OJAG Case Reference: 2005159

Regina

v

Corporal Scott Clive EVANS
Private David James HARDING
Private Billy Joseph NERNEY
Private Samuel Andrew MAY
Private Scott Raymond JACKSON
Private Manet Claude VOSLOO
Private Robert Fillipo DI GREGORIO

DECISION FOLLOWING SUBMISSIONS OF NO CASE TO ANSWER

Introduction

1. All seven Counsel for the defence have made submissions that I should stop this case now and direct the Court Martial Board to return verdicts of Not Guilty in respect to both charges against each of the Defendants. The Prosecution have opposed these submissions. May I thank all Counsel for their helpful submissions both in the skeletons provided and in their oral presentation. I have been enormously assisted by their hard work, intellectual analysis and objectivity throughout the trial and Counsel have made my task considerably easier by drawing my attention to the relevant law and, where appropriate, passages of evidence.

Legal Background

2. In considering these submissions I must have in mind the test laid down by Lord Lane in the well known case of Galbraith [1981] 1 WLR 1039. He said:

> *"How then should the judge approach a submission of no case? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence taken at its highest is such that a jury properly directed could not properly convict upon it, it is his duty, upon submissions being made, to stop the case. (b) Where, however, the prosecution evidence is such that its strength or weakness depends on the view taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury"*

3. In the case of Shippey [1988] Crim LR 767 Turner J said that taking the prosecution case at its highest did not mean "*taking out the plums and leaving the duff behind.*" The question of whether witnesses are lying is nearly always one for the jury but where the inconsistencies in the evidence are so great that any reasonable tribunal would be forced to the conclusion that the witnesses are untruthful then the judge should withdraw the case from the jury. So, in applying this test in this case I must give the witnesses' evidence the greatest weight that any reasonable Board could give to it, but I am not obliged to accept everything a prosecution witness has said, however implausible, and may ask whether it is too inherently weak or vague for any sensible person to rely on it. In other words, as the learned editors of Blackstones suggest at page 1539, I need not believe "arrant nonsense."

4. First let me refer to the context in which these alleged offences were said to have been committed. It is agreed that the legal regime which existed in Maysan Province in Iraq in May 2003 was governed by Hague Convention IV of 1907 and in particular Section III which governs Military Authority over the Territory of the Hostile State. Article 43 states:

> "*The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting unless absolutely prevented, the laws in force in the country.*"

5. It is important to set out the context in which the alleged offences occurred because it was a wholly different scenario from normal life in the UK. The Province was, and remains, very dangerous with groups of locals and insurgents, all dressing in traditional Arab civilian attire, smuggling arms, drugs and large quantities of money into the country, setting up illegal road blocks and then robbing or kidnapping those they stopped and generally acting unlawfully. It was not immediately apparent whether an individual was an innocent civilian or hostile. Pick up trucks – normally white – were used for both legitimate and unlawful purposes. There had been attacks on British soldiers since their occupation of the Province in which gunfire had been exchanged, but their presence on the ground had been requested by the Iraqi authorities in Al Uzayr and was necessary to help protect local civilians and maintain law and order. Under this regime in Iraq it was, and still is, lawful – and indeed their military task - for British soldiers to:

- Undertake armed patrols
- Stop and search vehicles and civilians at random
- Use reasonable and proportionate force to carry out this legitimate task
- Use lethal force only in self defence

6. Reasonable and proportionate force was further defined as "robust" by the defendants' platoon commander at the Al Uzayr police station, Captain Blackmore, and was set in the context that stopping and searching vehicles was an inherently dangerous business, because of the risk of attack by gunmen, which had to be effected quickly. Under extant Rules of Engagement it was therefore legitimate to manhandle Iraqi civilians who did not immediately comply with instructions and if necessary to use reasonable force to put them into a position, perhaps on the ground, to enable a search to be carried out. It was not legitimate to use excessive force to effect

compliance – ie shooting or beating them – or to punish civilians, and it was not legitimate to use gratuitous and unprovoked violence against them. It is the prosecution case that these seven defendants while on patrol engaged in wholly illegal activity outwith their duty to stop and search vehicles and civilians by undertaking an unprovoked and brutal attack on innocent Iraqi civilians. The prosecution cannot identify exactly what each of the defendants was alleged to have done individually nor who is alleged to have struck the fatal blow on the victim Nadhem Abdullah who is said to have died, but they say that all the Defendants were part of a joint enterprise to inflict serious harm on the victims – whether involved in the actual beating, keeping onlookers back or keeping watch. They say that even though they cannot identify the principal who struck a fatal blow on the deceased there is sufficient evidence to support charges of murder and violent disorder against them all, as secondary parties, which they need to answer.

