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PROCEEDINGS

of a

FORMAL PRELIMINARY EXAMINATION

held at

BASRAH AIR STATION

on the

15th, 16th and 17th days of March 2006

in the cases of

██████████ Captain ██████████ SO70
██████████ Corporal ██████████ SO71 and
██████████ Lance Corporal ██████████ SO72

all Corps of Royal Engineers
all 32 Engineer Regiment, Royal Engineers

(In attendance:)

Major A Murray
Adjutant General's Corps (Army Legal Services)
(Conducting Officer)

Lieutenant Colonel A Bartlett
Adjutant General's Corps (Army Legal Services)
(Assisting Conducting Officer)

D Whitehouse, Esquire, Queen's Counsel
(Appeared on behalf of the Defence Captain ██████████ SO70)

S Leslie, Esquire, Queen's Counsel
(Appeared on behalf of the Defence of Corporal ██████████ SO71)

A Mitchal, Esquire, of Counsel
(Appeared on behalf of the Defence of Lance Corporal ██████████ SO72)

TRANSCRIPT OF EVIDENCE

(356 folios)

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CERTIFICATE

In the matter of:

Regina v Captain [REDACTED] SO70
Corporal [REDACTED] SO71 and
Lance Corporal [REDACTED] SO72

I, **David Allen CERQUA**, of WordWave International, 1st Floor, Greencoat House, 183 Clarence Street, Kingston-upon-Thames, Surrey, KT1 1QT, hereby certify that:

I recorded by the use of digital equipment the proceedings of the above Formal Preliminary Examination and the typed transcript herein has been produced to the best of my skill and ability.

Signed: **David A. Cerqua**
Date: 18th day of March 2006

P16

**STAFF – INVESTIGATION
NOT FOR DISCLOSURE
OFFICER ONLY**



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ARMY

OC
70 Sect SIB (G) RMP
BFPO 30

CCRIO No: 64659/03
Date: 20 November 2004

**ALLEGED MANSLAUGHTER
(Furtherance of Enquiry)**

References:

- A. 70 Sect SIB (G) RMP Furtherance of Enquiry 64659/04 dated 9 Jul 04.
- B. 61 Sect SIB RMP Initial Case Report 64659/04 dated 27 Jul 04.

1. As requested at Reference A, extensive enquiries have been made to identify and interview the 10 Iraqi nationals, who were temporarily residing within the former Iraqi Marine Base, Basrah, however, to date these attempts have met with negative results.
2. A statement of Capt [REDACTED] ([REDACTED]), SO3 G3 (Ops), 1 Mech Bde, BFPO 641 and a statement of evidence produced by [REDACTED] Sgt Gledhill P, 61 Sect SIB RMP, BFPO 641, detailing the difficulties encountered whilst attempting to comply with this request are enclosed, together with all the unused material collated during the course of this enquiry.
3. Kindly acknowledge receipt of the original documentation and unused material by signing and returning the attached MOD Form 24.
4. If this Section can be of any further assistance do not hesitate to contact the undersigned.

[REDACTED] Wb2
for GD SMITH
Capt
for PM MND (SE)
ADL

Enclosures:

1. Statement of Capt [REDACTED] ([REDACTED]), 9/12L.
2. Statement of Evidence of [REDACTED] Sgt Gledhill P, RMP (SIB).
3. Schedule of Unused Material.

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STAFF – INVESTIGATION**

A **The Formal Preliminary Examination opened at 1008 hours.**

CONDUCTING OFFICER: There are a few preliminary points I must go through for the purpose of the record. If I can identify, please, the three accused. We have Captain [REDACTED] SO70, [REDACTED], 32 Engineer Regiment.

B CAPT [REDACTED] SO70 Correct.

CONDUCTING OFFICER: We have [REDACTED] Corporal [REDACTED] SO71 32 Engineer Regiment.

CPL [REDACTED] SO71 Yes sir.

CONDUCTING OFFICER: [REDACTED] Lance Corporal [REDACTED] SO72 32 Engineer Regiment.

C LCPL [REDACTED] SO72 Yes sir.

D CONDUCTING OFFICER: My name is Major Murray, a member of the Army Prosecuting Authority, and I will be the Conducting Officer for this hearing. This is a Formal Preliminary Examination, it is held under Rules 5 and 6 of The Courts-Martial (Army) Rules 1997, and in particular pursuant to an order for an FPE signed by myself dated the 31st January of this year. Unless I hear otherwise, I am assuming that all defence teams have seen a copy of that order – I know it was disseminated – and I do not propose to read it out.

E The important point I must make clear; an FPE is not a trial, it is not a court-martial, there is nobody here on trial, there is no judiciary, there will be no verdict, and as such none of the accused people are under arrest. Whilst they are entitled to be here they are not required to be here and should at any time they wish to get up and leave they are entirely free to do so.

The purpose of the FPE is to allow myself to examine on oath such witnesses as I may decide, and that is to assist me in making a decision in due course whether court-martial proceedings will be instituted in this case.

F Referring to the order, you will see from paragraph 5 there is a list of eight witnesses whom I do intend to examine orally, the first of which Mr Auda will be heard today. Following that, there is a list of witnesses whose evidence will be introduced either by reading it on to the transcript or by exhibiting them as part of the proceedings. That list of witnesses is at paragraph 6 of the order.

G Following that, and of course once witnesses are examined orally each accused through their counsel have the opportunity to cross-examine those witnesses. Following that, each accused has the opportunity to give evidence themselves or to call witnesses on their own behalf. Should they choose to give evidence – and they are not required to – then they can be questioned by their own counsel but they cannot and will not be cross-examined either by myself or by counsel for a co-accused. Similarly, should they call witnesses on their part, they cannot be cross-examined by myself or counsel for co-accused.

H

A And the final point: if any accused decides not to give evidence at no stage can any adverse inference be drawn from that decision at any future court-martial proceedings.

Now are there any issues or points at this stage?

MR WHITEHOUSE: No thank you.

B CONDUCTING OFFICER: Thank you. With that I would ask for the interpreter to be brought in please?

(The Interpreter [redacted] entered into the room.)

C CONDUCTING OFFICER: My name is Major Murray, the Conducting Officer of this hearing. What I want to do is just outline what we are after from yourself as the interpreter. There will be a number of witnesses who will be questioned by myself and by counsel. What we need from you is a word-by-word translation of what that witness says, okay?

INTERPRETER: You mean conversation.

D CONDUCTING OFFICER: Yes, literal translation of what that witness says. Even if he says something which seems innocent, he remarks about the decoration, we must hear exactly what he says. And similarly questions which I ask or which counsel ask must word-for-word be translated to the witness.

The other point in this case, because of security reasons the intent is not to mention names of people in the presence of the witness, either my name, any of the counsel's names, the accused names or your own name, so we refer to each other as counsel or Mr Interpreter if you do not mind.

E (The Interpreter is duly sworn.)

Mr MUNEM AUDA BALI having been called and duly sworn is examined by the Conducting Officer as follows:

F CONDUCTING OFFICER: Mr Munem, you will be asked questions about an incident in 2003 at old navy base in Basrah when you spoke to a soldier and you and another person ended up in the water. Now only a yes or no to this question: can you recall that incident?

A: Yes.

Q: Mr Munem, when we ask you questions it's important that your answer is limited to answer the question asked.

G A: Okay.

Q: And we're interested in hearing what you actually saw and heard and not what other people have told you about the incident.

H

A A: Okay.

Q: Firstly, Mr Munem, what is your full name?

A: Munem Auda Bali.

B Q: How old are you, Mr Munem?

A: 35 years old.

Q: At the time of the incident we're talking about where were you living?

A: In the place. In this place.

C Q: Is that the old navy base in Basrah?

A: Yes it is.

Q: And at that time how long had you been living there?

A: When the last war stopped we live here maybe approximately two months.

D Q: Are you still living there?

A: The new government had moved all the families from this place.

Q: So where are you now living?

E A: In Al Anhaya town.

Q: Is that part of Basrah?

A: It's near from city centre.

Q: When you were living at the navy base who were you living with?

F A: We had sheeps and cows and this place has many of plants and near the river. Me and other families came here. All the time we cared for animals.

Q: Could you please repeat the translation?

A: This area has many other plants and it's near the river. We have cows and sheep and this place is near the river. We came here all the time can we do our job.

G Q: And what was your job at that time?

A: I have no job, just a civil job.

H

A INTERPRETER: Civil job. This is in Iraq if anyone depend on themselves it is a civil job.

Q: Were you living at that time with any family members? Were you living with a family?

A: Many families. There is all families lived in a special house.

B Q: On the day of the incident we're talking about, can you tell me when you first had contact with a soldier that day?

A: He speak English and I couldn't understand what he said.

Q: What time of day did you first have the contact with the soldier?

C A: Approximately 10 a.m. There was one British soldier came with the rifle and took us to the other people. Invite us to the other people. Escorted us to other group of British soldiers.

(At this point in the hearing there was an issue with the layout of the room and the fact that people were having difficulty hearing the evidence. A break was called for in order to re-arrange the furniture in the room.)

D **The Formal Preliminary Examination adjourned at 1038 hours.**

The Formal Preliminary Examination reopened at 1101 hours.

Mr MUNEM AUDA BALI having returned is further examined by the Conducting Officer as follows:

E CONDUCTING OFFICER: The question I asked before we adjourned, I asked Mr Munem if he could describe, please, his first contact with the soldier that day?

A: You want me to explain what happened exactly at that time?

Q: Please, yes.

F A: British tankers everyday usually came here in order to wash their tankers. Usually every day when British tankers came here we don't care because there is not my job to ask about this matter, but on that day there was one British soldier hauled on my shoulder and asked me come here. He escorted us to the location where the British tankers stopped.

Q: Mr Munem you said earlier this was about 10 a.m.?

G A: Yes, approximately at this time. Ten to eleven.

Q: Mr Munem, what were you doing when this British soldier first spoke to you?

A: You know this area has many plant and I stopped here to wash my animals, cows and sheeps.

H

A

Q: These cows and sheeps, are they your cows and sheep?

A: It's for my father.

Q: Mr Munem was anybody else with you at that time or were you alone?

B

A: Just me and my cousin. There's other people but I was alone with this person.

Q: Who is your cousin?

A: This person is dead. His name is Sa'ad.

C

Q: Do you have his full name? A triple name? Can you spell it?

A: Sa'ad Rachi Shapraam, is that clear?

Q: Your cousin Sa'ad, at that time where did he live?

A: In the same place with me.

D

Q: Did you see your cousin every day?

A: Yes.

Q: Can you give a description of what your cousin looked like?

A: He has a hard body. He's student in the secondary stage.

E

Q: How old was your cousin?

A: Approximately between 18 to 19 years old.

Q: Can you remember on that day what he was wearing?

F

A: He was wearing white shirt and white flannel T-shirt under the shirt.

Q: Bellow what was he wearing?

