

MOD-83-0000296-A

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

B E T W E E N

THE QUEEN (on the application of
MAZIN JUMAA GATTEH AL-SKEINI and others)

Claimants

and

SECRETARY OF STATE FOR DEFENCE

Defendant

WITNESS STATEMENT OF
BRIGADIER DAVID JOHN RUTHERFORD JONES

I, **David John Rutherford-Jones**, of Joint Service Command and Staff College Joint Service Command and Staff College, Farringdon Road, Watchfield, Swindon, Wiltshire SN6 8TS WILL SAY AS FOLLOWS.

1. I am a Brigadier in the British Army. My current post is Director of the Army Division at the Joint Service Command and Staff College.
2. I make this statement on the basis of my own knowledge, information provided to me by others, and with reference to documents copies of which I exhibit to this statement paginated and marked "DJRJ1".
3. I was commissioned in 1977 into the 15-19th Hussars. I held a number of positions in the regiment rising to Major, and saw service in Cyprus, Germany and England. In 1993 I was a student at the Staff College. After that I was Chief of Staff of the 1st Brigade and was then promoted to Lieutenant Colonel. In 1995 I went to SHAPE (NATO HQ) where I worked on the planning for the NATO campaign in Bosnia. At the end of 1997 I went to command the Light Dragoons in Germany. With the Light Dragoons I saw service in Bosnia,

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Egypt and Canada. At the end of 1999 I was promoted to full Colonel and through to the end of 2001 I was Chief of Staff of the 3rd Division here in England. At the end of 2001 I was promoted to Brigadier and took command of 20 Armoured Brigade. The Brigade was based in Germany but did a 6 month operational tour in Kosovo, a 2 month training tour in Canada, and deployed to Iraq for 6 months beginning on 6 November 2003.

4. I first went to Iraq in early July 2003 for a two day initial reconnaissance, knowing that 20 Armoured Brigade would begin deploying there in October. I then went back in the first week of August for a main reconnaissance for about 4 days. I went back again - because the situation was so fast moving - in early October for a brief 24 hours on a confirmatory reconnaissance. I took command in Iraq with the Brigade on 6 November. I handed over command of the brigade in Iraq in mid-January and since then I have been in my current post as Director of the Army Division at the Joint Service Command and Staff College. The Brigade remained in Iraq until 25 April 2004.
5. My principal responsibility in Iraq was to command the Brigade in its area of operation, Maysan and Basra provinces in Southern Iraq. Specifically, this involved conducting security and stabilisation operations in the Brigade area of operations. My commanding officer was Major General Graeme Lambe, Commander Multi-National Division (South East).
6. In the Brigade I had six battlegroups under command. A battlegroup is a unit made up of a mix of companies with different skills and capabilities, serving under one commanding officer, designed to deliver a variety of operational effects. The battlegroups under my command were based on regiments, although each battlegroup included companies from other regiments to meet the mix of capabilities required.
7. The battlegroups in the Brigade were: the Light Infantry Battlegroup (1 LI BG) based in Al Amara; the Danish battlegroup based in Al Qurnha (this was made up of Danish soldiers); the Queens Royal Hussars Battlegroup (QRH BG) based initially in North Basra; the Royal Regiment of Wales Battlegroup (1RRW BG) in Basra city centre and 26 Regiment Royal Artillery Battlegroup

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(26 RRA BG) based in South Basra province. In addition, there was a sixth battlegroup, the Argyll and Sutherland Highlanders (1 A&SH BG) which did not deploy into Iraq until January 2004 (as I was leaving). However, the planning for the deployment of 1 A & SH was done by me and my staff. The intention was not to give 1 A & SH BG a particular geographical area of responsibility, rather they were responsible for training and mentoring the Iraqi security forces alongside the QRH BG which I re-rolled in December.

8. The Brigade totalled around 4,400 soldiers, who were under my direct command, of which about 2,200 were combat soldiers; the remainder were in support roles. During the handover from 19 Mechanised Brigade, I also commanded for a few days some troops and units of that Brigade, including 1 KINGS BG. At DJRJ1 p 1 there is a rough diagram showing the Brigade's area of operations and the division of that area between battlegroups.