The Defence Submissions

7. Let me now turn to the submissions. Each Counsel has spoken on his own client's behalf but all Counsel pray in aid each others' arguments in respect of their own client.

8. Mr Tedd, on behalf of Corporal Evans, said that on any interpretation of the evidence the members of the section were engaged in lawful activity when they first came into contact with the Iraqis. They were not therefore engaged in a joint criminal enterprise *ab initio* as would be the case, for example, where a group of youths armed themselves with baseball bats and went looking for trouble. If this proposition is correct, he says, then the earliest stage at which any joint criminal enterprise may be formed between any of the defendants was when one or more first used unlawful force. Any secondary party not actually applying force must be proved to have encouraged the use of force and, to be guilty of murder, it must be proved that the secondary party appreciated that there was a realistic possibility that another defendant might kill, with the intention, at least, of causing grievous bodily harm. Adverse inferences could not, he says, be drawn against the secondary party by the fact that the principals were applying force with weapons and helmets because each defendant was in possession of those pieces of equipment to carry out their lawful tasks. That is completely different from the scenario just mentioned where a group of youths arm themselves. There is then, says Mr Tedd, no evidence that Corporal Evans did anything to enter a criminal joint enterprise once unlawful force began to be used – if indeed it did - and there is no evidence that he had the mental state necessary for a secondary party to murder or the statutory alternative of manslaughter. He uses the same arguments to say that there is no evidence against Corporal Evans to answer a case of violent disorder.

9. Secondly Mr Tedd submits that the absence of any medical evidence as to the nature and severity of the injury or the manner in which force was inflicted is fatal to the prosecution case. He says this means there is no evidence upon which the Court Martial Board could infer that the person who struck the blow intended to cause really serious injury.

10. Finally he suggests that a domestic offence of murder is wrong in law because it cannot be said that Iraq was under the Queen's peace in May 2003 when the

Province was in a transition from Armed Conflict to peace. He says if this is correct then even if the prosecution evidence is accepted at its highest conceivable, the prosecution has proved a war crime but not the domestic offence of murder.

11. Mr Parroy on behalf of Private Harding says that the prosecution have not proved a direct causative chain which links the death of Nadhem Abdullah, if indeed there was a death, to the unlawful acts of the defendants. He says that a finding that he died depends on evidence of the family which has been impugned to such an extent that the Court Martial Board could not come to any sure conclusion about the actual cause of death. He also supports the arguments on joint enterprise submitted by Mr Tedd in relation to both the charges of murder, and the statutory alternative of manslaughter, and violent disorder. In particular he says that the evidence suggests that Private Harding would have stayed in the vehicle as "top cover" and that even if other members of the section having started a lawful stop and search then used unlawful force he could not be said to be a secondary party to the crime because he was present doing his duty, he could not leave the area, and he could not have had the foresight that others would use unlawful force intending to kill or inflict really serious harm. He further submits that even if I conclude there is, at this stage of the trial, sufficient evidence for me to leave the case to the Board, I should stop the trial because it would be an abuse of process to continue. He says there are a series of cumulative factors which render the continuation of the trial unfair because, he says, there has been (i) a failure of proper disclosure, (ii) an incompetent investigation, (iii) failure to give proper notice of the evidence to be called and (iv) difficulties for the defence to rebut the evidence because of the inability of the defence to carry out their own inquiries in Iraq. He submits that these defects cannot be rectified by the trial process.

12. Lord Thomas on behalf of Private Nerney says that there is insufficient evidence of the death of Nadhem Abdullah – the evidence of the family has been so discredited and, as there is no independent corroboration, the Court Martial Board could not conclude that Nadhem has died. On causation he says that even if the Board could be satisfied that Nadhem was dead there is insufficient evidence from which any compelling inference that the section were responsible for the death could be drawn. Further Lord Thomas says that there is overwhelming evidence that the section under the command of Corporal Evans were acting entirely lawfully and in accordance with the Rules of Engagement in force. He submits that the use of lawful force, even if it results in death, does not give rise to criminal liability either for murder or manslaughter, nor may it sustain charges of violent disorder. Lord Thomas repeats the submissions relating to joint enterprise and argues that the evidence identifies Private Nerney as being the "minimi" gunner who remained on top of one of the vehicles. He argues that if he was maintaining top cover and keeping watch, his lawful duty, then he could not be said to have been a secondary party to offences of murder or violent disorder. He also supports Mr Parroy's arguments on abuse of process. Finally he submits that the evidence as a whole has been discredited because the of lies, inconsistencies and discrepancies and are such that the Board could not safely convict.

