

Witness Name: Martin John Hemming
Statement No: 2
Exhibits: 2
Dated:

THE BAHAMOUS PUBLIC INQUIRY

SUPPLEMENTARY WITNESS STATEMENT OF MARTIN JOHN HEMMING

I, MARTIN JOHN HEMMING will say as follows: -

1. I make this supplementary statement in response to allegations made by Lieutenant Colonel Nicholas Mercer which initially came to my attention via an article in the press, but which are to an extent repeated in his first and second witness statements to the Inquiry.
2. In his first statement to the Inquiry, Lieutenant Colonel Mercer says at paragraph 41 (BMI0468):

"It should be noted that, after the court martial at Bulford (R v Payne and others), my evidence was questioned by DGLS (Martin Hemming) in an email suggesting that my recollection had been incorrect. He also threatened to report me to the Law Society for my reference in my evidence at trial to the email on ECHR applicability (MOD019813), suggesting that I had breached the Solicitors Code of Conduct by disclosing material subject to legal professional privilege. In fact, the email was part of the case materials disclosed by the prosecution to the defence teams as part of the unused material in the trial and I had simply been asked to comment on it by defence counsel for one of the defendants. I pointed it out to DGLS who, I understand, then tried to have action taken against Brigadier Prosecutions at APA (UK) (Brig Stephen Vowles). At the same time, both myself and Lt Gen Robin Brims were provided with pre-prepared statements by DGLS to sign and hand

in to the Human Rights Committee of the House of Commons [sic]. We both refused to sign the pre-prepared statements.

3. In his second statement to the Inquiry, Lt Col Mercer says at paragraph 20 (BMI06901):

"After the trial I was contacted by Martin Hemmings [sic] who tried to suggest that I was confused in my evidence on this point. As a result, I contacted S002 and asked him if he recalled showing me the document and, if so, where could a copy of the document be obtained. He stated that he had shown me the document and it was held at Chicksands. However, he could not recall the name of the document. Although some may say that J2X did approve such a practice, I am sure that this is an illegal practice and that once cognisant of it, it was banned by an oral order within the 1 Div AO. FRAGO 152 merely confirms this position as I was increasingly apprehensive that people might try to circumvent it."

4. Lt Col Mercer's allegations can be summarised as follows:

- (1) I threatened to report Lieutenant Mercer to the Law Society as a result of the evidence he gave regarding the applicability of the FCHR at the *Bulford (R v Payne and others)* Court Martial;
- (2) I pre-prepared statements for him and General Brims to submit to the Joint Committee on Human Rights (JCHR), which they both refused to sign.

5. I would like to make clear that both allegations are untrue. I have never threatened to report Lt Col Mercer to the Law Society for any reason, and I did not provide draft statements for his and General Brims' signature that they refused to sign. The allegations refer to matters that were not the subject of any oral evidence to the Inquiry by Lt Col Mercer.
6. The truth is as set out below. This account is based on my recollection of events, which has been refreshed by reference to documents exhibited to this statement [MH1]. My only communication with Lt Col Mercer in connection with the Bulford court-martial was in July 2007. On 11 July 2007 I sent him a copy of a draft

memorandum that I told him it was proposed should be submitted, subject to the agreement of Ministers and the Attorney General's Office, to the Joint Committee on Human Rights. The title of the document was this - *R v Payne and Others: The evidence before the court-martial concerning legal advice on the application of the Human Rights Act and the European Convention on Human Rights*. It was headed 'A memorandum from the Ministry of Defence' (see exhibit [MH2])

7. My email of 11 July 2007 to Lt Col Mercer, to which I also attached a transcript of his own evidence to the Court Martial, said this:

"The draft Memorandum is based wholly and exclusively on the public record of the evidence at the court-martial. Given your own involvement in this matter, and the centrality of your own evidence, I thought you would welcome the chance to see the draft memorandum, which I now attach. I would be grateful to know if you spot any factual inaccuracy in the analysis of the transcript so far as your evidence is concerned."

8. His response on 12 July was to tell me that he and Gen Brims "concluded that it was a wholly misleading and inaccurate report". I replied the same day inviting Lt Col Mercer to give me his detailed comments indicating where the draft memorandum was "misleading and inaccurate."
9. On 13 July Lt Col Mercer responded saying that "Correcting your memorandum will involve a considerable amount of work and research as there are (in my opinion and that of General Brims) many errors, omissions and (false) assumptions". The final sentence of the penultimate paragraph of his 13 July email said this: "Can you confirm the Attorney General's advice on this [the application of the HRA] issue (which is currently under the cloak of legal privilege - para 1 [of the draft memorandum]) as this will help clear up many of the ambiguities that are beginning to creep into this case."
10. I replied the same day (13 July) reminding Lt Col Mercer that in my email of 11 July I had said that the draft was

"based wholly and exclusively on the public record of the evidence at the court-martial. Given your own involvement in this matter, and the centrality of your own evidence, I thought you would welcome the chance to see the draft

memorandum, which I now attach. I would be grateful to know if you spot any factual inaccuracy in the analysis of the transcript so far as your evidence is concerned."

11. I went on to say this: *"My interest was not in any error or factual inaccuracy in the content of your evidence (or anyone else's), but only in whether there is any inaccuracy in the analysis of what you actually said (right or wrong) to the court-martial, which is of course rather different."* (The underlining was in the original email to Lt Col Mercer.) I continued: *"Surely you can give me just a few examples of where the memorandum goes wrong. You told me yesterday [in the email of 12 July] that you have highlighted concerns in every paragraph, which sounds to me to be a good starting point for what I have requested."*

12. In the same email I said

"You mentioned legal professional privilege. The APA is now in the course of delivering to the Army a large number of documents and other material, which are to be examined to see what is appropriate to hand over to Public Interest Lawyers. One issue will be LPP. In that regard, can you tell me how and by whom LPP in the advice exhibited to your statement was waived?"

13. Lt Col Mercer responded giving some examples of alleged inaccuracy. He also gave his explanation of the way in which LPP material was introduced into the court-martial proceedings, indicating that *"the trial judge dealt with this issue (at trial) where it was waived given the importance of getting to the heart of this matter in relation to the treatment of prisoners and what was authorised."* I did not pursue the LPP issue any further with Lt Col Mercer, or respond in relation to his alleged inaccuracies.

14. In summary, I did not at any stage question the accuracy of Lt Col Mercer's evidence to the Court Martial, or suggest that it was incorrect. I did not threaten to report him to the Law Society, or "try to have action" taken against anyone else. I did not provide draft statements for his and General Brims' signature that they refused to sign. Although the memorandum was not submitted, that was not because it was considered to be inaccurate. It was a quarry for both the letter sent by the Treasury Solicitor to Public Interest Lawyers on 24 July 2007 (a letter that was simultaneously copied to the Chairman of the JCHR, and also for the

Memorandum that was attached to a letter from the Secretary of State for Defence to the Chairman of the JCHR dated 10 October 2007. Both of these documents were published in the Annex to the 19th Report (2006-07) of the JCHR.

15. Given Lt Col Mercer's flawed recollection of his exchanges with me, I thought it important put the truth on record in my statement to the Inquiry.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed

A black rectangular box redacting the signature of the witness.

Dated

28 May 2010