

THE BAHA MOUSA PUBLIC INQUIRY

VICTIMS’ RESPONSE: LEWIS CHERRY CLIENTS’ SUBMISSIONS

Introduction

1. This document sets out the victims’ response to the submissions made on behalf of the witnesses represented by Lewis Cherry. It essentially tracks the order of those submissions. 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).

Kenyon

2. The victims’ main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt V [213-14] (dealing with Major Pinchen’s treatment on the robust treatment order) and Pt V [241-261] (dealing with the Garamsche incident).
3. Kenyon was probably the most effective Company Commander and someone whose strategic choices would have influenced not only his own company but other companies by word of mouth. His in depth knowledge of and involvement in what occurred in the Garamsche incident speaks volumes of the culture inside the Battle Group that regarded violence upon detainees as permissible in situations of perceived emergency. The Garamsche incident, though isolated in its extremity, was not an act of indiscipline.

Suss-Francksen

4. The victims’ main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt II [273-279] (dealing with the breach of the 14 hour rule), Pt II [331-352] (dealing with the aftermath of the death) and Pt V [241-246] (dealing with the involvement of the higher Battle Group chain of command in the Garamsche incident).

5. Although the victims do not accept Suss-Francksen's denial of knowledge of the conditioning techniques,¹ their major criticism of him remains that given his involvement in negotiating the late delivery of the detainees to the TIF with the COS he ought to have paid closer attention to their wellbeing on the Monday evening (VCS Pt II [278]). Thereafter, this witness must have colluded for his part in an effort not to report or otherwise get to grips with the injuries and abuse of the surviving detainees prior to them being moved off the base on the Tuesday morning: see especially VCS Pt II [341-347].

Sweeney

6. The criticism to be made, not so much of Sweeney *per se*, but of the 1 QLR chain of command generally, is that they knew at the time of the Mirror photograph inquiry that features of the depicted conduct definitely represented reality even though it transpired the photographs were fake.² In that context and with that caveat they should have said so publicly. In this context, it may be that DVD evidence of abuse of the detainees in this case was knowingly not handed on to the SIB when it was discovered in Cyprus in May 2004 several months after another version of the film was discovered on the computer.³ To have done so would have embarrassed the campaign against the Mirror photographs. Giblin maintains that Sweeney would have been one of the people who viewed the DVD.⁴

Stacey

7. The victims' main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt II [112-150]. They have nothing further to add in reply.

¹ SUB000108 [40]

² BMI 73/25/10 – 26/13.

³ Redfearn BMI30/171/2-8 and 238/25 to 240/7, Giblin BMI06474 [9], Sweeney BMI06332 [7]. The later discovery of the same footage is shown by MOD000684, Schofield BMI00376 [63], Cunningham BMI04872 [7].

⁴ BMI 53/22/4ff.

Fallon

8. The victims’ main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt II [112-150].
9. Further to the suggestion that the victims have exaggerated their treatment in the hotel or in the TDF,⁵ the victims refer generally to their submissions at VCS Pt II [5-13] and [115-117] and their Opening Submissions at [267-269]
10. As to the Fallon and Crowcroft account that one of the detainees rugby tackled Fallon,⁶ the victims refer to their concerns about the veracity of this account and the subsequent escape narrative that developed in relation to Baha Mousa’s alleged conduct on the second day: VCS Pt II [148], [281] and [308].

Slicker

11. The victims’ main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt II [114], [153-155], [234], [285] and [446]. They have nothing further to add in reply.
12. As to the reliance of Fallon, Stacey and Slicker⁷ on the medical evidence of an assessment at c. 15:00 on the Sunday, for reasons outlined at VCS Pt II [353-381], there is good reason to doubt that it took place at all and, if did, it was perfunctory in the extreme. The credibility of the medics’ evidence is generally not accepted.

Mercer

13. The victims’ main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt IV [12-43] and [70-95].
14. In relation to the description given of Frend’s role in advising JFIT outside of the formal Divisional chain of command and without Mercer’s knowledge, the victims share

⁵ SUB000131 [78] et seq.

⁶ SUB000128 [73] and [124-125].

⁷ SUB000161 [142].

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concerns,⁸ especially given Frennd's legal support for the JFIT 'security' rationale and his purported failure to inspect the impugned conduct directly himself when he visited the JFIT.⁹

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⁸ SUB000169 [159].

⁹ BMI 69/69/13 to 75/3, 80/18-23 and 91/8.