13. Mr Clegg on behalf of Private May argues that a review of the evidence reveals an astonishing confession by the witnesses from Iraq that they lied to the investigators about what happened. He says there is an admitted conspiracy by some

of the witnesses to pervert the course of justice. He submits that when properly analysed the evidence cannot be a safe basis to convict. He says that the presence of blood found on his rifle butt does not link Private May by way of contact with the source of the blood because, according to the independent forensic evidence, it was airborne and did not get onto the butt by direct contact with any body. He had a perfectly lawful reason for being next to Nadhem when he was pulled from the vehicle and was acting lawfully by being there and the most likely source of the airborne blood was the small cut on Nadhem's finger.

14. Mr Ford on behalf of Private Jackson submits that there is insufficient evidence to prove that Private Jackson was present at the scene at all. He says that Captain Blackmore is the only person who has positively identified the members of the Section. In evidence in chief Captain Blackmore named the other six defendants as being members of the patrol and said "from my memory Private Jackson was in the section as well". He said that Private Jackson drove the PINZ when on patrol and that he drove for other sections as well. Captain Blackmore originally thought there was only one section on patrol on 11 May but acknowledged there were three and accepted in cross examination that he could not be sure who drove the PINZ in any of the three patrols including Corporal Evans' patrol and he could not remember speaking to Private Jackson after the patrol returned to the police station in Al Uzayr. If that is not accepted, and it was found that there is sufficient evidence that he was on the relevant patrol Mr Ford adopts the arguments of others in relation to the legality of the use of force, the lack of evidence of causation of death and joint enterprise. On the latter point he also submits that the evidence suggests that Private Jackson would have been one of the soldiers who remained in the vehicle. On the basis that the initial contact with the Iraqis was lawful, there is no evidence which suggests Private Jackson had the necessary foresight of unlawful acts by others to make him guilty as a secondary party.

15. Mr Chinn on behalf of Private Vosloo supports the submissions of the other defence counsel. He said that although Private Vosloo admitted presence at the scene in his interview under caution, there was no forensic link between him and the deceased. He also says that there was no evidence of a prior plan to act unlawfully – indeed Captain Blackmore gave evidence that it would have been very noisy in the rear of the PINZ and there would have been no opportunity to communicate a plan to act unlawfully with the others within the vehicle or between the two military vehicles. On that basis the first contact with the Iraqis must have been lawful and so if there was a fatal blow struck by one of the soldiers there is no evidence to prove that the secondary parties had the necessary foresight or intention before the illegal violence started.

16. Mr Fergusson on behalf of Private Di Gregorio adopts the submissions made by other defence counsel. He says there is no evidence that he was present or participated in an assault on Nadhem, and that an analysis of what he said when interviewed under caution suggested an account which was compatible with the evidence of Bounaiain that the driver and passenger did not get out of the pick up willingly and had to be pulled out. The evidence suggested that Private DiGregorio left the military vehicle to assist his section commander in lawfully pulling a reluctant person from the car and then returned to the military vehicle to continue his lawful duty. Mr Fergusson submits that there is insufficient evidence to prove that Private

DiGregorio could have had the necessary foresight that others would act unlawfully and apply force intending to kill or inflict serious harm.

Prosecution submissions

17. Mr Heslop on behalf of the Prosecution resists these applications and argues that there is sufficient evidence for me to leave the matters to the Board. He says that issues of lying and inconsistency are essentially for the Board unless evidence is arrant nonsense. He says that notwithstanding the inconsistencies in the prosecution case the evidence does provide a basis upon which a reasonable Board, properly directed could convict. He says that on the evidence it is reasonably open to the Board to conclude that:

a. Nadhem is dead;
b. He died as result of an assault;
c. The assault was carried out by soldiers who were these 7 defendants;
d. The assault was unlawful;
e. The blows were inflicted with at least the intention of causing serious harm; and
f. Each of the seven defendants participated in the assault as part of a joint enterprise