A: He had track sport.

Q: Can you remember the colour of that track sport?

G

A: I couldn't remember because it's happened a long time.

Q: At that time did Sa'ad have any facial hair?

A: He has nothing here.

H

-7-

A

Q: My question, at that time did Sa'ad have any facial hair?

A: Just a little moustache here.

Q: Can you remember, Mr Munem, what you were wearing on that day?

B

A: Shirt and track sport.

Q: Can you remember the colours of the shirt or the track sport?

A: I couldn't remember because it happened a long time ago.

C

Q: You mentioned in the area there were other people around.

A: Many people were in there.

Q: Did you know any of these people?

A: I know many people of this place in this area.

D

Q: Can you remember specifically any of the people who were around at that time?

A: I can remember that.

Q: Well can you tell the names of any of those people?

A: Yes I can. One person was Abu Marwah, this is his nickname in Iraq.

E

Q: Can you spell that name and write it down please as before?

A: A.B.U.M.A.R.W.A.H. and other person Abu Ali. This is person who worked in the water pump, Abu Ali.

F

Q: Can you remember any more names?

A: One other person Ali Hassan.

Q: And just to confirm, these people were in the area when you first spoke to the soldier?

A: In that time there is many guys around us and many people. Just I know this people among this group and other people came in order to fishing and swimming in this area.

G

Q: The three names you've given us, were they in the area when you first spoke to the soldier?

A: Just Abu Ali and Abu Marwah were found in this place.

H

Q: And you said there was a British soldier. How do you know he was a British soldier?

A
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A: Generally I know that just the British forces located in Basrah City.

Q: This soldier, had you seen this soldier any time before?

INTERPRETER: When I translate that question for him he said 'I've never seen him.' I ask him 'This is first time you've seen him?' he said 'Yes.'

Q: Can you give a description of that soldier?

A: He has glasses. He has hard body also. He has black glasses. He moved close to the end and has a rifle.

Q: Can you remember what he was wearing? What his clothes were?

A: Like this uniform.

Q: Just to clarify, does he mean like my uniform?

INTERPRETER: Your uniform.

Q: Is that what he said?

A: Same this uniform. This soldier had a black T-shirt.

Q: You said he had black glasses, is that correct?

A: Yes he has black glasses.

Q: Can you tell us any description of those glasses?

A: Just black glasses that can reflect the light.

Q: Was he wearing anything on his head?

A: A beret. He has a beret on his head.

Q: What was the colour of that beret?

A: Maybe red.

Q: Did he have any badges or markings on his uniform?

INTERPRETER: You have to explain to him what you mean badges or markings because Iraqi people has no idea about this matter please?

Q: Can he remember anything about the uniform?

A: Just I note his dress, his clothes only.

A

Q: And you said he was carrying a rifle, is that correct?

A: Yes.

Q: How was he carrying that rifle?

B

A: In this hand he aimed the rifle at me and escorted me.

Q: Did the soldier say anything at that time?

A: He escorted us to his group and this group were three people and told his group I give this people to you. I couldn't understand what he said but he tell the people I bring you two persons.

C

Q: Before, Mr Munem, you were escorted, did the soldier say anything when he first came to you?

A: Just hit on my shoulders and tell me come here. patted on my shoulder.

D

Q: What did he pat you on your shoulder with?

A: With his hand and he search me and tell me let's go.

Q: When he said 'Let's go' did you understand what he said?

A: I couldn't understand what he said. He speak but I couldn't understand.

E

Q: Did you understand what he meant when he spoke? What he meant by what he said?

A: He escorted us to his group in order that that people identified us.

Q: When the soldier spoke did you understand what he meant when he spoke?

A: I thought on that time he escorted us to his group.

F

Q: Mr Munem, you mentioned the soldier searched you.

A: Yes.

Q: How did he do that?

G

A: He searched us by his hand.

Q: Did he search your cousin as well?

A: Yes he did.

H

Q: Was anything taken from you by the soldiers?

A

A: Nothing.

Q: Mr Munem, I'm going to show you a copy of a photograph of the old naval academy.

(Handed to witness)

B

Q: Looking at the photograph can you recognise it?

A: I can recognise. This is the stiff.

Q: What is stiff? Can you ask the witness what is stiff?

A: Like concrete base. Concrete base.

C

Q: Concrete base. If you look along the map where it shows the water and the land, if you look on the right-hand side of the map you see a point where the water comes in to the dock.

A: Yes, I found it.

Q: Looking at that part of the map can you recognise what the photograph shows?

D

A: I don't know. It's not clear.

Q: Can you recognise from this photograph, Mr Munem, where you were living at the time?

E

A: We lived in a large hall. In the past the Iraqi Army used it to store ammunition and weapons.

Q: Tell me if you don't recognise the photograph, Mr Munem, but can you point on the photograph where you were staying?

A: In this area near the main hall. **(Pointing on the photograph)**

F

Q: Can you point, Mr Munem, to where you were living at the time we're talking about?

A: This is main road. I lived in this area near the main road. And this is part of port from where British tankers stopped. This is water pump.

Q: If we could just take it through firstly where he was living at the time?

G

A: This area. **(Pointing to the map)**

Q: Could you please, Mr Munem, write with a pen the figure 1 where you were living at the time?

Witness marked the map.

H

A Q: A circle then. Could you draw a circle with the pen on the map where you were living at the time?

Witness marked the map with a circle.

Q: Could you mark with a cross where you were when you first saw the soldier?

B **Witness marked the map with a cross.**

Q: Now looking at that cross, when you met the soldier were you next to a building or was it an open space?

A: It's open place.

C Q: You said, Mr Munem, that this soldier escorted you to his group?

A: Yes.

Q: How far away was his group from when you first met him?

A: Approximately between 400 to 500 metres.

D Q: How long did it take to get to the group?

A: Approximately between 10 to 15 minutes. About ten minutes.

Q: And during that 10 -15 minutes did anything happen during the walk?

E A: Through this time my cousin Sa'ad tried to escape from the soldier but the soldier touched him with the tube of the rifle.

Q: What did the soldier do with the front of the rifle?

A: He hit him on his back. He beat him at his back.

F Q: Is this you, Mr Munem or Sa'ad we are talking about?

A: Sa'ad not me.

Q: Were you hit during this time, Mr Munem?

A: No, Sa'ad not me.

G Q: And during the walk was anything said? Did you say anything?

A: I didn't say anything?

Q: Did the soldier say anything?

H

- A A: No, the soldier didn't say anything also?
- Q: And Sa'ad?
- A: Sa'ad didn't say anything.
- B Q: Where were you escorted to by this soldier? Where did you finish walking? Where did you end up?
- A: When he escorted to his group he said to the people keep these people with you I'll ask the interpreter if he can identify these people.
- Q: You've mentioned this soldier's group.
- C A: Yes.
- Q: Dealing with the group, did you see any other soldiers in that group?
- A: Just three people of the group.
- Q: Were the three people soldiers?
- D A: Yes, they were soldiers.
- Q: When you first saw these three people what were they doing?
- A: This English soldier said to us sit down and nothing else. I will go to ask the interpreters.
- E Q: Can you describe any of the other three soldiers?
- A: They were guys and they removed their clothes because I believed they want to swimming inside the river.
- Q: What were they wearing?
- F A: They wear the same soldier uniform.
- Q: You said they had taken off some of their clothing. What part had they taken off?
- A: Just the jacket.
- G Q: And was that all three of the soldiers or just some of them?
- A: Just two people take off their jacket and the third one inside the tank.
- Q: So the two soldiers then that had taken off their jackets?

H

A

A: Yes, just the jacket.

Q: Were they wearing anything on their upper body?

A: No.

B

Q: So they were bare-chested? Were they bare from their waist up?

A: Just jacket and they wear T-shirt.

Q: Do you remember the colours of the T-shirt?

A: One person has white T-shirt and two people have black.

C

Q: The three soldiers, not the first soldier, the three within the group, you said that one was in the tanks is that correct?

A: He get ready next to the tank.

Q: Okay, he was ready and next to the tank. And was he, that one person, was he wearing full uniform jacket or was he T-shirt?

D

A: He wear his uniform.

Q: And so there were two others and they were in T-shirts, is that correct?

A: Yes.

E

Q: And those two people, one was wearing a white T-shirt, is that correct? The two people in T-shirts, is it correct that one was wearing a white T-shirt?

A: Yes.

Q: And what colour was other person's T-Shirt?

F

A: Just one person has a black T-shirt and the rest people has white T-shirt.

Q: So there's one black and the rest white, is that correct?

A: Yes, that's right.

G

Q: And is it correct then that the person with the black T-shirt was the first soldier who had escorted you there?

A: Yes.

Q: And so the other soldiers in T-shirts had white T-shirts, is that correct?

H

A A: Yes.
Q: You mentioned at the group there was a tank.
A: Yes.

B Q: How many tanks were there?
A: Just one tank.
Q: Can you describe that tank?
A: It's a small tank, compact tank. Small vehicle.

C Q: The colour?
A: Military.
Q: And did it have wheels or tracks?
A: Tracks.

D Q: And can you remember was there a turret on it with a big gun or was there not?
A: Without guns.
Q: Can you remember was there any markings or anything written on the vehicle that you can remember?

E A: Just number 16 in a black colour.
Q: Where on the vehicle was this number 16?
A: In the end of the stack. When the door opened it's founded here. When you want to open the door in this location. In the back of the tank.

F Q: Can I just ask the question again: where on the vehicle was this number 16 in black?
A: On the side of the tank.
Q: You said earlier that it was common for British tankers to come here to wash their tankers.

G A: Yes. They came every day in order to wash tanks and back again.
Q: Is that what was happening to this vehicle you've described?
A: Sorry?

H

- A Q: Was it being washed? The vehicle you've described, was it being washed?
A: Yes, the stack came to wash and when the soldier escorted us to the group they found these people. English people, washing the tank.
Q: So the soldiers there were washing the tank?
- B A: Yes.
Q: How were they doing that?
A: They had pump. They threw it inside the water and pumping the water towards the tank.
- C Q: So when you got there the pump was on?
A: Yes.
Q: Was it noisy?
A: Yeah, it was noisy and it worked normally.
- D Q: And you said there was one tank there, one vehicle?
A: Yes.
Q: When you were taken there where were you escorted to? What happened to you when you got there?
- E A: He tell us sit down and he gave Iraqi interpreter.
Q: Who told you to sit down?
A: The soldier who was escorted us tell us that and the people around us tell the soldier there is one person here he can speak English. You can ask him to help you.
- F Q: And did you sit down?
A: Yes.
Q: And Sa'ad?
- G A: Yes
Q: Did Sa'ad sit next to you or away from you?
A: He sit down beside me together.
- H

- A Q: You mentioned there were other people around.
A: Yes.
Q: Were these Iraqi nationals?
A: Iraqi people. They came to swim and fishing.
- B Q: How many people were around?
A: About 25 to 30 people.
Q: And were they all around the area where the tank was? Were they all next to the tank, these 25-30 people?
A: Yes, they were swim and fishing?
Q: So some of them were swimming?
A: Yes.
- D Q: Do you know who any of these people were, the 25 to 30 people?
A: Some people from the same area coming to swim and other people that is fishing came from the other side to fishing also and back again to their house.
Q: Can you give us the names of any of those people?
A: Some people from the same area and some people came just for fishing and back again. I don't know all of them.
Q: You then said that some of these people spoke to the soldier, is that correct?
A: Yes.
- F Q: Did you hear that conversation?
A: Yes.
Q: And what was said between the people and the soldier? There was people talking to the soldier who had escorted him. What was said between those people and that soldier?
A: The interpreter or the people?
Q: The people.
A: The people asked him please arrested him. We know this is very poor man in our village. The British soldier said no. I asked the interpreter to identify this person first.

