incident supports this last conclusion. In a speech at the University of Buffalo, Finkelstein apparently tried to prove that Israel is a Nazi state because it favors “blue-eyed, blond-haired Aryan types” (referring to Russian Jews). To support this bizarre point, he said that the lead

character in the novel Exodus was named "Ari" because it was short for Aryan. (Ari is, of course, short for ancient Semitic names such as Ariele and Ariel, and is common among Sephardic and Ethiopian Jews). Finkelstein is truly an irresponsible person who will say and write anything, so long as it is anti-Israel.

You should beware that there is documentary evidence establishing these serious allegations. If you are not, this is to put you on notice that they exist. You are now also on notice of his demonstrable lies during his C-SPAN speech. This should place a heavy burden on you to be certain that every one of his defamatory statements are entirely truthful and are not motivated by malice or political bias—a malice and a bias he virtually admits.

Once again, let me emphasize that I have no wish to prevent any book from being published. I insist, however, that every defamatory accusation directed against me be scrupulously and independently examined, not by an intern for *The Nation*, which has also falsely defamed me by repeating Finkelstein's false charges of plagiarism in a column by Alexander Cockburn, but by an independent fact-checker with no political or ideological axe to grind.

Sincerely,



Alan Dershowitz

P.S. I am enclosing a copy of Dr. Baden's recent letter to me confirming what I say. He is still looking for his files in the case. I am also enclosing the original Hebrew version of a 1993 letter from the Israel State Attorney's Office, supporting what I wrote in endnote 9.

Cc: Rohit Goel  
Andre Schiffrin

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*Michael M. Baden, M.D.*

27 April 2004

*Via Facsimile*

Alan M. Dershowitz, Esq.  
Harvard Law School  
1575 Massachusetts Avenue  
Cambridge, Massachusetts 02138

Re: *Mustafa Akawi, deceased*

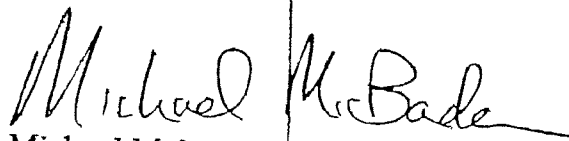
Dear Alan:

Pursuant to our telephone conversation, this letter is to confirm that in February, 1992 I was flown to Israel by Boston's Physicians for Human Rights to participate in the autopsy of Mr. Mustafa Akawi, who had died while in police custody.

The autopsy was conducted by Chief Medical Examiner Dr. Yehuda Hess and me. It demonstrated that bruises on Mr. Akawi's body were the result of a struggle days earlier when he was taken into custody and were not inflicted while he was in jail.

The autopsy also showed that Mr. Akawi had not suffered any internal injuries caused by trauma and that the death was due to previously undiagnosed and untreated natural heart disease caused by severe arteriosclerotic narrowing of the coronary arteries.

Yours very truly,

  
Michael M. Baden, M.D.

MMB:ph

Tali @ Consul Gen'l  
native speaker

An unofficial translation

State of Israel

Ministry of Justice  
State Attorney General  
January 4<sup>th</sup> 1993

Number: 192/92/12  
(11491)

To: Ms. Tamar Golan, Director of the Human Rights Department, Ministry of Justice

Re: Mustafa Akowi

Following your referrals about Mustafa Akowi, we would like to notify you that the State Attorney has decided to close the investigation file that was opened following the death of Mustafa Akowi, who passed away while staying at an investigation facility of the General Security Services (GSS) in the Hebron Prison on February 4, 1992.

By that, the Attorney General's Office has adopted the police's stand, which recommended that the file be closed due to lack of evidence that the death of the deceased was caused by foul play. The case was examined by various departments in the Attorney General's office, followed by a discussion with the police and with medical examiners, which led to the acceptance of the police's position.

The investigation's findings were based mainly on the report of the pathologist, Dr. His, who is the head of the Institute of Pathology and who conducted the autopsy. His findings were that Akowi's death was caused by a heart attack, which was manifested by the failure of his heart, with a medical history of medium-severe sclerosis and with a narrowing of up to 95% of the his arteries cavity.

Therefore, his death was caused by disease and no other reason.

It should be noted that the deceased's illness was not known to the interrogators of the GSS when he entered the investigation facility, and medical exams that were conducted upon his arrival did not show this specific condition.

Indeed, the pathologist added and established that it might be that the circumstances of the imprisonment and the circumstances surrounding Akowi's death might have affected his heart failure, however it has not been possible to prove with the necessary degree of certainty required by the criminal justice system that indeed there was a connection between the conditions of imprisonment and the death of the deceased, or between the imprisonment conditions and the creation of any danger to his health. Therefore, it could not have been proven, as said above, the culpability of anyone in inducing the death of the deceased.

With this in mind, since the findings of the investigation showed that the duty GSS investigator on that night did not act according to what was expected of him regarding the detention of prisoners, the Attorney General has recommended to the Director of the GSS to take disciplinary measures against this specific investigator, although a connection was not found between his behavior and the death of the deceased.

Following this recommendation, disciplinary measures were taken against this officer.

In addition, the State Attorney General gave recommendations to the Director of the GSS to insure stricter enforcement of procedures with regards to the conditions of imprisonment.

In addition, the investigation's findings showed that the attending medical paramedic of the prison on that night deviated from standard procedures, which a reasonable paramedic would have done, although his behavior was not considered a criminal offense, and a connection was not found between his behavior and the death of the deceased.

Therefore, the State Attorney General has recommended to the head of the prison facilities that he take disciplinary actions against the paramedic.

This information can be transferred to any inquiring international parties.

Sincerely,

Shai Nitzan  
Deputy Attorney General