18. Mr Heslop concedes that in relation to the charge of murder, and the statutory alternative of manslaughter, there is no evidence to show which of the defendants struck Nadhem Abdullah so if the Prosecution is to succeed they must show that all of the defendants acted as part of a joint enterprise. The prosecution have put forward their case not on the basis that this was a lawful stop and search which degenerated into the application of unlawful force but an unlawful action from the start. That is, the prosecution says, the section decided to apply unlawful force to the Iraqi civilians before or as they arrived at the scene. The prosecution says this can be inferred from the evidence – they boxed in Ather's Toyota; all or some assaulted Ather or Nadhem immediately using the same type of weapons and using the same force on each near to each other. When not actively taking part they were standing guard while others carried out the assault clapping and shouting: "one two, one two." The prosecution says that this evidence shows that they had this type of violence in mind from the start – a group of men acting violently together, spontaneously, in the same manner and from the outset. There was no delay or break from events and the incident moved from arrival to assault immediately. The prosecution says that even if the evidence shows that one or two soldiers stayed with their vehicles it also shows that there was an agreement before or at the time they got to the scene of the assault and the same reasoning applies to them as well. The Prosecution say that the Board could also draw an inference from the subsequent assault on Kasim and Soughier that all the defendants were part of that plan.

19. If this is correct, says Mr Heslop, then I should not stop the case but I should allow it to proceed against all seven defendants on both counts of murder and violent disorder and leave it to the Board to decide. Further, he says that if his argument in relation to joint enterprise at the first contact between the patrol and the Iraqis fails the Crown relies on the second incident to support its case on violent disorder. As far as the defence submissions on abuse of process he argues that the trial process is capable

of dealing with any defects so that it is possible for the defendants to have a fair trial. Lastly he argues that these defendants are capable of being tried for murder by way of the Sections 205f and 70 of the Army Act 1955, and Mr Tedd's argument that the term "under the Queen's peace" is more than a jurisdictional point is nonsense.

Comment on the evidence

20 I have reviewed all the evidence in this case. It is clear - and in many cases common ground - that most of the Iraqi witnesses have exaggerated their evidence. The three women eye witnesses have admitted telling lies that they were seriously assaulted when they were not. Others have been shown to tell lies. It is clear, on any objective analysis, that much of the evidence is based on a corporate recollection discussed by the family or tribe and much of the evidence is too inherently weak or vague for any sensible person to rely on it. Evidence which comes within that definition is:

- Ather Finjaan's suggestion that he was unconscious for three days after the alleged assault – taken at the highest the evidence shows he was slightly dazed;
- The extent of the assault against him – had he been assaulted with the intensity he described his injuries would have been much worse and it is an affront to common sense to believe his account of the ferocity of the alleged attack;
- The extent of the damage to his pick up truck – clearly the photographs depicted a vehicle which had been in a collision. Again it would be an affront to common sense to conclude that the major damage shown in the photographs had been caused by soldiers hitting the vehicle with rifles, helmets and boots;
- Dalal's suggestion that the assault carried on for an hour with soldiers stopping for a rest and cheering and clapping while others took over – had that been the case both victims of the assault would have been smashed to pulp;
- Dalal's suggestion that a blow from a soldier's rifle damaged a tooth which was removed a few days later, when the dentist said that the tooth was decayed and he could see no evidence of any assault;
- The evidence of the brothers Kasim and Soughier as to the extent of any beating they received – the evidence showed their injuries were very minor and would have been much worse had they been inflicted by boots, helmets and rifles;
- Soughier's evidence that his kidney stones were formed because of a beating he received from the soldiers;
- Kasim's suggestion that the very serious scar on his arm was caused by this attack when it was clear that it was an old injury.

21. Notwithstanding these deficiencies, there is sufficient evidence, when taken at its highest for a Court Martial Board, properly directed, to conclude that:

a. Nadhem is dead – evidence from his mother Jusm, uncle Kareem and Hashim suggests that he died in a car on the way to Basra, was washed and prepared for a funeral and was buried in Al Najaf cemetery. The fact that on the day after the alleged assault they asked a local doctor to provide a death certificate (even though he did so without seeing the

dead body) provides additional independent evidence to corroborate this evidence.

