

THE BAHAMOUS PUBLIC INQUIRY

SUBMISSIONS IN REPLY ON BEHALF OF MAJOR MICHAEL PEEBLES

The final submissions on behalf of Colonel Mendonca

1. Major Peebles is disappointed and surprised that he has been apportioned responsibility by his Commanding Officer for the ill treatment of Baha Mousa (see submissions on behalf of Col Mendonca SUB000042). In particular the submissions at paragraph 4 make the huge assumption that Major Peebles had the role of *supervising* the holding and questioning detainees and to ensure they were not ill treated.

2. There is something rather unattractive about such a submission. It is accepted that Peebles was a senior officer and he was in charge of processing detainees but he was not in charge of caring for them. The submission that Peebles was responsible is particularly unappealing in the light of the fact that the Commanding Officer had himself created, either by deliberate actions or by default, the situation in which he removed important members of the team (Briscoe and Smith) from their respective recognised duties within the chain of command or at the TDF, leaving the manning position at the TDF threadbare. This allowed Payne to play a greater role in prisoner handling than his temperament and qualifications suited.

3. Peebles does not seek to blame others but to point out the relevant factors: the shortage of men and resources, the long working hours, the lack of any pre deployment training or plan for the handling of detainees, the imprecision of the post of BGIRO and the too numerous changes of personnel in August 2003.

4. What went wrong is that it was not sufficiently clear as to who had responsibility for the welfare of the detainees. The reality is that Major Peebles did not consider he had a specific responsibility for the welfare of the detainees. If Major Peebles had been told by Royce or had considered it was his job he would have done it to suggest otherwise would be to suggest Peebles chose not to do his job.

5. The submission on behalf of Mendonca that Major Peebles did not need written orders is obvious, but sadly Peebles did not receive any or any sufficient guidance from Major Royce on handover. The absence of written orders is not decisive but it confirms the confusion that was created by the creation of the post of BGIRO. If it had been written down that the BGIRO was responsible for the welfare of the detainees and the supervision of the Provo staff that would have been guidance for Peebles.

6. Put simply if FRAGO 29 had changed the chain of command for the care of prisoners and removed the RSM from the loop this was such a fundamental change to the chain of command it is almost inconceivable that it was not written down. If it was not written down it should have been.

7. Without in any way wishing to make a facetious point the best guidance as to of the role of the BGIRO is in the name *Battle Group Internment Review officer*, the FRAGO does not mention care of the detainees.

8. The one thing that is clear is that it was not clear who had responsibility for the detainees. The inquiry should be cautious about seeking to determine clarity when it was not clear.

9. If the matter had been clear at the time there would have been no need for Peebles to seek to clarify the issue after the death of Baha Mousa. Further Colonel Mendonca and other recipients of the Peebles report 18th September 2003 would have commented that Peebles was putting the chain of command back where it a had been prior to the creation of the position of BGIRO. If the

RSM really had been removed from the loop in June/July 2003 and put back in September 2003 it would have been the subject of considerable discussion amongst the senior officers concerned.

Submissions by KN on behalf of Major Royce

10. On behalf of the KN participants it is stated at SUB000862 para 343 “there cannot be any sensible suggestion that Peebles did not understand the extent of his responsibilities towards the detainees or that Royce did not make this clear to Peebles...”

11. This is a bold submission which takes no account of the confident, carefree nature of Royce against the cautious approach of Peebles. The evidence cited in support, namely Cronin supports Peebles’ understanding of the job:

“.....the BGIRO job was extremely important and that it would take up a lot of Major Peebles time *because of the amount of paperwork involved....*” He did not say it was an important job because it was necessary to keep a close regard for the welfare of the detainees or because Payne was known to be less capable than Smith or because the RSM is so busy on the CO’s tactical group or because most of the Provo staff have been moved to work elsewhere. No the emphasis was on the paperwork. The emphasis by Cronin and indeed by Royce in his evidence was that this was a big paperwork job.

12. Royce (who was not regarded by the Crown as a witness of truth at the before the Court Martial and unusually was only called to give evidence by the Judge Advocate after submissions on behalf of Mendonca and Peebles) has been wrongly elevated into a witness of wisdom and accuracy.

13. The witness Elliott may have stated that Royce was notable in his instructions about what he expected in the treatment of detainees but Elliott also said he (Elliott) had very little involvement with detainees and no direct involvement whatsoever (BMI 06394).

14. The Inquiry will have to decide if Royce was particularly accurate and precise in dealing with other officers: his dealings with Clifton and Robinson do not appear to have been uncontroversial discussions, incapable of misinterpretation and misunderstanding.

15. The reality is that for whatever reason Royce did not make the position clear to Peebles, if he had, Peebles would have written it down in his notes and Peebles would have done it.

Conclusion

16. Perhaps the best summary of the position is set out in the submissions on behalf of the detainees (SUB 002605/6) Part V at paragraphs 192/3: In a lengthy passage on the topic of confusion about responsibility it is stated; "If ... the RSM was taken out of his normal role of supervising the provost staff then this was a substantial mistake."

17. Put simply if the RSM had not been removed (which is Peebles case) then he should have been supervising the Provost staff and not spending so much time with the CO's tac. If the RSM was removed this was a substantial mistake because it resulted in inadequate supervision of the Provo staff and the TDF. Rather simply if there had been proper and adequate supervision of the Provost staff by the RSM (which is what would usually happen) this tragedy would not have happened. To seek to look much further may be to miss the obvious which is right in front of the Inquiry.

Dingle Clark
Goldsmith Chambers
Temple
London EC4Y