

THE BAHA MOUSA PUBLIC INQUIRY

VICTIMS’ RESPONSE: DAVIES SUBMISSIONS

1. This document sets out the response of the victims to the closing submissions of Davies. The victims cross-refer to their own opening and closing submissions as “VOS” and “VCS” respectively, followed by the relevant Part and paragraph number(s).
2. The victims’ main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt II [207-238] and [450] (dealing with events at BG Main); VCS Pt III [45-103] (dealing with doctrine and training); VCS Pt V [58-60] (dealing with the extent to which TQ capability in Iraq lacked genuine subject matter expertise); and VCS Pt V [94-158] and [198-201] (dealing with the Brigade sanction).

Training

3. With regard to whether “utter confidence” is the right view to have had of S011,¹ see VCS Pt II [82-83].
4. The extent to which Davies was facilitated in insulating himself from the moral consequences of his actions by the questionable intellectual tools provided to him on his short course, see VCS Pt V [114-115].
5. While the victims do not regard Davies as being primarily responsible for the welfare of the detainees,² the debates about division of responsibility are predicated upon a system of normal detention where stress positions and hoods and sleep deprivation are not being used. Once one factors into the equation these unlawful techniques there is a degree of pathos in the debate between the various parties as to who was responsible for failing to watch their application as closely as possible. The level of scrutiny of the TDF should have been no less anxious than the level of scrutiny applied on a CAC course.

¹ SUB000476 [3.1].

² SUB000482 [3.8 – 3.11].

6. One of the key problems that Davies brought upon himself in this area (although clearly also a systemic issue) was the degree to which, with his minimal training, he was play-acting as a subject matter expert in Iraq. One sees a key example in this case where he was willing to delay TQ for many hours while he analyzed the search findings of Operation Salerno. The broader problems of undue deference to subject matter expertise are considered at VCS Pt V [28-29], [58-60], and [83-89].

Baha Mousa and the other detainees

7. The victims do not accept the constant references in Davies’ account to the primacy of his ‘day job’.³ That is not to contest that he did not work hard on the tour. He was, however, obviously viewed as key TQ trained person available to Brigade. This is how Radbourne and Fenton described him.⁴ According to Hunt’s initial account and the evidence of Barber he appears to have played a part in explaining conditioning techniques to Battle Groups at the start of the tour.⁵
8. With regard to preparation for TQ,⁶ the victims do not accept that the imperative to ask the detainees where C001 had gone was commensurate with the delay of 12 hours (see VCS Pt II [207]). They regard the issue as having been clouded in a mythology of intelligence gathering expertise: see also VCS Pt II [176].
9. In paragraph 4.8 of the Davies submissions it is said,⁷ “Prior to Op Salerno Davies was aware of two separate intelligence reports that came to Bde HQ...” For reasons set out at VCS Pt II [24-30], the defendants do not accept the intelligence came to light *before* the arrest. They strongly suspect that the G2 witnesses have felt compelled to build that idea up after the event to cover the incompetence of championing an internment decision based upon the very barest of intelligence that came from information of unknown quality without any corroboration.
10. One of the key matters that Davies does not deal with in his submission is the extent to which he has given evidence in the past that sight deprivation was used for the dual purpose of security and maintaining shock of capture: VCS Pt V [110-112]. The

³ e.g. SUB000495 [4].

⁴ VCS Pt V [58].

⁵ VCS Pt V [121-124].

⁶ SUB000497 [4.5 – 4.9].

⁷ SUB000498 [4.8].

victims do not therefore accept Davies description of hooding as “a common sense solution to operational security issues”.⁸

11. The victims do not accept Hunt’s denial of his original account in his oral evidence before the Inquiry that Davies had told him about the disorientation as a purpose behind hooding (see VCS Pt V [121-122]).⁹
12. In response to Davies’ denials concerning stress positions,¹⁰ see VCS Pt V [113]. See also his co-authorship of the Brigade memo with Radbourne (VCS Pt V [109]).
13. The victims do not accept that Davies was not aware that the detainees he interviewed on the Sunday night/Monday morning were in an extremely traumatized state and physically exhausted from their assaults throughout the day.
14. The victims’ submissions with regard to the generator incident at set out at VCS Pt II [219-235]
15. The victims regard Paterson’s initial account in writing¹¹ about the detainees being roughed up and probably nothing more than hotel workers as sound evidence of what he came away from BG Main knowing: VCS Pt II [31-37].

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9 July 2010

⁸ SUB000505 [4.19].

⁹ Cf. SUB000504 [4.18].

¹⁰ SUB000506 [4.21] et seq.

¹¹ BMI02623 [41].