H

- A Q: When the people were saying about this poor man, were they talking about you?
- A: The people said there is two guys, me and Sa'ad, my cousin. He said this is a poor people from my village and they have sheeps. We know him very well the people said to the British soldier.
- B Q: Do you know of the people specifically who said that?
- A: Especially Abu Ali, this is person work in the pump station. He speak with him a lot of time to require him to release these people but the British forces refused.
- Q: Abu Ali, you say he works at the water pump station.
- A: Yes.
- C Q: Was he part of this group who spoke to the soldier at that time?
- A: Yes.
- Q: Can you remember specifically what Abu Ali said?
- D A: Once he said left them alone, I know this people. This is from our area, from our town. Please left them.
- Q: Abu Ali, was he talking Arabic or English?
- A: In Arabic because Abu Ali could not speak the English language.
- F Q: And the soldier was he talking in Arabic or English?
- A: He never answered him. He want to ask the one fisherman because the people tell him that he can speak English.
- Q: We will get to that. Mr Munem, do you speak or understand any English?
- F A: No.
- Q: You then mentioned there was an interpreter there at the scene.
- A: He worked in this dock and he can speak English and can understand that.
- G Q: Who is this person? Do you know his name?
- A: I forgot his name but he's found in this dock at the moment. This is Iraqi person. He can speak English and he works in the stock.
- Q: But you don't know his name?

H

A A: His nickname, Abu Marwah, but I'm not sure.
Q: Abu Marwah, that is the interpreter?
A: Yes.
B Q: You mentioned earlier in evidence an Abu Marwah. Is that the same person?
A: This is person I said before. This is Abu Marwah. His father, he's old man and he can speak English but I don't know his name well.
Q: So this interpreter you said he works in the dock.
A: Yes.
C Q: On the day we're talking about what was this person doing? On the day we are talking about, at the time of the incident, what was this interpreter person, what was he doing?
A: This interpreter speak with the British soldier in English language a long time and I couldn't understand the purpose of the conversation. After that the interpreter go.
D Q: Is it correct that the soldier went to get the interpreter?
A: Yes. Not from them, this is the Iraqi interpreter.
Q: Did you see what the interpreter was doing when the soldier went to get him?
A: He was fishing.
E Q: And the interpreter then came and there was a conversation you say between the interpreter and the soldier?
A: Yes.
F Q: You could hear that conversation could you?
A: Yes.
Q: Could you understand what was being said?
A: I couldn't understand what he said.
G Q: Can you describe what this interpreter looked like?
A: He has older. He has dish-dash, this is old Arabic uniform. He has a white beard.
Q: He then left?

H

A A: Yes, he went.

Q: How long was he there for?

A: Approximately 10 minutes.

B Q: I want to next make reference to the RMP plan to try and map this out and I haven't taken the measurements off it and I'd probably like to do that, so I wonder if we might have an adjournment now, perhaps even lunch, and we can do that.

The Formal Preliminary Examination adjourned at 1216 hours.

The Formal preliminary Examination reopened at 1316 hours.

C **Mr MUNEM AUDA BALI having returned is further examined by the Conducting Officer as follows:**

CONDUCTING OFFICER: Mr Munem, during the lunch break did you speak to anybody about your evidence today?

D A: No.

Q: You were telling us just before the lunch that you had been escorted to this group and you were told to sit on the ground.

A: Yes.

E Q: And Sa'ad was sitting next to you.

A: Yes.

Q: And there was a tank there and some soldiers.

A: Yes, okay.

F Q: Could I ask you to go back to the large photograph on the board there, please, with the pen and on the large photograph again another cross where he was told to sit down by the tank?

The witness marked the plan.

G A: I sat down here and Sa'ad by here and the tank was here.

Q: You described that bit earlier as a wooden pier. Is that what we're talking about? We were looking at the map earlier, Mr Munem, you pointed to that bit as being a wooden pier. Is that the correct part?

A: Yes.

H

A Q: When you were sitting were you sitting on this wooden pier?

A: Yes.

Q: And the tank, was it parked, sitting on the wooden pier?

A: Yes on the side.

B Q: If you can describe ... can you describe where you were sitting in relation to the tank?

A: 1 metre from the tank.

Q: Were you at the side of the tank or behind the tank?

C A: Beside the tank.

Q: Were you sitting closer to the water than the tank or further away?

A: The tank between me and the water.

The witness drew a diagram.

D A: This is wooden pier. The people sit me here and Sa'ad sitting beside me. This is me and this is Sa'ad. This is tank and this is the British soldiers. Is that clear?

Q: Thank you. How far were you when sitting, how far were you from the tank?

A: 1 metre approximately.

E Q: And how far was the tank from the edge of the water?

A: On the bank of the wooden pier, on the edge.

Q: The tank?

F A: Yes. On this location.

Q: So the tank was close to the water?

A: It's too near from the water. Very near the water.

Q: Can you help with a distance? An estimate of how far in metres or something?

G A: Less than 1 metre.

Q: Where you were sat and the tank was were there any buildings nearby?

A: Yes, many buildings.

H

A Q: What was the nearest building?

A: Water pumping station.

Q: How far away were you from the water pump station?

A: 3 metres.

B Q: I'm going to show you a photograph, Mr Munem. For the record it's photograph 8 from Exhibit AJC/7. There are in that photograph two buildings. Do you recognise either of those buildings?

Handed to the witness.

C A: Yes, I've seen it before.

Q: Do you know the names of either of those buildings? Have you seen them before?

A: Yes, I've seen it before.

Q: Do you know the names of either of those buildings?

D

A: This in the past Iraqi army used it as a store.

Q: Which building was being used by the Iraqi army for storage?

A: This is building, Iraqi native army use it to store to repair the port also.

E

Q: And the building next to it yellow in colour?

A: This cabin it's used for repair the engines for the ports.

Q: The other building that is yellow in colour and has pipes at the front, what is that building?

F

A: This is water pump station.

Q: Is that the building you were 3 metres from when you were sat down by the tank, the one you said was the water pump station?

A: Yes, this building.

G

Q: That building on the photograph with the pipes coming out the front, that's the building I'm talking about, is that correct?

A: Yes, this is pump station.

H

A Q: And when you were sat down with Sa'ad near the tank, how far were you from that building, the water pump station?

A: Approximately 3 metres.

Q: Two more photographs. For the record these are 9 and 10 of the same Exhibit.

B **Handed to the witness.**

Q: If you take a minute to have a look at them. Looking at both photographs what I want you to do is show everybody where you were sat with Sa'ad when you were sat at the tank?

A: The tank was here on the pier. The soldier escorted here from this way to this tank. This is wooden pier, the tank was here and the British soldier escorted from this way on this wooden pier.

C

Q: When you were sitting on that photograph, were you on this side of the water or the far side?

A: On the other side. This is near to water.

D

Q: Are you able to mark on the photograph where you were sitting?

A: I was sitting here and Sa'ad was here.

Q: And the tank?

A: **(Inaudible)**

E

Q: Where the tank was, is that shown in the photograph or not?

A: No.

Q: The next photograph then, number 7.

F

Handed to the witness.

Q: Do you recognise that view? Do you recognise that photograph?

A: I can recognise it but I don't know anything about this area. This location it's near from the area when the accident happened.

G

Q: Does that photograph show where you were sitting and where the tank was?

A: The location for the tank is not in this picture or not in this area that the picture shows.

Q: Another photograph. This is number 6.

H

A **Handed to the witness.**

Q: Does that photograph show the area where the tank was when you were sitting?

A: No.

B

Q: There was one photograph which you marked two crosses on.

A: The tank was here on this location, I know that. Just this is picture is clear to me.

Q: Right, photograph 10 is clear?

A: Yes, it's okay.

C

Q: Does that photograph show where the tank was?

A: Yes.

Q: Can you draw a circle on that photograph, a circle where the tank was?

D

A: This is a plate that was not found before.

Q: What wasn't found?

A: This plate.

Q: On photograph 10?

E

A: Yes, was not found before.

Q: Okay.

A: The tank was here.

Q: And on that photograph you have also drawn two crosses.

F

A: Yes.

Q: Again to clarify, what is shown by those crosses?

A: Me and Sa'ad sit down in these two marks.

G

Q: Who was sitting closer to the water?

A: Me, I'm very near from the water...

Q: And Sa'ad was sitting further from the water?

H

A A: Sa'ad sit down beside me but I am near down here from the water.
Q: When you were sitting which way were you facing? Which way were you looking?
A: I was sitting face to face with the British soldiers.

B Q: Were you looking at the tank?
A: I'm looking at the soldier.
Q: Is the soldier standing next to the tank or is he standing the other side?
A: On the other side.

C Q: You also told us earlier that there was an interpreter came.
A: Yes.
Q: And that interpreter talked to the first soldier.
A: Yes.

D Q: That conversation, how far from you did that conversation take place?
A: 1 metre.
Q: And the interpreter left?

E A: Yes.
Q: What happened once the interpreter left?
A: When the interpreter left they said stand up.

F Q: Who said stand up?
A: The British soldier, this is the person with the rifle, this is who escorted us.
Q: Is that the first soldier you saw? Is that the same one?
A: Yes same soldier.

G Q: And what did he say?
A: He remarked to us stand up.
Q: And did you stand up?

H

A
B
C
D
E
F
G
H

A: Yes.

Q: And Sa'ad?

A: Yes.

Q: How long had you been sitting there before you stood up?

A: Approximately 15 minutes.

Q: And when you stood up what then happened?

A: They took us to the end of the wooden pier and the soldier behind us.

Q: When you say they took us. Who took you?

A: The same first soldier.

Q: The same soldier?

A: The same soldier put us near the water on the end of the wooden pier.

Q: One soldier or more than one soldier?

A: There is one person escorted us to this location and the other people standing behind us.

Q: Who escorted you to the edge of the water?

A: The same first soldier, this is who escorted us in the first.

Q: This is the first soldier.

A: Yes.