9. So far as I am aware there has been no accurate census of the population of Basra and Maysan provinces; judging the total strength of population was extremely difficult. I believe, however, that Basra city area has a population of about 1.4 million; Maysan province has a population of about 800,000, including a large number of displaced persons. I would guess that the total population in my area of operations maybe in excess of 3 million. The vast majority of the population in Southern Iraq are Shia Muslim with a small minority of Sunni and an even smaller number of other religious and ethnic groupings. The population divides into two broad categories: the urban population and the rural population. The rural population has a strong tribal structure. Amongst the urban population the tribal structure is less evident; other loyalties such as political groups, religious groups, and academic or professional groups are often as strong as tribal loyalties, and seemed to be gaining in influence while I was in Iraq. Generally speaking, the rural population is relatively uneducated; the urban population includes a significant number of educated professional middle class. The whole area, however, is very poor.

10. Basra and Maysan provinces are dominated by the waterways of the Tigris and the Euphrates which join together to form the Shatt Al-Arab. These

waterways act very much as a magnet for the population – the cities are arranged along the rivers, and agriculture extends ordinarily for three or four kilometres either side of the rivers. Beyond is fairly barren and sparsely populated; the only areas of real interest are where there is oil or gas, although there are one or two isolated communities. The Eastern border of Iraq with Iran is also a predominant factor of life in Southern Iraq. It is an open border which has historically been the focus of trade, including drugs, arms and human trafficking. My total area of operations was about 450 kilometres deep and 150 kilometres wide at its widest. Although my tour in Iraq took place in the winter, there were still days when the heat and humidity was quite extreme. In addition there were occasionally violent winds. There were also one or two bursts of serious rainfall which if nothing else, served to emphasise the poor plumbing in Basra – sewage would come to the surface and run in the streets.

Functions of forces

11. I understood my Brigade to have four main functions in its area of operations: (1) maintenance of security and a secure environment – through patrols, security operations and guarding of our own facilities and key Iraqi facilities; (2) security sector reform – training, mentoring Iraqi police and other security forces; (3) my own force protection – physical protection of bases and the lives of soldiers; and (4) support for the civil administration. The main effort which underpinned everything we did was to maintain the consent of Iraqi people.
12. Patrols would go out very regularly. These usually operated in multiples of 12 soldiers, working in three teams. We also conducted security operations, which were intelligence led. When we had intelligence which we believed to be reliable about terrorist activity in a particular place – for example a house - we would mount an operation and seek to bring the terrorists in. Such operations were normally mounted after dark, during the quieter hours.

Security situation

13. Iraq was more complicated than any other theatre I have been deployed to, including Bosnia and Kosovo. The culture, language, character of the people and environment in Iraq are all unfamiliar to British soldiers, moreso I judge than other theatres of operation they had been deployed to previously. Added to which in Iraq the threats were rarely obvious and the belligerents never in uniform. The situation from a military perspective was entirely non-conventional. Violence was endemic but unpredictable and the reasons for it were often not apparent. These are very challenging circumstances for soldiers to operate in, for many as difficult as difficult gets.

14. The level of consent amongst the majority of the population in my area was seemingly high. By consent I mean a willingness to work and co-operate with the Coalition Forces, and support the work we were doing to bring greater security to our area of operations. I think this was in part because as a predominantly Shia population they had been oppressed for 30 years by Saddam Hussain. At the end of war with the removal of Saddam Hussain's regime I genuinely believe that the Shia in Southern Iraq felt liberated. Equally, there was a misunderstanding (understandably so) of what they thought would happen next. There was an expectation that everything would get better immediately and in reality we were unable to achieve that. By the time I arrived there was still a residual loyalty to us – for having brought in a new life from the oppressive regime of Saddam Hussain – but on the other hand there was an underlying tension borne out of the frustration of the majority at the perceived failure to deliver a good quality of life. That frustration was aimed at the entire Coalition.