b. He died as the result of an assault – the prosecution has to prove that the assault contributed significantly to the death and it can do so by showing there is a chain of events from the assault to the death. There is evidence that during the mid afternoon Nadhem was beaten, that he became semi conscious, he had bruises to head in the position where hit, he was carried to Issa's car and taken home, at home he was unable to speak, groaning and vomiting, and that position never changed. There is evidence that he was taken to a Doctor in Al Uzayr – the doctor said that he observed a haematoma to the left side of back of head which he regarded as a very serious injury. There is evidence that he was taken to the central hospital in Al Amarah where he received some treatment, that he was removed from the hospital and died on the road to Basra. Although much of the evidence comes from witnesses who have lied or exaggerated in some of their testimony, there is evidence which taken at the highest supports the prosecution allegation that Nadhem Abdullah was dead within about 15 hours of an assault and there is a clear chain of evidence capable of establishing a causal link between assault and death.

c. The assault was carried out by Corporal Evans' section – there is unchallenged evidence that Corporal Evan's section was on patrol in the afternoon of 11 May 2003. Captain Blackmore was certain that six of these defendants were part of that patrol, but he could not be sure whether or not Private Jackson was driving on this particular patrol. Captain Blackmore's evidence is the only admissible evidence against Private Jackson at this stage and it cannot be said that there is sufficient evidence to prove to the required standard that Private Jackson was even there. There is however sufficient evidence to place the other six defendants at the scene of the assault. The blood found on Private May's rifle butt supports the prosecution case that he, and hence the patrol, can be placed at the scene. The 2 radio log entries and Captain Blackmore's observation that he found the members of the patrol slightly excited so that he thought something had happened when they returned, supports the case. Private Di Gregario described an incident in the course of his interview which could be this incident as did Private Vosloo who also agreed that he was on patrol in Nahr El Ez area.

Analysis

22. With respect to the Prosecution I do not agree with their analysis that there is sufficient evidence from which the Board could conclude there was a plan between the members of the patrol to use unlawful violence against civilian Iraqis before the confrontation with Nadhem and Ather commenced. All the evidence points to the fact that this section was acting lawfully in conducting an armed patrol of the area. They communicated on the radio with their HQ in Al Uzayr that a vehicle had avoided their check point and that they were in pursuit. The evidence of the Iraqi witnesses suggests

that Ather and Nadhem either verbally or physically resisted attempts to get them out of the car or on the ground. Some say there was physical resistance, others said they tried to show ID and argued with the soldiers – so it was lawful to use reasonable and proportionate force to effect compliance with the soldiers instructions. There is evidence that some soldiers stayed on their vehicles to act as top cover and that the civilian vehicle was searched. There is, therefore, insufficient evidence to support the prosecution assertion that this was an illegal activity from the start.

23. Thus, for the prosecution to succeed it must be shown that the legal stop and search degenerated into the illegal use of force and that all the soldiers were part of a joint enterprise. In the absence of evidence against any particular soldier that he inflicted the fatal blow on Nadhem the law is that it must be proved that these defendants were secondary parties who entered a joint criminal enterprise at the time of or after the first application of unlawful force. It is not enough for the prosecution to prove that the soldiers remained at the scene: they must be shown to have encouraged the commission of the crime (R v Clarkson [1971] 55 Cr App R 445). Here there is insufficient evidence to show that there was encouragement – the evidence of Dalal is such that no reasonable Board properly directed could rely upon it. Additionally for the secondary party to be guilty of murder it must be proved that he appreciated that there was a realistic possibility that another defendant intended to kill or cause serious harm to the victim (R v Powell and English [1998] 1 Cr App R 261) before the fatal blow was inflicted. In this case if one or more of the soldiers at the start of the incident used reasonable or proportionate force to facilitate a lawful search, but then subsequently used disproportionate - and therefore unlawful force – those members of the patrol who were carrying out their lawful duties, such as providing top cover, securing and protecting the area, or applying lawful force to another civilian, could only be guilty if it could be proved that they joined in or encouraged the unlawful force and at the time could foresee that the actions of the soldiers using unlawful force would kill or cause serious harm to the victim. The evidence in this case – and particularly the observations of the injuries on both Nadhem and Ather – leads one to the conclusion that the incident was over very quickly and the evidence of those Iraqi witnesses who suggested the assault was sustained over a long period can properly be described as too inherently weak or vague for any sensible person to rely on it.