Q: And what were the other soldiers doing at that time?

A: The other soldiers standing behind us and they didn't say anything.

Q: How many of the other soldiers were standing behind you?

A: Three people and this first soldier is the fourth one.

Q: So when you were standing at the edge there were four soldiers behind you, is that correct?

A: Yes.

A Q: Were these the same four soldiers that you've already described to us?
A: Yes.
Q: What then happened?
B A: He said jump to the water. I said we can't do that because we can't swim. After that he push us to the water.
Q: Who said jump to the water?
A: The same first soldier.
Q: The first soldier?
C A: The first soldier. When we refused to do that immediately he push us to the water.
Q: When that soldier said jump to the water, did he say it in English or Arabic?
A: He remarked to us jump to the water. Body language.
D Q: And just to clarify, did you say anything at that time?
A: I didn't say anything.
Q: You didn't say anything. Did Sa'ad say anything?
A: No, Sa'ad didn't say anything.
E Q: Were your hands tied in any way?
A: No, my hand was free.
Q: And Sa'ad?
F A: Sa'ad also free.
Q: And after the soldier had said jump to the water, what then happened?
A: The soldier push us to the water.
Q: Which soldier pushed you?
G A: The first soldier.
Q: And how did that soldier push you?
A: We put down in the water.

H

- A Q: I asked how did the soldier push you?
A: He push us with his hand.
Q: Were you looking at the soldier at the time?
A: He was behind us and we are facing the water.
- B Q: Did you actually see who pushed you?
A: This is first soldier he was very near to us.
Q: And the other soldiers?
A: He push us.
Q: But did you actually see him push you?
A: Yes, we saw him push us. He shoved us in the back. Only this soldier behind me.
- C Q: Can I clarify: is that the soldier who escorted you to the area?
A: Yes, it's the same soldier. It's only this person near to us in this same location.
Q: When you were pushed were you pushed in your front, on your chest or on your back?
A: On my back.
- D Q: So when you were pushed in the back were you looking at the person who pushed you?
A: The first soldier was very near to us and the other didn't care and he was very angry at the moment.
Q: Who was angry?
A: This is the first soldier, he was very angry but the other people they didn't care, they this matter as joking that this soldier was angry.
Q: You say he was angry. Why do you say that? What was he doing that made him appear angry?
- E Q: His voice was very high and shouting.
Q: The other three soldiers, what were they doing?
A: They still standing.
- F Q: They still standing.
- G Q: They still standing.
- H

- A Q: How close or how far away were they to where you were?
A: They standing in one queue, one beside the other, but this soldier was very near to us.
Q: And the other three soldiers were not near, is that what you are saying?
A: Yes, not near.
- B Q: And did any of the other three soldiers appear angry to you? You described the first soldier as being angry. Did any of the other three soldiers, did they appear the same?
A: No.
- C Q: When you were pushed, did you feel one hand or two hands pushing you?
A: One hand. We are very close, me and Sa'ad, one hand on my back and the other hand on Sa'ad's back.
Q: So you and Sa'ad were pushed at the same time?
A: Yes, same time.
- D Q: When pushed did you go into the water?
A: Yes.
- E Q: Can you help, what's the distance between the edge of bank and the water? What was the distance between the edge of the bank and the water?
A: Approximately 1.50cm.
Q: And you fell in the water?
A: Yes.
- F Q: And what about Sa'ad?
A: I don't know about Sa'ad in the water.
Q: At any time did you see Sa'ad go into the water?
A: No.
- G Q: When you were pushed you described one hand pushing you and one hand pushing Sa'ad, is that correct?
A: Yes that's correct.
- H

- A Q: Did you actually see Sa'ad being pushed?
A: We whittled down to the water together but I don't know about him.
Q: And can you help us, was it the same person that pushed you and Sa'ad or was it different people that pushed?
- B A: I swear with my god, this is person near to us and he was very angry. This is first soldier.
Q: What happened to you when you were in the water?
A: For one moment I tried to float to the up and I note there was no one, just soldier people around me on the top of this wooden pier.
- C Q: When you were in the water did you see the soldiers?
A: No.
Q: How did you get out of the water?
- D A: This edge have metal plate. This is the plate covered with the gas, it's oil and grease. When I catch I can't catch the metal. Some people threw this rope to me. There is rope here.
Q: Is that the rope that's attached to a gun? A cannon?
A: Abdul Nabi threw the rope to me and pulled me to get out of the water.
- E Q: Are we talking about the rope that's attached to the cannon?
A: Yes, these people throw the rope to me because I couldn't get out because it's so difficult if I want to get out from this plate.
Q: And you climbed out on a rope?
- F A: Yes.
Q: The rope that you climbed out of the water on, was that rope attached to the cannon?
A: Yes.
- G Q: So if you have photograph 10 and you pointed to the cannon and the rope, is that where you got out of the water where the cannon is?
A: Yes.
Q: How long were you in the water for?

H

- A A: Approximately 10 minutes and after that people came to grab me but I was very tired.
- Q: Can you swim?
- A: I can't.
- B Q: When you were in the water did you see Sa'ad?
- A: No, I didn't see him because he late. He get delayed.
- Q: When you got out of the water what happened?
- A: When Sa'ad got delayed the people will search in water to seek about Sa'ad. The people shouted 'Sa'ad dead, Sa'ad dead', and all the people in this area jumped to the water to search about Sa'ad inside the water. When I get out Sa'ad got delayed and people shouted 'Where's Sa'ad, where's Sa'ad?' The people shouting Sa'ad may be dead. Some people from this area jumped into the water to search about Sa'ad.
- C Q: Could you repeat the translation, please?
- D INTERPRETER: He said when I get out Sa'ad got delayed and people said about 'Where's Sa'ad, where's Sa'ad?' The people shouting 'Sa'ad maybe dead.' Some people from this area jumping into water to search for Sa'ad.
- Q: How many people jumped in to search?
- A: Many, maybe seven or eight people jump into water.
- E Q: Did any of the soldiers jump in to search?
- A: There is two of the soldier jumped into the water also.
- Q: Now of those two soldiers was the first soldier, the first soldier you met, was he one of those two?
- F A: When the people took out me in order to save me, clean me, because there is a lot of gas inside my mouth and my nose. I don't know if this person with him or not.
- Q: So you weren't feeling very well?
- A: Yeah. I feeling well but I stayed very far from that accident location.
- G Q: Were you sick. Did you vomit?
- A: Yes, a little.
- Q: Did you stay conscious?

H

- A A: Yes, but very tired from the gas, exhausted.
- Q: So when you got out of the water did you stay at the water's edge or did you move further away?
- A: Yeah, the people moved me far from the water and make like turned to me and said in my body if I have any damage on my body.
- B Q: So is it correct then that you didn't really see what took place at the water's edge after that? You were taken away. Is it correct that you didn't see what was happening at the water's edge after that?
- A: Yes. No, I don't know.
- C Q: After you got take out, after you left the water and were taken away, did you see what happened at the water's edge after that?
- A: No.
- Q: Since that day have you see Sa'ad?
- D A: No, I didn't see him.
- Q: You mentioned when in the water that Abu Ali threw the rope to you.
- A: Yes.
- Q: Is this the same Abu Ali that is at the water project?
- E A: Yes.
- Q: When you got out of the water did you speak to Abu Ali?
- A: No, I couldn't speak with him.
- F Q: Do you remember speaking to anybody in particular when you got out of the water?
- A: No, I was very, very afraid. I was fright.
- Q: Just going back, when you and Sa'ad went to the edge of the water, how long were you standing there before you were pushed?
- G A: Approximately 10 minutes.
- Q: Mr Munem, thank you, I have no further questions but other people will have questions for you. But it may be appropriate for a break. Could we say fifteen minutes till two thirty.
- H

A If I could for the record, this witness has obviously marked a number of documents. If I could refer to the large photograph will be Exhibit 1, the blank sheet of paper which was marked be Exhibit 2, and photograph 10 marked will be Exhibit 3. Now would there be any objection to me marking them as 1, 2 and 3?

MR WHITEHOUSE: No.

B **The Formal Preliminary Examination adjourned at 1418 hours.**

The Formal Preliminary Examination reopened at 1437 hours.

Mr MUNEM AUDA BALI having returned is cross-examined by Mr WHITEHOUSE as follows:

C MR WHITEHOUSE: Do you have a job now?

A: No. I'm self-employed.

Q: You were brought to the building here today by whom?

A: I received a letter inviting me came here and I came alone from the city to the airport.

D Q: Came alone from the city to the airport.

A: Yes.

Q: Did you see Abdul Nabi here or not?

E A: No, I wouldn't seen him.

Q: Do you know Basim Al-Akaili? Mr Basim? Basim Jabir? N6

A: Yeah, I know Basim Jabir. He was here because he work as policeman in airport.

Q: Did you come with Basim today?

F A: No.

Q: When did he last talk to Basim?

A: Basim had met me on the reception of the airport and he escort me through the main gate.

G Q: So you have met Basim this morning?

A: Yes, of the reception of the Basrah airport.

Q: And before today when did you last see Basim?

H

A: Basim lived in same area. Many times I've met him.

Q: Did you see him yesterday?

A: I've seen him day before and tell me this is letter invite you to came here to the airport.

Q: Have you discussed what happened on the day that Sa'ad died with Basim?

A: No.

Q: Never?

A: No. I swear with God never.

Q: You swear by God?

A: I swear by God never discussed with him.

Q: Is there a reason why you did not discuss the incident with Basim?

A: Always he busy with his job and there is no opportunity to meet him.

Q: But you live near to each other?

A: Basim is a policeman and I'm a worker. I never seen him. I have not had time to see him.

Q: You don't have enough time?

A: Yes. I depend on my job to get my money.

Q: Are you members of the same tribe as Basim?

A: Yes.

Q: How far does Basim live from your home?

A: It's close distance. It's near distance. Like the distance between the camp and this hall. The Sky Link Company camp and this hall.

Q: So you lived within a kilometre of each other?

A: Less than one kilometre.

Q: Less than a kilometre.

A: Yes.

H

A Q: This happened three years ago. Are you telling me you haven't talked to Basim about this case in those three years?

A: What you mean what I said to him? Basim what will get benefit from this object?

Q: Did you talk about Basim getting compensation for what had happened? Basim getting compensation for the family?

B

A: No. I never know anything about this matter. Also we are forget this matter. This is dead.

Q: Was there any discussion within the tribe about getting compensation for Sa'ad's family?

C

A: We have experience because, you know, Iraq live through **(inaudible)**. Many explosive matter happened and a lot of people has been killed. There is no one compensation there. There is very simple accident.

Q: Has there been any discussion about blood money to compensate Sa'ad's family? Has there been any discussions between you and Basim and other members of the tribe about compensation, fasal, for Sa'ad's family?

D

A: From any side we will get this compensation from anyone.

Q: Have you discussed this with Basim?