Terrorists

15. In the period before I arrived in Iraq, from about August 2003, there had been an increasing terrorist campaign targeted at Coalition Forces in Iraq, alongside an ongoing public disorder problem. When I arrived the terrorist campaign was still very much at large but Coalition Forces were keeping the lid on it and public disorder was reduced. The calmer atmosphere when I arrived enabled

me to focus the efforts of my forces more on building consent with the Iraqi population, as well as maintaining security. Building consent was about building confidence in what we were doing and persuading the local population we had their interests at heart. For example, we put effort into assisting with the rebuilding and return to operation of public services such as schools, hospitals and on engineering works. During the two months I was in Iraq the security situation did seem to improve. There were no fatalities amongst British forces due to enemy action during my time in Iraq.

16. Nevertheless we had to be vigilant all the time. During my first month in Basra there were 23 improvised explosive devices (IEDs) targeted at British forces. The majority of these were successfully discovered and de-fused either through the vigilance of soldiers or often because an Iraqi would report it to us. Around 25% did however explode including some that caused injury for my soldiers, and one bomb in Basra centre which injured a number of civilians and killed two others who we believed to be the bombers. The position did get better in December when there were six IEDs in Basra aimed at British forces.
17. Our intelligence on terrorist activity was not as good as I would have liked; Iraq is a very challenging environment in which to gain accurate intelligence. We could not say with certainty how many terrorists groups there were or where they were. Intelligence did however improve as time went on. There was no particular pattern to the local terrorist campaign; it seemed incoherent. Most of the terrorists we believe were locally based but probably controlled from the North of Iraq. There was also in Iraq a burgeoning wider terrorism threat which I would describe at a level above the local and fairly poorly organised attacks. An example of this level of terrorism was the attack on the Italian brigade (which was also under the command of Multi-National Division (South East) in An Nasirya. A huge truck bomb driven by a suicide bomber got through the gates of the base, and a large number of Italian soldiers were killed. This more professional level of terrorism we believe involved foreign fighters and international terrorist organisations. My troops had to be on constant alert for this very real threat, which might come in the

form of a large vehicle borne bomb, or perhaps a waterborne craft, or a singleton suicide bomber.

Public disorder

18. Although as I have said the level of consent amongst the general population was seemingly high, there were a number of factors about the population in particular which made the security situation challenging. The population generally was very poor and under employed. A lot of young men had been employed in the army, which at the end of the war the Coalition disbanded, thus effectively putting many of them on the dole, that is those who were not absorbed into the Iraqi Police Service, or other duties. In those circumstances, frustrated and in some cases desperate, they were ripe for someone else's cause; there were a number of existing and emerging political and religious groups that we suspected were using intimidation and violence to further their ambitions.
19. Additionally, Iraqi society was still heavily armed; the situation was more stable by the time I arrived than what I understand was the position immediately after the war but there were still huge amounts of weapons on the streets. People generally seemed to have easy access to an AK47 or some sort of weapon. Most of the weapons around were lighter handheld weapons – light but still lethal. And although it was illegal, we were fairly sure weapons could readily be bought in the marketplace. There also seemed to be a small industry in amateur bomb making. I remember through one of the interpreters working for 1 RRW BG sending an Iraqi out to see what weapons were being sold in the market, and he came back with an improvised explosive device.
20. I think one of the single most difficult dynamics, however, was the volatility of the people and crowds. It is difficult to explain quite how volatile the situation was; the propensity for violence was high, particularly given the number of weapons so readily available. We would quite often find that on any day a state of complete calm would develop into a small contretemps, and then violence. These incidents were often founded on inter-tribal disputes, could involve many people, a lot of them armed, and last for some time. They

were challenging moments for the soldiers on the ground, who often found themselves at during incident being both diplomat, calming a situation down, and law enforcer, applying minimum force to prevent further violence; and always mindful that in the back ground there may be a hidden, more determined threat.

21. It was also pretty routine – it would happen about once a week - for there to be a demonstration in front of one of our Headquarters in Basra, or at the Headquarter of CPA. Anything from 40 to hundreds of people would come to demonstrate about a whole range of things – schools, unemployment, things of that kind. The Iraqi police would police the demonstration in the first instance, but if it got out of control CF would deploy to reinforce and to help them restore order. If the demonstrations were not handled properly they could become violent; the crowd would often start shouting/wailing, sometimes throwing objects at us, and occasionally shooting. In instances when guns were deployed in the crowd we believed the shooters may have come from particular groups that wanted to stir up trouble. At the start of 20 Brigade's tour, before I took command and during the handover from 19 Mechanised Brigade to 20 Armoured Brigade, one civilian was shot by British Forces in a demonstration of this kind. During my tour, however, I was not aware of any civilians being shot by British forces during demonstrations.