24. In those circumstances, then, there is simply insufficient evidence which would enable the Board properly directed to conclude that those members of the patrol not directly involved in an assault on Nadhem could have been part of a joint enterprise to murder or commit violent disorder. Even if unlawful force was applied to Nadhem by one of the soldiers which was a substantial cause of his death, the prosecution cannot identify which of the defendants applied that force, or whether it was applied after the other members of the section joined in. Since those not involved in the assault on Nadhem could not be guilty as secondary parties, and the prosecution cannot identify any single defendant who applied unlawful force, then there is no case against any of the defendants.

25. As I have upheld the defence submissions on this point there is no need for me to address the arguments in relation to abuse of process or the Queen's peace, although I have to say I was not persuaded by either of them.

Conclusion

26. The entire case against Private Jackson fails at this stage on the first limb of Galbraith because the Prosecution has failed to adduce evidence which proves he was at the scene.

27. In relation to all defendants, after discarding the evidence which is too inherently weak or vague for any sensible person to rely on it, the prosecution evidence taken at its highest is such that a reasonable jury or Court Martial Board properly directed could never reach the high standard of proof required to be sure of the guilt of any defendant. In those circumstances it is my duty to withdraw the case from the Board now and direct that they return verdicts of not guilty to the charge of murder against all seven defendants.

28. The same arguments apply to the charge of violent disorder in relation to the first incident at the pick up. The prosecution then say that in these circumstances the second incident with the brothers provides evidence of violent disorder. Again I disagree. The evidence of the brothers in relation to their injuries can properly be described as too inherently weak or vague for any sensible person to rely on it. They suffered very minor injuries, if any injuries at all, and the incident involving them could properly be described as a lawful stop and search. In those circumstances I will also withdraw that case from the Board and direct them to return verdicts of not guilty to the charge of violent disorder.

29. In short, therefore, I will direct the Board that they find all seven defendants Not Guilty of both charges against each of them.

Final Comment

30. Before I ask the Board to come back into the courtroom I would like to make some general comments about this case.

- First, there is no doubt that the investigation in this case has been inadequate. It is, of course, difficult to conduct the sort of investigation expected of the civilian police in the benign conditions in this country because of the general dangers in Iraq and I do not underestimate those difficulties. Nevertheless it has been established during the course of the case that the investigators made serious omissions in not searching for records of hospital admissions or treatment and not establishing whether there was a register at Al Najaf shrine in which Nadhem's burial may have been recorded. It was also an error not to have taken DNA swabs from Nadhem's siblings (particularly his six brothers) to exclude them as a possible source of the blood on Private May's rifle, as all that the forensic scientist could say was that this blood belonged to a male offspring of Nadhem's parents. The investigators assumed that the semen stain on the trousers of the clothes which matched the blood on Private May's rifle came from Nadhem, but that too could only be said to have come from the male offspring of the parents, and the possibility that one of the brothers had worn the clothes in the six months between the alleged incident and the surrender of those clothes should have been considered. It was also an error not to have analysed the DNA swabs taken from the defendants. The

investigators should also have sought and seized items of Nadhem's clothing from the family of the deceased early on – but even when they received them after six months they should have analysed the specks of blood which were on those articles. It was also a significant error to have waited 6 months before interviewing the defendants under caution or taking fuller statements from the Iraqi witnesses.

- On their own admission these Iraqis saw an opportunity to seek financial advantage from the British Army – they frequently spoke of "fasil" or blood money and compensation in relation to what were patently exaggerated claims. The court also heard that other Iraqis had made what quickly turned out to be specious claims of improper behaviour – including allegations that a baby and old man had been killed by British soldiers – and that should have alerted the investigators that they needed to search for independent evidence in this case.

- I make no criticism of the prosecution or the Army Prosecuting Authority even though I have directed verdicts of Not Guilty at this stage. Where on the face of the papers presented by the investigators a serious crime appears to have been committed it is perfectly proper to take the matter to trial, and in this case the prosecution team have presented their case properly and objectively. However it has become clear to everyone involved as the trial has progressed that the main Iraqi witnesses had colluded to exaggerate and lie about the incident. In particular three women have admitted lying that they were assaulted by British soldiers when they were not, one witness has told the court that the family of the deceased actively encouraged others to tell lies to support their account and witnesses who said they were some distance from the incident could not possibly have seen what they said they saw. Had the Iraqi witnesses turned out to be credible then the case would have been stronger.

- Any death is a tragedy and particularly when it is premature and as the result of violence. I commiserate with Nadhem's family, but it would be wrong and a miscarriage of justice to blame these seven defendants collectively for that death.

HHJ Jeff Blackett
Judge Advocate General

3 November 2005