A: I have discussed this matter with my uncle and my cousin ask us.

E

Q: Name?

A: Rahed Shapraam.

Q: That is the father of Sa'ad?

F

A: Yes, exactly. We discussed this with this person and he said this is your responsibility, you and Basim to said about this matter

Q: Sa'ad's father said it's your responsibility and Basim's responsibility?

A: Yes, because this person Rahed Shapraam ask us this person and Basim why **(inaudible)** said you and other one and they didn't save Sa'ad on that accident.

G

Q: So when did this discussion take place?

A: In his house.

Q: How long after Sa'ad died?

H

A: Approximately six months.

A

Q: Was there no discussion in the next few days?

A: Because some people said this treatment will not take a long time and the British forces will compensation you. When the time took a long---

B

Q: Was Basim there on the day?

A: In the same area but not in the group.

Q: He was not in which group? You said he was not in the group. He was not in which group?

C

A: When the British soldier arrested us Basim was not found but he came when the accident happened.

Q: He came when the accident happened?

A: Yes. the accident happened and he came with the other people.

D

Q: After the accident had happened?

A: Yes, after the accident.

Q: You hadn't seen him until you got out of the water?

A: No I never seen him.

E

Q: On the 29th May 2003, you went to be interviewed by two Military Sergeants about the death of Sa'ad. How did you come to go there? Had the policemen come to where you lived?

A: Yes, they came twice down to my house and took a picture to my house.

Q: Took a picture of?

F

A: Of video camera.

Q: Took a picture of?

A: My house.

G

Q: A picture of your house. And you're moving. It's a video picture?

A: A small compact camera. Very little.

Q: Did they take a picture of the pier where the incident happened?

A: Yes.

H

A Q: And were you pointing out what happened to them?

A: They asked me to explain the accident.

Q: Explain?

B A: To explain to us.

Q: How soon after the accident did that happen? How many days after?

A: Approximately one or two months and they came to us.

Q: Well was this before or after you were interviewed on the 29th May?

C A: Before the interview.

Q: It was before?

A: Before the interview.

D Q: Before the interview?

A: Yes.

Q: Mr Munem, I don't want to trick you. I'm not trying to trick you. You were interviewed on the 29th May. The incident happened on the 23rd May.

E A: Yes.

Q: That's when your interview took place. Did these Military Policemen come with their camera before or after your interview?

A: Before the interview.

F Q: Before the interview.

A: Yes. They took us to Basrah Palace by vehicle for the interview.

Q: They took you to?

A: Basrah Palace.

G Q: Who is 'us'? That is you and who else?

A: What you mean?

Q: You said they took us to Basrah Palace. Who are they?

H

A A: Me and Rahed Shapraam, this is Sa'ad's father.

Q: How many days before your interview was this?

A: Before the interview they took us to Basrah Palace.

B Q: Who else was there apart from Sa'ad's father?

A: Just Basim.

Q: Basim was with you.

A: Yes. Me, Rahed Shapraam, Sa'ad's father and Basim.

C Q: Had there been any discussion about blood money before you went to the Basrah Palace?

A: No.

Q: Was there any discussion at Basrah Palace about it?

D A: When the investigation finished his father said if the British forces will pay us the claim or compensation that's good but I never discussed it. I never asked, no.

Q: You did not discuss what was happening.

A: Yes.

E Q: Now was any record made either in writing or on tape of this first meeting at Basrah Palace? When you went to Basrah Palace with the father and Basim was any note made by the policeman?

A: There was necessary paperwork like the death record and they ask us to bring us the body for the person who's dead and we will investigate about is this reason close to death him or not and after that we will complete the paperwork that has related with this death.

F Q: And did you tell them what had happened in the accident?

A: I've told him. He repeat that story also, he said the people asked me to explain to him what happened near the water.

G Q: Did they make any notes like these gentlemen and this lady are making notes now?

A: No, just one officer record this information and ask us to provide him the body in order to check it.

H Q: Thank you very much. Now on the 29th May, which is the day when you were interviewed, did the police come to where you lived?

A

A: Yes.

Q: And had you and Basim got some witnesses for them or was it just Mr Basim who did that?

B

A: Yes, Basim did that.

Q: It was Basim who did that? So had he arranged for ^{N69} [REDACTED] to come to the police station on the 29th May? It is [REDACTED] Do you know someone called [REDACTED]?

A: This is one witness.

C

Q: Well did he go with you to the police on the 29th May?

A: No.

Q: Mr Abulnabi Hameed Abdullah, did he go with you?

D

A: When this person reported about this invitation here he came here with me but he didn't speak with Basim.

Q: He didn't speak to him?

A: Yes, didn't speak to him.

Q: How did Abulnabi know to go to the police station?

E

A: What you mean from this question?

Q: Abulnabi go with you to the police station on the 29th May the day you were interviewed. Who told the police that he was available as a witness? The pumping station man. We're talking about the pumping station.

F

A: Yes, what happened?

Q: He's called Abu Ali. Abu Ali is his nickname.

A: Yes, he's called Abu Ali also.

Q: Now who arranged for him to speak to the police? Was it you or Basim?

G

A: The police came to the area, Military Police with the vehicle. They choose some people from different house and the Military Police record their names.

Q: Right. So they were going round asking people if they had seen the accident?

H

A: Yes. and record their names.

A

Q: And did they ask you to find some names?

A: No, the police tell him we will ask and we can't choose the people.

Q: Did you see a leaflet, a piece of paper about the accident from the police?

B

A: Yeah, they came and asked people if anyone has information about accident and record the information and names also.

Q: What did the piece of paper say?

A: The main purpose in this paper said there is like question how this accident happened, what kind of people arrested them and which one pushed him into the water.

C

Q: I think there may be confusion and I don't want to take advantage of a misunderstanding. Did the police hand out to people near where the accident happened a piece of paper with writing on it about the accident?

A: No.

D

Q: I want to ask about the relationship between Basim Jabir Al-Akaili and you. What is your relationship?

A: Basim is Sa'ad's cousin and Sa'ad's my cousin also, we are relatives.

Q: [REDACTED], what relation is he? Is he a relation to you?

E

A: No, he is no relation.

Q: Was he a member of the same tribe?

A: No.

Q: [REDACTED], is he a member of the same tribe?

F

A: No.

Q: Do you know him?

A: No.

G

Q: You don't know him?

A: Just a witness.

Q: He lives very close on the site does he not?

H

A: Yes. They ask him as a witness.

A
B
C
D
E
F
G
H

Q: Who asked him as a witness?

A: These two Sergeant in Basrah Airport they ask him as a witness.

Q: Is he related to Sa'ad Shapraam? Is he related to him?

A: No, just in the same area.

Q: Did you see him during the incident?

A: No.

Q: Did you see him there when you were spoken to for the first time by the first officer?

A: There was no one there when the officer first spoke to me.

Q: [REDACTED], do you know him? N78

A: I know him as a witness.

Q: You only know him as a witness. So he's not a member of your tribe?

A: No.

Q: [REDACTED]? N78

A: No. Just a witness on the accident.

Q: [REDACTED]? N77

A: Correct. A witness also.

Q: Not a member of the same family?

A: No.

Q: [REDACTED]? [REDACTED] perhaps? Do you know him? N76

A: Yes, as a witness also. He was found as a witness also.

Q: As a witness also. Not a member of your tribe?

A: Yes.

Q: Let's take them in turn: [REDACTED], did you see him during the incident?

A: No, I didn't see him.

A Q: [REDACTED] did you see him during the incident?

A: I couldn't see him during this matter but maybe they were seeking or searching outside the water, because when Sa'ad's body was took out it took a long time.

Q: [REDACTED], did you see him during the incident?

B A: All these are a witness. They came after the accident have been complete.

Q: They arrived after the accident was finished?

A: Yes.

Q: So all these witnesses came after the accident had finished?

C A: Yes, exactly when the accident was finished. Yeah, I remember that. All this witnesses came when Ali took out of the water and moved from this location.

Q: Thank you. Now have you been offered any money for giving evidence?

A: No.

D

Q: No money at all?

A: No.

Q: Basim hasn't mentioned it?

E

A: No.

Q: And the letter from the police didn't mention it?

A: Never.

Q: Have you had any money so far? Have you had any payment so far?

F

A: No.

Q: Didn't you tell to the police that you would bring out, to the Military Police, more witnesses when they took you back?

A: No.

G

Q: Did you in fact get any more witnesses yourself for the police?

A: The police didn't depend on us getting witnesses. The police told me we would come to choose different people in order ask him about the accident. They were choosing randomly.

Q: How do you mean they were choosing randomly? What were they doing?

H

A

A: They choose which building near this accident and choose it.

Q: And they ask in the building if people saw the accident.

B

A: Yeah, exactly.

Q: Were there any women who saw what happened?

A: Yeah there is many woman in the accident but the police didn't invite them.

Q: The police didn't invite them to make statements?

C

A: Yeah.

Q: I want to turn to a different subject. The war finished on 1st May 2003. This was about when you moved to the naval base is that right?

A: Which where that you aim to it?

D

Q: Let me take it in stages. When the war ended – by that I mean the last war in 2003 – three years ago, is that when you moved on to the naval base?

A: Yes we came here in that time because we have a lot of animals and this area has many plants.

E

Q: You moved there because you didn't have a house?

A: We have a house already but this area has many plant and near the water.

Q: You didn't move there because a relation suggested that you go and live there because there were some nice houses and you did not have a house.

F

A: Yes.

Q: That is correct.

A: Yes.

Q: There were members of your family living in five or six houses on the base.

G

A: Yes. That's correct.

Q: This incident happened about three weeks after you moved to on to the base.

A: Yes.

H

A Q: Just after the war finished and a very short time before this accident were three youths shot about 100 metres from where this happened?

A: I have no idea. Some people say but I'm not sure on this matter.

Q: One youth did you hear was killed and two were injured?

B A: I don't know. I have no idea.

Q: Well you heard that some people were shot?

A: I never heard that.

Q: You never heard it?

C

A: No.

Q: You didn't hear that they were trying to steal weapons which had been stored on the site?

A: I couldn't remember that.

D

Q: You don't remember that?

A: Yes.

Q: It is right isn't it, that at the time after the war there was a lot of looting going on?

E

A: That's correct, many.

Q: And some people who did it were being shot?

A: That's correct. There is sometimes that British patrol came around the camp and if the British forces found any thief or any hijackers they will shoot him.

F

Q: They would shoot them. And sometimes people were taken prisoner.

A: Yes. the British patrol came around always every day.

Q: And you knew that this was the situation on 23rd May.

A: Yes.

G

Q: If they weren't shot were they taken off to prison?

A: Normally when the British forces arrested some people or some thieves they already send him to the prison.

H

Q: They take him to the prison.

A

A: Yes.

Q: And in the prison were they or ill-treated or well treated?

A: I have no idea.

B

Q: What did you think?