Tribal feuds

22. But, as I implied earlier, a lot of the violence arose out of inter-tribal and inter-criminal gang activity. Society in Southern Iraq is fundamentally a tribal society and tribal lore is important. My understanding of this is that, for example, put simply if a member of a tribe is killed blood money must be paid and if it is not the killing must be avenged with another killing. A lot of stress was placed on honour, pride and tribal leader credibility. Opposing tribal groups would feud in every way from arguments, to fights, to major gun battles – and for any number of different reasons - thefts, killings, infidelities. When a serious tribal dispute was on-going we would either hear it – for example if it was a gun fight close to our camps – or we would be told about it

by the Iraqis who would come to us to stop it. We were very wary however of becoming an interposing force, because of the very serious threat to the life of my soldiers this involved. But in extremis we would interpose ourselves if we thought it necessary to protect life. These kinds of situations were very difficult and very challenging for my young soldiers and commanders. Again, I cannot emphasise enough the volatility and the speed with which things could escalate— it was not unusual for CF soldiers to deploy to stop an argument, or prevent further violence, but in the event find themselves the focus of attack with, for example, someone on a roof shooting at them, as if it were an ambush; CF soldiers had to be constantly vigilant, and wary of a trap. These kinds of incidents involving tribes and criminals were not uncommon — they happened on average about once a week, sometimes more often.

Infrastructure

23. When I arrived the infrastructure was still in a very poor state. There were supplies of non-potable water in Basra, but there were still difficulties with the supply of potable water. Electricity had become more reliable but it was still in fundamentally poor state. There were difficulties in rebuilding and repairing the infrastructure arising out of a lack of immediate cash, and because there was a reluctance amongst outside contractors to work in Iraq

with telecommunications. Another was a doctor who we seconded to assist on the medical side. I also had very regular meetings with the CPA.

25. Alongside the CPA was an Iraqi civil administration structure. At the top of this in Basra was the Governor of Basra. He had a council, and beneath that a number of sub-committees. There were also a lot of local councils which was how things worked on an ad hoc level. We assisted the CPA in trying to formalise this local authority structure. The local governing council in Basra and its committees were mentored by the CPA.
26. I was not involved in this civil administration per se except in the security committee – which was responsible for the Iraqi security forces, and security matters. This committee was made up of some council members and the heads of key security areas – the Chief of Basra City Police, and the local Chief of Border Police, Chief of the Iraqi Civil Defence Corps, and Chief of Police Intelligence. I decided to make the functioning of this committee one of my main priorities. This was in order to achieve one of our aims - that of ensuring that the Iraqis were represented in security terms from the top to the bottom of society; it was important to put a credible and competent Iraqi face on security. Initially I attended the committee in an advisory capacity, but subsequently I was asked by its chair, Brigadier Ali Shani (Chief of Police) to become co-chair. Ultimately, however, the committee answered to the local Governor and was not subject in any way to my military command; they could ignore my advice and guidance to them, and often did precisely that.
27. The Iraqi administration was more advanced in Basra than in the rural areas. In Maysan province in particular the people were resistant to any form of central government. Maysan province is a tribal stronghold, where the population are predominantly Marsh Arabs who were brutally oppressed by Saddam. They are historically very independent and defiant of any kind of governmental control. It was only just as I left that a Maysan provincial council was inaugurated; beneath that police committees and other similar committees were still to be set up.

28. By November 2003 a lot of work had already been done to begin to establish a democratic Iraqi police force answerable to a civil authority. This police force was eventually to be responsible for everything from the equivalent of the bobby on the beat to criminal investigation to utilities protection to border and riverine patrol. It was very important to our aims that we developed an Iraqi police force for Iraqis controlled by Iraqis. However, although some gains had been achieved in practice the police were still lacking confidence, were poorly equipped, and were not competent at anything other than the most routine and basic policing functions; but they did have a loose structure, had been given some initial training, carried out their own patrols, did joint patrols with CF, and had begun to conduct arrests. We were still heavily involved in mentoring, training, assisting them with equipment and operating along side them.
29. It was the police not the British military who were responsible for investigating crime. If we arrested someone for a criminal matter we would hand him over to the police. There were courts operating when we were there and criminal trials were held, although we were fairly sure judges were being intimidated, despite provision of security to them.
30. Our relations with the police were politically difficult, however. Ultimately they answered to the Iraqi administration and not to Coalition Forces. If my soldiers interfered with police practice because they found their actions improper, then I would get complaints from the Iraqi security committee that we were not respecting the independence of the police force. So whilst on the one hand they looked to us for equipment, training and funds, and expected us to carry out patrols and provide backup security, on the other they did not want us to interfere with their autonomy.
31. In addition to assisting the police, British forces also helped set up and train the Iraqi Civil Defence Corps. This project had started before I arrived and my Brigade took it on. The ICDC was fundamentally different to the police, in that they were selected by us and under our command. We trained them and then formed them into companies which we embedded in our

battlegroups. We had four companies embedded in the brigade by the time I left, with about a hundred men in each company.

Use of force

32. As I have indicated, the incidents in which British forces came into violent contact with Iraqis were: terrorist attacks; demonstrations/riots; criminal activity; intertribal feuds; anti-terrorist operations; and random incidents of disorder. Under our Rules of Engagement, a soldier is permitted to use lethal force when he believes his life or the life of those around him are threatened. The force used must be the minimum necessary in the circumstances.
33. Ultimately, the judgment on use of force has to be the individual soldier's. When we train our soldiers we train them to understand what constitutes a threat. Often in an incident this is a very difficult judgment to make, the soldier under huge pressure, frightened, and in a fast moving situation. What is important in our business is that the rules are simple enough for each soldier to understand and feel comfortable with, such that he has an instinctive and correct reaction to a set of circumstances when they arise. We trained very hard before deploying to Iraq in order for the soldiers to reach this standard, it was core business, at the heart of everything we did to prepare the force.
34. Overall, during my time in Iraq, ten Iraqis died as a consequence of incidents where CF soldiers were also involved, including the cases I understand to be before the Court numbered (2) and (3).

Reporting and Record Keeping

35. Patrols carry with them a radio which allows communication back to base. Some commanders also carried a mobile phone. Mobile phones were helpful because sometimes military radios do not work very well, particularly in urban areas. When there is a contact – for example an incident in which the patrol is fired on or itself fires at a target - the radio operator will send a contact report back to the patrol's base location. The person who listens to the radio reports coming in keeps a log. After a contact report is made a report will be sent

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over the radio up the chain of command – this is known as a situation report. This comes through to battlegroup headquarters. A single consolidated report of the day's activities then comes through to Brigade HQ. Twice a day 8.00am and 6.00pm I also had a situation brief where I would be briefed by staff on what was going on. In the case of more serious incidents I would be briefed as the incident occurred. The contact and situation reports are the records of contact activity. They form part of the "war diary" which is the total sum of the records kept in theatre.

36. During my tour, the policy in place for the investigation of shooting incidents was set out in MDN(SE) J3/1260 of 28 July 2003. A copy of that is exhibited at pages 2 – 7 of "DJRJ1". The policy required the Commanding Officer to determine whether or not the incident fell within the Rules of Engagement, and to order an SIB investigation if he was not satisfied that the incident fell within the Rules of Engagement or did not have sufficient information to allow him to make that judgment. He was required to report to me as Brigade Commander on his decision.
37. Immediate investigation at the scene of the incident, whilst perhaps desirable, was in most cases unwise given the very real dangers to our people of further attack; our experience was that it was generally sensible not to re-enter an area where there had been a major incident until it had calmed down, and that would invariably take quite a while. However, investigation of an incident would involve speaking to the soldiers concerned and might also include speaking to the deceased's family and any witnesses. That investigation would not include a forensic analysis – my officers are not qualified to do that and did not have the personnel.
38. When I received a report I would look at it with my Legal Adviser, who was a uniformed lawyer from the Army Legal Service (ALS), and my Deputy Chief of Staff. It was then my decision whether I agreed with the Commanding Officer or not. If I felt that he was wrong – and I did on two occasions – I would then have it further investigated by SIB. On the two occasions I demanded further investigation, both involving 1 LI BG, SIB found that the

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soldiers had acted in accordance with the Rules of Engagement. SIB was not under my command and I had no authority to intervene in their investigations.