A: I have no idea.

Q: Were you afraid?

C

A: After this accident I was very afraid from anything. For example, when the Iraqi government invite me to join with the police service I didn't do that because I believed that the British forces push to water I couldn't serve with them.

Q: When you were interviewed by the Military Police in this case did you tell them that if someone is caught by the British they will hurt him? Do you remember saying that to the police?

D

A: Exactly this matter happened but when I went to the Basrah Palace I'm surprised how this British forces think about (**inaudible**).

Q: So you were surprised when they treated you well?

A: Yes. He tell me to sit down and you can drink water.

E

Q: You expected to be treated badly?

A: I expected that.

Q: You were frightened going to the police at Basrah Palace.

A: Yes I was.

F

Q: Do you remember when you were sitting by the tanks on the pier and the soldier went off to get the interpreter? Do you remember that happening?

A: Yes.

Q: Do you remember what people were saying to you about what was going to happen?

G

A: What you meant? Any people, what's that mean?

Q: Did they say that you would be taken to another place where they would put a sack on your head?

H

A: Yes.

A

Q: Did somebody say that to you?

A: Yes.

Q: Who said this to you?

B

A: These people around us.

Q: The people around were saying you were going to be taken away by the police and you were going to be tortured.

A: Yes. I don't expect the person would push us to the water.

C

Q: You must have been terrified when they said that to you?

A: Exactly I was.

Q: You were terrified sitting by the tank you and your friend, Sa'ad Shapraam had been told that you would be taken away and tortured.

D

A: They said maybe tortured, maybe they put bags on your hands and maybe you will be shot.

Q: This is what the people were saying to you.

A: Yes.

E

Q: The reason they were saying this to you was that the officer was accusing you of stealing.

A: Normally all the people was arrested in this area. When any person who has been arrested in this area he look like suspected person. The British forces will never release them. After they took me to another place and picked this location with me. When the police discovered this person was not suspected we can't release him after.

F

Q: I don't really understand.

A: We are afraid because the British has no evidence against us. The British forces has not interpreted or discuss or something. The British soldier didn't understand from us any information.

G

Q: Did you understand that rightly or wrongly the soldier was accusing you of stealing?

A: No. I swear. The people tell me you will go with him near the water and after that he will release you.

Q: The people said that you would go near the water?

H

A A: Yes, the people advise me to go with him.

Q: Were you really herding animals on the day?

A: Yes.

B (The Interpreter asked for a short break.)

The Formal Preliminary Examination adjourned at 1535 hours.

The Formal Preliminary Examination reopened at 1550 hours.

C **Mr MUNEM AUDA BALI having returned is further examined by Mr WHITEHOUSE as follows:**

MR WHITEHOUSE: On the day was one of the reasons you were frightened that you had in fact been digging up some electricity cable?

A: There's a lot of people in the same moment and the other people can do like this matter but not me.

D

Q: Well was Sa'ad Shapraam digging up cable?

A: No.

Q: Cable was very valuable at that time wasn't it?

E

A: How can I search in the earth about cable because you know there is a lot, massive electric inside or through this cable. How can I touch it?

Q: Is the truth that you had a spade and Shapraam had a space and you had dug a trench?

A: When the soldiers search us he never find this equipment.

F

Q: There weren't two spades there?

A: I had nothing.

Q: There weren't animals there when the soldier came up.

A: Yes, a lot of. Many animals.

G

Q: There were many animals? You just left them?

A: When the British soldier came and there is a lot of people tried to thief equipment inside this store. Just he invite us to remain outside.

H

A Q: He asked you and Sa'ad Shapraam to go because there was a cable right there lifted on to a piece of wood in a trench.

A: There is no cable on this area at all.

B Q: Now the soldier was wearing a green T-shirt wasn't he?

A: No.

Q: When you were describing him earlier on, something which you showed us with your hand was that his sleeve was rolled up.

A: He has glasses and black beret.

C

Q: So you say he had a full uniform with the sleeves rolled up and a red beret?

A: Maybe it's red.

Q: You said red beret earlier today, which is in fact the colour of the police beret. You say black now.

D

A: He wore red beret.

Q: Now you told us that the soldier searched you and Sa'ad Shapraam.

A: Yes.

E

Q: Did he sling his gun while he was doing it?

A: The British soldier held the weapon with one hand and search us with the other hand.

Q: The weapon was slung on his back wasn't it?

A: He clutch it in one hand. He searched us with the other hand.

F

Q: Did he try to explain to you that cable is dangerous?

A: He never did that.

Q: Do you swear on the holy book that you were not trying to steal cable?

G

A: I do.

Q: You do.

H

CONDUCTING OFFICER: Would you explain to Mr Munem that that is the end of the proceedings for today but there will be more questions for him tomorrow, and I think he has been asked to be back at 0830 tomorrow the same time at the gate.

A

I should remind him that it's essential that he doesn't speak to anybody about the evidence he gave today. Thank you for the evidence he's given today and we will e him tomorrow.

The Formal Preliminary Hearing adjourned at 1600 hours.

B

C

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A **The Formal Preliminary Examination reopened at 0845 hours.**

MENUM AUDA BALI having been recalled is further cross-examined by Mr WHITEHOUSE as follows:

MR WHITEHOUSE: I've been asked to say will you speak slightly more slowly and slightly more clearly than you did yesterday.

B

A: Okay.

Q: When you were sitting by the tank you were in the shade of the tank.

A: No, beside the tank.

C

Q: Then I'm not sure we understand. You were in the position near the tank where there was no sunshine.

A: The tank is front of us and I'm sitting beside the tank at the back.

Q: I give up. Moving on. The interpreter arrived and when the interpreter came there was talk between you and the interpreter about the reason why you had been taken there. Do you agree?

D

A: I agree.

Q: What did the interpreter say?

A: The interpreter know about us from this area and the interpreter ask why the soldier give you here.

E

Q: Didn't the interpreter tell you what the soldier had told him?

A: He didn't say that but he said I'll ask the soldier in order to free you or to release you.

Q: Didn't the interpreter tell you that the soldier was saying you were stealing?

F

A: The interpreter didn't say that.

Q: How long was the interpreter there for? How long were you talking to the interpreter?

A: Approximately 15 minutes.

G

Q: And at no time in that 15 minutes did the interpreter say what you were there for?

A: I couldn't understand the position between the soldiers and the interpreter.

Q: But when the interpreter was talking to you didn't he tell you what the soldier was saying to him?

H

A A: I tell the interpreter we are lived here to care our animals and the soldier keep us here because he suspected us.

Q: Suspected you of what? Did the interpreter tell you what the soldier was saying you were stealing?

B A: The interpreter didn't say that.

Q: Was there any mention of cable?

A: No.

Q: Well what was it that you were suspected of doing?

C A: There is no suspicion on this matter. Maybe why I'm from this area the soldier meet us and did that.

Q: I'll move on to another subject. When the interpreter was with you was he shouting at you?

A: No.

D Q: Were the children shouting Ali Baba at you?

A: The children in our tradition or Iraqi people when anyone arrested the children of the Iraqi people tell them Ali Baba. This is normally in Iraq.

Q: Were you being jostled by the children? Pushed?

E A: The children didn't say that. They didn't meant that from said Ali Baba.

Q: Did the children push you with their hands?

A: No.

F Q: While you were sitting on the ground by the tank?

A: No.

Q: Were the children throwing bits of white plastic at you? Were the children throwing bits of white polystyrene at you?

G A: The children was very far from me because the children are threat from British soldier.

Q: When the children swim they were using pieces of white polystyrene as floats weren't they?

A: Yes. The children were swim but they didn't throw me.

H

A Q: Did the children not throw their pieces of white polystyrene at you and at Sa'ad Shapraam?

A: No, because the children was very far from us because they are afraid from British soldiers.

B Q: Did you and Sa'ad Shapraam go and run away because you were frightened that you were going to be shot or tortured?

A: No.

Q: It is a lie that you were pushed in the water isn't it?

A: There is clear evidence and there is a lot of people took me from the water.

C Q: You jumped in the water didn't you?

A: No. I no have a good ability to swim in the water. If the children killed us it's better than throw us to water.

D Q: Let us move to the question of discussions with other witnesses. Have you been talking to other witnesses about what happened in the incident?

A: No.

Q: Never?

A: No.

E Q: Why not?

A: I didn't say anything with the evidence because all the witnesses see this accident and they speak, they said that.

F Q: Didn't you have discussions about the details of what had happened?

A: When the people came and the other group from British people came I moved from the water and I far from the accident. I don't know what happened.

Q: Well, for instance, did you not discuss with other people the number on the tank at the quay?

G A: No I swear.

Q: You swear.

A: I do.

H

A Q: You're putting your hand on the Qur'an?

The witness stood and placed his hand over the Qur'an.

Q: Well we saw that. When you were interviewed by the Military Police on the 29th May you were asked if you could remember anything about the tank is that correct?

B A: Yes.

Q: You were asked if you could remember a number on it or a distinctive mark.

A: I don't care just 6 the number. I just remember the number.

C Q: You were asked this question, 'Do you remember if there was a number on it or a distinctive mark?'

A: I don't know any details about the tank or mark.

Q: You said 'Our people recorded it.'

A: That's correct.

D

Q: 'They recorded the number 400.'

A: Because our tank came after this accident because some British soldiers asked to get help from other regiment and there is two tank more came. The people record the number of the two tanks again because the British soldiers were swim and asked British forces to help me.

E

Q: This happened after the incident when you say you were unconscious.

A: That's correct because the British soldier came and record names.

Q: Who told you that the people had recorded the number of the tank?

F

A: My uncle.

Q: Your uncle?

A: Yes.

Q: This is Mr Basim?

G

A: No, my uncle, the father of Sa'ad Shapraam

Q: Oh, the father of Sa'ad Shapraam.

A: Yes.

H

- A Q: When did he tell you?
- A: During when we sit down in his house he tell me I record the numbers and I'll submit these details and will make statement.
- Q: When were you told?
- B A: Ten days after the accident.
- Q: Ten days after the accident? Well it can't be ten days after the accident because you mentioned this number to the officers who interviewed you six days after the accident.
- A: I told the people with this interview just the number I have it not the number my uncle know it.
- C Q: So you must have had a discussion with somebody about the number of the tank?
- A: No.
- Q: Who else was there when your uncle told you this number?
- D A: Just me and my family.
- Q: Who else in the family?
- A: Just my family. All my family.
- Q: What did he tell you apart from the number?
- E A: I have their address and I have their names and which regiment this people belong.
- Q: Any other details?
- A: For any battalion, the engineering regiment.
- F Q: Was there anything told to you about the incident, who had seen it?
- A: No. he didn't tell me that.
- Q: What about the time when the incident had occurred, were you told that? Did anybody tell you the time when the incident had occurred?
- G A: I have no need anyone, just my uncle tell me I make a statement.
- Q: About the time?
- A: I swear I don't know.