39. After I had taken my decision, I would send the paperwork up to the Division. It went to Division so that the staff there had a record of the incident, and could if necessary make a judgement, and because there may be subsequent compensatory action, compensation was authorised at Divisional level. I would further add that it was not unusual for incidents, of any nature, to be investigated further, on my order. We tried, with the resources available to us, to be rigorous. I expected my BG commanders to do likewise.

Claimants' cases

40. I was Commander of the Brigade at the time of the death in case (3). In case (2), the death occurred immediately before I took command, and I dealt with the investigation into it. Below I set out my role in the investigation of these cases.

Case (2)

41. This case involved the shooting of a man on 6 November 2003 during a house search conducted by a patrol from 1 Kings. I was not directly involved until I received the report from CO 1 Kings Lieutenant Colonel Ciaran Griffin. I read through the documents and considered them with my Legal Adviser and Deputy Chief of Staff. I also discussed the case with my Political Adviser. The documents I had before me were the report by the Company Commander, Major Routledge, the report by the Commanding Officer Lt Col Griffin, and a covering note from my Deputy Chief of Staff. Copies of these documents are at pages 21 – 28 of DJRJ1. Copies of the Brigade logs of this incident are at pages 8 – 20 of DJRH1.
42. From the information before me, it seemed to me a straightforward case, in that although the outcome was very unfortunate, the circumstances my soldiers found themselves in on entering the house were very dangerous and,

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having heard gunfire and then being directly confronted by gunmen at short range they had no choice but to react the way they did in self-defence. My judgement was that they acted lawfully to protect life, in accordance with Rules of Engagement and I issued my report saying so. A copy of my report is at pages ²⁹⁻³⁰ of DJRJ1.

Case (3)

43. This case involved a woman and child being shot in cross fire during an attack on a patrol from 1 Kings on 10 November 2003. I was first involved at the stage that I received a report from the Commanding Officer Lt Col Griffin. On this occasion I recall that the unit radio logs had been included with the documents sent to me, which otherwise comprised a Serious Incident Report (SINCREP), the Commanding Officer's report and a covering note from my Deputy Chief of Staff. In fact, although the Commanding Officer's report states that the infant died of its injuries, in fact I now understand that the infant survived. Copies of the unit radio logs are at pages ³¹⁻³⁴ and other documents are at pages ⁴⁰⁻⁴⁵ of DJRJ1. Copies of the Brigade logs are also exhibited at pages ³⁵⁻³⁹ of DJRJ1.
44. I believe I spoke to the Commanding Officer Lt Col Griffin on the phone about this case. I wanted him to talk me through it, and to satisfy myself that all the members of the patrol had been interviewed. I also discussed the case with my Deputy Chief of Staff and my Legal Adviser. My judgement was that the incident fell within the Rules of Engagement and did not require further investigation. A copy of my report is at pages ⁴⁶⁻⁴⁷ of DJRJ1.
45. I believe the contents of this statement to be true.

Signed:



Dated:

30 June 2004

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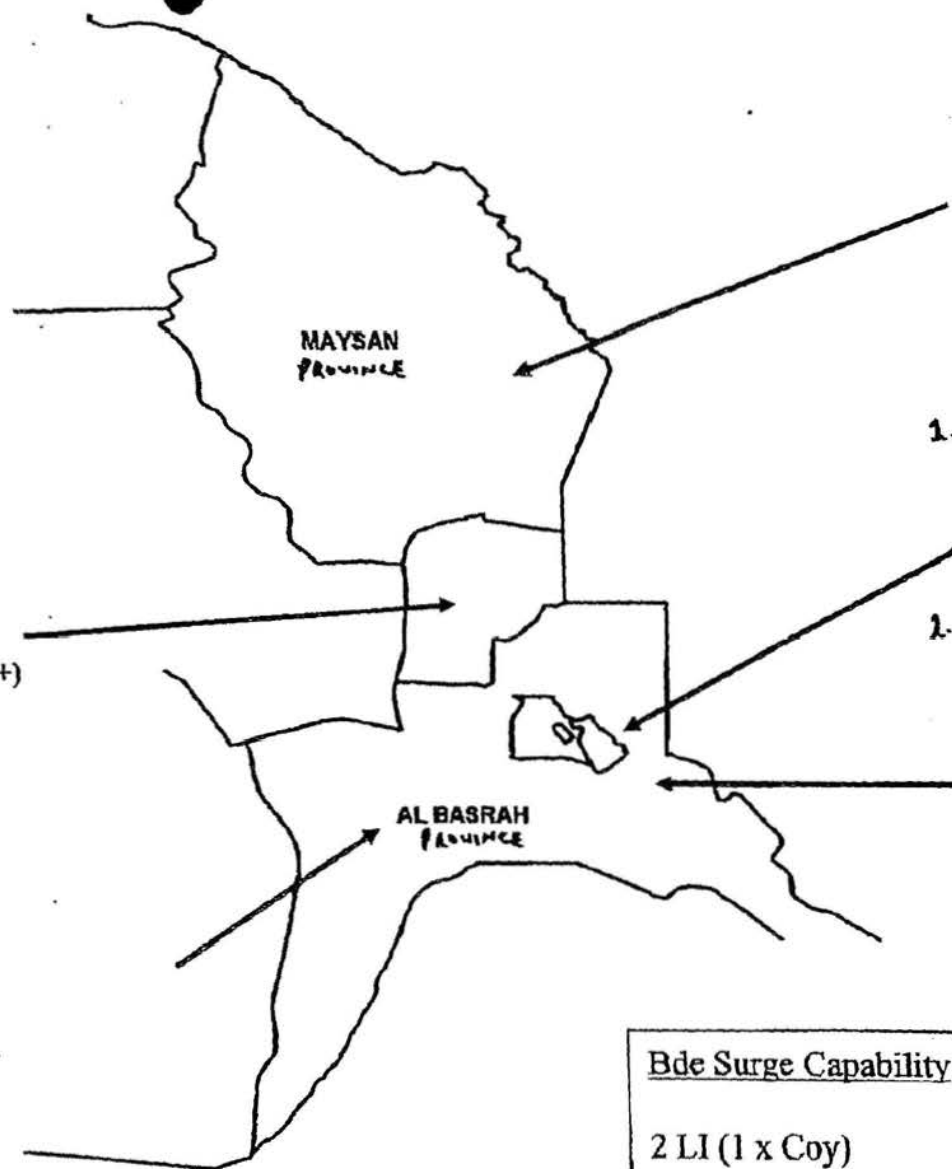
Exhibit

This is the exhibit DJRJ1 referred to in the witness statement of Brigadier David John Rutherford-Jones dated 30 June 2004.

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11 rough sketch of 20 Brigade Battlegroup LA 7000

L.



1 LI

1 x A1 Coy
3 x Light Inf Coy

MAYSAN PROVINCE

1. ORH (SSR)

1 x Armd Inf Coy
1 x Armd Sqn
2 x Light Inf Coy

2. 1 A x SH Bg

1 RRW

3 x Light Inf Coy
2 x A1 Coy
1 x Inf Coy (Def Coy)
1 x A1 Coy (Bde Ops Coy)

DANISH BN

1 x Recce Sqn
1 x Mech Inf Pl (+)
1 x Engr Sqn

AL BASRAH PROVINCE

26 REGT RA

1 x FR Sqn
1 x Sp Bty
3x Light Inf Coy

BDE TPS
200 SIG SQN
4/73 BTY
44 HQ SQN RE
77 ARMD ENGR SQN
100 FD SQN
49 SQN EOD
110 PRO COY

Bde Surge Capability
2 LI (1 x Coy)

NOTES:

1. SSR = Security Sector Reform, in practice training and mentoring indigenous security forces. I moved QAH Bg to this role in Dec.
2. 1 A x SH went into the SSR role also, but did join 20 Brigade unit mid-Jan 04.

AS AT:21-Dec-03

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