H

A Q: Did you tell the police officers that the soldiers had come over around half past ten?
A: Yes.
Q: Did you have a watch on?
A: The time approximately about half past ten.

B Q: Did you have a watch on?
A: I have no watch.

C Q: Did you tell the police officers that it took about half an hour before you were arrested and that at half past eleven the incident occurred?
A: When the British soldier arrested us the accident happened after one hour when he get the interpreter for this process during one hour.
Q: You didn't know the times.
A: I don't know.

D Q: You gave the military police those times because you'd been told those times, didn't you?
A: No.
Q: You told the Military Police that some people had noted down the time.
A: No.
Q: You didn't say that?
A: No.

E Q: Well I'm afraid it's written down here and it was recorded on tape.
A: You asked me about the time. I don't have any idea about the time.
Q: You were told what time to tell the military police weren't you?
A: According to the people said when the people tell me we took the body for this dead person.

G Q: And you must therefore have discussed with these people what times you should tell the Military Policeman?
A: That's correct, I said that.

H

A Q: Well when were you told these times? When were you told the times so you could tell the policeman?

A: That's correct.

Q: When did this happen?

B A: After the accident I ask the people how you come to took the body from the water.

Q: You told us you had had no discussion about the incident. We have proved that you have discussed a number on the vehicle and you have discussed the times.

C A: After they came from the Palace they said we need the person with this dead man and we need him explain to us how this accident happened on the second day. They asked me how you pushed from the water any time this accident happened and took picture for me how this accident happened, the details of the accident.

Q: Did you ask you friends or family what had happened?

A: After that my family tell me. After that the British army came and took the body from the water.

D Q: After that what did your family tell you?

A: My family tell me we give Iraqi (**inaudible**) and took the body from the water.

Q: Was there any talk about what the soldiers were wearing?

E A: They didn't say that.

Q: Was there any talk about one of the soldiers wearing a black T-shirt?

A: No they didn't say that because I saw that by my eyes.

F Q: You told the Military Police that after the incident you were sick and you could not remember anything because you had swallowed some oil.

A: They said we don't need anything from me just we need the clear evidence how this accident happened, which one push him, how this process complete.

Q: Did you tell them you couldn't remember anything because you had swallowed oil and you were sick?

G A: I tell him I couldn't remember but I can show you the location where the accident happened.

Q: Did you tell him you felt dizzy?

H

A A: Yeah, I did that and the British tell me if you need any help you can stay with us and we can treat you with the drugs if you need that.

Q: Did you tell the police that people had taken you back to your house?

A: Yes.

B Q: Did you tell the police that you woke up about three o'clock?

A: Three o'clock or seven o'clock?

Q: That you woke up about three o'clock. Did you say that?

A: I didn't say that.

C

Q: Was it true that you had been so ill you had had to be taken by people home?

A: I was very tired because I have a lot of gas and I couldn't remember anything therefore people take me to my house.

Q: Did you not run away from the dock? You ran away from the dock, didn't you?

D

A: I don't run away.

Q: You ran away because you were frightened?

A: I was stay in same location. Just the people removed me from the water.

E

Q: Thank you very much.

The Formal Preliminary Examination adjourned at 0926 hours.

The Formal Preliminary Examination reopened at 0941 hours.

F

MENUM AUDA BALI returned to the room and is addressed by the CONDUCTING OFFICER as follows:

CONDUCTING OFFICER: Could you explain to Mr Munem there are no further questions for him and so he I now free to go. I wish to thank him for coming yesterday and today but I would ask please this matter has not yet finished and please do not discuss this incident with anybody else.

G

The witness is duly released.

The Formal Preliminary Examination adjourned at 0944 hours.

The Formal Preliminary Examination reopened at 1017 hours.

H

A (The Interpreter Mr [REDACTED] Interpreter entered into the room.)

CONDUCTING OFFICER: My name is Major Murray, the Conducting Officer of this hearing. What I want to do is just outline what we are after from yourself as the interpreter. There will be a number of witnesses who will be questioned by myself and by counsel. What we need from you is a word-by-word translation of what that witness says, okay?

B INTERPRETER: You mean conversation.

CONDUCTING OFFICER: Yes, literal translation of what that witness says. Even if he says something which seems innocent, he remarks about the decoration, we must hear exactly what he says. And similarly questions which I ask or which counsel ask must word-for-word be translated to the witness.

C The other point in this case, because of security reasons the intent is not to mention names of people in the presence of the witness, either my name, any of the counsel's names, the accused names or your own name, so we refer to each other as counsel or Mr Interpreter if you do not mind.

(The Interpreter is duly sworn.)

D **ABDUL NABI HAMEED ABDULLAH having been called and duly sworn is examined by the CONDUCTING OFFICER as follows:**

CONDUCTING OFFICER: What is your full name?

A: Abdul Nabi Hameed Abdullah.

E Q: Mr Abdul Nabi, how old are you?

A: 52 years.

Q: You're going to be asked a number of questions about an incident that took place in 2003 at the former naval base in Basrah.

F A: Yes.

Q: When you saw some soldiers and two people ended up in the water.

A: Yes.

Q: Just a yes or no: can you recall that incident? Can you remember that incident?

G A: Yes.

Q: Now when answering the questions, Mr Abdul Nabi, it's important you tell us what you saw or you heard.

H

A A: I saw some things, I didn't hear anything.

Q: What I'm getting at, e don't want to hear what other people my have told you happened.

A: I was with them. I was turned with them.

B Q: At the time of the incident, Mr Abdul Nabi, were you working?

A: Every six month there is a new forces coming and those guys were new and one officer came and asked me where they usually wash their tanks and I told them just near by me. He came in Land Rover. When I told him the place, when I pointed the place to him, the officer went and brought the tank. He brought those tanks and they started washing them. After 30 or 45 minutes one of the soldiers brought two civilians and put them between two tanks. He shout to me and I couldn't speak with him, communicate with him. There were a translator sit nearby us or a few minutes by us and he know how to speak a little English. He and the other British went and bring that translator and started speak with him. I don't know the name of that Iraqi person. I've seen him spoke with British. He knows how to speak English. He usually sit by the river to fish. I took him to that British and we spoke to the British. He started spoke with those two Iraqis. I was volunteering to protect a water project. I stay away to keep my eyes on the machines. There were a woman stood there by accident and she told me they caught them. I've seen those British caught those Iraqis by their ears and they took them to the river pushing them and those Iraqi's start shouting 'we don't know how to swim.' They start to push with soldiers. They were afraid of the water because they don't know how to swim. One of the group of soldiers took him to the water and force him and they put the gun in his back and they push him and then they push the other one into the river. I ran and brought a rope and I drag one of them and I couldn't rescue the other one and he sink in the water. When the other person they didn't float up some of the British they went to the river trying to take him out. This incident happened about 11 o'clock or midday 12 o'clock. We asked the officer if he can bring some divers or another people to take him out of the river. He spoke with his HQ. Another armed vehicle, a third one, came with an officer and they asked him if there's any divers can come and take him out of the river and he said the divers are in Al Amarah not in Basrah, not here. If we call them they need five days to come here. Then they took the armed vehicles and they withdrew. They desperate to rescue them, they couldn't. I told his father to go to As Shah - which is the city - and bring some local divers. They brought a diver and they took the body out of the river about five o'clock afternoon. His family took him and went.

Q: You mentioned that during that one of the Iraqi civilians shouted to Abdullah. Are you Abdullah?

A: Yes I am.

Q: You also mentioned that you were volunteering to protect the water project, is that correct?

A: Yes I am.

H

A Q: How long had you been doing that?

A: After the occupiers came.

Q: After the occupiers came. What is this water project? Can you describe it?

B A: It's a project took water from the river and bring the water to the tanks and thus they took the water from those tanks to Umm Qasr.

Q: If I show you a photograph, this is photo number 8.

Handed to the witness.

C Q: Can you tell us, is the water project shown on that photograph?

A: Yes it is.

Q: Which of the buildings is the water project?

The witness points to the photograph.

D Q: You're pointing to the one with the pipes coming out of it.

A: Yes, this is the project.

Q: Is the door to that building shown in that photograph?

A: No.

E Q: Where is the door to the water project?

A: It's not shown in the pictures. Near the tree.

Q: Photograph 12 does that help?

F **Handed to the witness.**

Q: Does that show the door to the project?

A: No.

G Q: At that time, Mr Abdul Nabi, where were you living?

A: I lived in that house.

Pointing to the photograph.

Q: Could you with the pen mark on the photograph where your house was?

H

A **The witness marked the photograph.**

Q: How far is your house from the water project?

A: 15 to 20 metres.

B Q: Dealing then, Mr Abdul Nabi, you said that you saw one soldier bringing two civilians.

A: Yes.

Q: Where were you when you saw that?

A: I was stand with them.

C Q: With the soldier and the civilians?

A: I was stand with the soldiers.

Q: How many soldiers were you standing with?

D A: There was someone in charge of them and there were a ship near to the incident.

Q: I'm going to show you a plan. This is the RMP plan with the distances taken off it.

Plan handed to the witness.

E Q: For the interpreter, can you see the word 'pump station'?

INTERPRETER: Yes.

Q: Could you interpret that for the witness please? And if you take the dark part as being water, does that plan look familiar?

F A: This is the water project and this small room used to be a project belonging to the ex navy.

Q: What small room is that?

Witness points to the plan.

A: And this line used to be a line for cranes.

G Q: Cranes. Can you mark on that plan where you said you were standing with soldiers?

Witness marks the plan.

A: I was standing next to the person in charge of them here.

H

A.

Q: When was the first time that day you saw these soldiers?

A: About nine o'clock a.m. Someone in charge of them came and asked me where's the place they used to wash their tanks. He left his vehicle away and he came walking to me and asked me. I told him bring them here and wash them. I explained the road to him. He went and brought the tanks and the machine they used to take the water.

B

Q: How long between first seeing them and speaking to them coming back with the tanks?

A: About thirty minutes, half an hour.

C

Q: And when they came back with the tanks, how many tanks?

A: Two and one Land Rover.

Q: How many soldiers?

A: Four to six.

D

Q: And did you actually see them coming back at that time?

A: What do you mean by coming back?

Q: When they came back and brought the tanks and the equipment for the water did you see them coming back?

E

A: Yes. I was standing there.

Q: Where were you standing?

A: Between the project and the river.

F

Q: And what did the soldiers then do?

A: They took the pump, the machine they wash the vehicles by and they start washing their tanks. One of them stayed as guard, as protection, and he start walking. After a while he came back and brought those two.

G

Q: I'm going to hand you the same plan. Can I ask, please, if you could you draw squares on it where the two tanks and the Land Rover were when they were being washed?

Plan handed to the witness who marked the plan.

A: You want one square for all tanks?

Q: Three squares.

H

A A: You mean the two tanks and the Land Rover?

Q: Yes.

The witness held the plan up.

B Q: Which one is the Land Rover?

A: That one's the Land Rover.

Pointing to the plan.

Q: The tank nearest to the water, how close was it to the edge of the river?

C A: 3 metres.

Q: You said the soldiers were washing the vehicles.

A: Yes. They was washing one and one waiting.

Q: The equipment to bring the water out for washing, was that noisy?

D A: Just the voice of the motor. It's light voice.

Q: Can you describe the noise or how loud the noise was from the cleaning equipment?

A: There wasn't a noise.

E Q: There wasn't a noise? The two tanks, can you describe them?

A: How could I describe them do you mean?

Q: Colour?

A: Paint. It's all green.

F Q: Did they have wheels or tracks?

A: My problem is I wasn't in the army. Tracks.

Q: He used the word 'tank'. Was there a turret and a gun on the top of the vehicle or not?

G A: It wasn't a tall gun; it was short.

Q: Was there any markings or writing on the vehicles can you remember?

A: Like an arrow. A sign of occupation.

H Q: And the Land Rover, any signs or writing on the Land Rover?

A

A: Same sign.

Q: Now you describe one of the soldiers leaving and coming back with two civilians.

B

A: He was little tall and his body was average. He wear glasses.

Q: Who is this you are describing?

A: The soldier who brought those.

Q: So he was a little tall?

C

A: Not very tall.

Q: And you say his body was average

A: Little slim.

D

Q: And you said he was wearing glasses.

A: Yes.

Q: Can you describe what type of glasses?

A: Eyeglasses. Medical eyeglasses.

E

Q: Can you tell us what was that soldier wearing?

A: Military kit and helmet.

Q: Can you help us was he wearing any clothes? Shirt, trousers?

F

A: No, full clothes.

Q: Full soldier uniform?

A: Yes, soldier uniform.

Q: The shirt that he was wearing, was that similar to what I'm wearing?

G

A: Yes.

Q: And you said he had a helmet?

A: Yes, he was wearing a helmet.

H

Q: Did he have a gun?

A

A: Yes, he got a gun because he was standing as protection for the people who are washing.

Q: And you said this soldier went somewhere and came back with two civilians?

B

A: Yes.

Q: Do you know where he got these civilians from? Did you see where he got these civilians from?

A: No, but he brought them from far away, about 200 to 300 metres away.

C

Q: But you didn't see the soldier get the two civilians at the start?

A: No, I saw them when he brought them near the tanks.

Q: These two civilians, at that time did you know them?

A: No. I didn't.

D

Q: Can you describe them?

A: They are dark skin. One of them shorter than the other.

Q: Can you remember what they were wearing?

A: Trousers and shirt.

E

Q: Is that both of the men?

A: One of them wearing a dish-dash.

Q: Can you remember the colours of these clothes?

F

A: Grey.

Q: The two civilians, were they young or old?

A: They were young.

Q: Had you seen those two civilians before?

G

A: No I didn't.

Q: You saw the soldier bring these two civilians?

A: I saw them between those tanks and they shout to me.

H

A Q: Before they got between the tanks did you see the civilians walking with the soldier to the tanks?

A: No, I was faced the river.

Q: So you didn't see that?

B A: The soldier shouted to me and told me to come and see those two. I seen them and they were at the edge of the river. He said they are Ali Babas.

Q: So when you first saw these two civilians, when you first saw them, were they walking or were they between the tanks?

A: They were sitting between those tanks and then he came.

C Q: So you saw them sitting between the tanks?

A: Yes.

Q: Was it then that the soldier shouted to you?

D A: Yes he did and he said come.

Q: The soldier said come?

A: Yes.

E Q: So at that point when the soldier shouted at you, how far away from the tanks were you?

A: 3 to 5 metres.

Q: Were you closer to the water project?

A: Yes.

F Q: So were you standing near the water project at that time?

A: Between the tanks and the project and there was a ship stopped there.

G Q: I'm going to show you the plan again. Could you please mark with a cross where you were when the soldier shouted to you?

Plan handed to the witness and marked.

A: The same lines here. I put my face to the river.

Q: And when the soldier shouted what did you do?

H

- A A: I took him and went to that guy who can speak English.
Q: You mentioned this guy earlier. Is this the interpreter you mentioned earlier?
A: Yes he is.
- B Q: And you said you had seen that person before. You knew that person?
A: The interpreter you mean?
Q: Yes.
A: Yes, I knew him.
- C Q: So you took the soldier to the interpreter?
A: Yes.
Q: At that time what was the interpreter doing?
A: We brought the interpreter and come and stand with those two.
- D Q: You mentioned earlier the interpreter was a fisherman, is that right?
A: Yes he is.
Q: Was he fishing that day when you took the soldier to him?
- E A: Yes he was.
Q: And how far away was the interpreter from the soldier? How far did you have to go to get this soldier?
A: 75 metres.
- F Q: Just looking at your plan, 75 metres. was that 75 metres up the way, this way or 75 metres the other way?
A: The depth of water is 65 metres. I have counted them before. We had a wooden pier and that fisherman was sitting there.
- G Q: Can you describe the interpreter?
A: He's with a red face.
Q: Is he old or young?
A: He's old as me.
- H

- A Q: And you took the interpreter with this soldier back to the tank, is that right?
A: Yes.
Q: And what happened then?
- B A: I left them together and I went to the machines because I was activated them, just I want to keep my eye on. I was standing near to the window looking through the window towards the machines and there were a woman standing there also. She told me they took them to the river and threw them to the river.
Q: If I could stop you there and we will have a break shortly? The interpreter, when you had taken the interpreter back you then left.
- C A: I left them about 5 metres away from me.
Q: Did you hear anything said between the interpreter, the soldier and the two civilians?
A: They took them to throw them into the river and one of them told me 'Help me, I can't swim'.
- D Q: At the time the interpreter was there and you had gone back you said to check the machines, did you hear anything said at that time?
A: I didn't hear anything.
Q: And just to go back one point, when you took the soldier to get the interpreter and bring him back, did the soldier say anything to you?
- E A: He told me Ali Baba and I said to him no.
Q: At that time when he told you Ali Baba what do you think he meant?
A: I asked those guys and they told me they've got sheep there and there is grass there and they was sitting.
- F Q: What guys? Are these the guys between the tanks?
A: Yes, those two guys.
Q: When did you ask them?
- G A: When the interpreter shout to me and then we went to bring the interpreter.
Q: Is that when the interpreter shouted to you or when the soldier shouted to you?
A: Soldier.
- H

A Q: So before you went to get the interpreter you spoke with the two people between the tanks, is that what you're saying?

A: When the British came and told me Ali Baba I came and ask them and they told me they got sheeps and goats so I took him and asked for the interpreter.

B Q: When you spoke to the two civilians sitting down at that time did you say Ali Baba to them?

A: I asked him why he brought you here and they said they got animals and he caught us.

Q: He caught us.

The Formal Preliminary Examination adjourned at 1119 hours.

C

The Formal Preliminary Examination reopened at 1145 hours.

ABDUL NABI HAMEED ADBULLAH having returned is further examined by the CONDUCTING OFFICER as follows:

D CONDUCTING OFFICER: Mr Abdul Nabi, you said you went back to the water project, pump house, to check the machine. Why did you do that?

A: Because the machines were activated so I want to check if someone turn off or something.

Q: At that time when you went back were there any other people in the area of the tanks?

E A: There was the people far away.

Q: Far away where?

A: Long distance. They were far away for long distance. About 75 metres or more.

Q: You then said you heard a woman.

F

A: There were a woman standing.

Q: What did this woman say?

A: She told me by Allah they will throw them into the river.

G

Q: This woman, had you seen this woman earlier that day?

A: They moved.

Q: The woman who spoke to you or said that thing, had you seen her before that day earlier?

H

A A: I know her by face but usually she came to walk near the river but I don't know where she lived.

Q: For example when you were taking the soldier to the interpreter did you see this woman at that time?

B A: Yes.

Q: Where was she?

A: She was on the corner of the project.

Q: Photograph 8. Does that help where this woman was? Can you show us?

C **The witness pointed to the photograph.**

Q: And did you know this woman?

A: No I didn't.

D Q: Can you describe her?

A: She's a little dark, fat, that's it.

Q: When you heard this woman speak where were you?

A: I was next to the window watching the machines.

E Q: What machines? The water project machines?

A: Yes, the water project machines.

Q: Were you inside or outside the building?

A: Outside the building.

F Q: And at that time were you looking at the soldiers and the tanks?

A: Yes.

Q: Again I show photograph number 8. Can you mark on that where you were standing when you heard the woman speak? Can you mark with a pen please?

G **The witness marked the photograph.**

A: Near to that window.

Q: And you said you were looking at the water project machines.

H

A

A: Yes.

Q: What did this woman say?

A: She shout by Allah they will throw them into the river.

B

Q: You used the word 'shout'. How loud was her voice?

A: It's not very loud because just 1 metre between me and her and there's one boy between me and her.

Q: And when you heard this what did you do?

C

A: There was a rope tied to a cannon and I threw that rope to one of them.

Q: Immediately after hearing the woman speak what did you do?

A: I can't speak with them to stop them. They pushed them and they throw them into the river. I ran to the rope and bring it with me and throw to that other. I throw the rope to him and I pulled him. I drop the rope to the other person but I couldn't rescue him.

D

Q: You mentioned there you saw throwing into the river.

A: Yes.

Q: Who threw who into the river?

E

A: They throw them together.

Q: Who was thrown into the river?

A: The first guy, his name is Munem. they threw him into the river. Then they took the other person and throw him.

F

Q: These two persons, had you seen them before?

A: No, I don't know.

Q: Were these the two persons that you had seen sitting between the tanks?

A: Yes.

G

Q: So who threw these persons into the river?

A: The British soldiers did.

Q: How many British soldiers?

H

- A: About four to six there were.
- Q: How far away were you when you saw this?
- A: When they throw them?
- Q: Yes.
- A: 3 metres.
- Q: Were you standing at the same place as when you heard the woman speak or had you moved?
- A: When she shout to me and I'd seen them pull them from their ears they took the first person and push him to the river, his name is Munem, and they took the other person and push him by force into the river.
- Q: You've marked on the photograph where you were standing when you heard the woman speak.
- A: Yes.
- Q: Were you in the same position when you saw the throwing into the river?
- A: Yes.
- Q: Now you said you saw the two civilians being held by their ear?
- A: Yes.
- Q: Who was holding them by the ear?
- A: The British soldiers.
- Q: How many British soldiers were doing that?
- A: About four.
- Q: I'm talking about the holding by the ear.
- A: Yes. Every two soldiers held one on his ears.
- Q: So the civilians were both their ears being held?
- A: Yes and they took him to the river.
- Q: Was it a different soldier holding each ear?

H

A A: Each soldiers was holding one from his ear so they were four. So two soldiers held one person.

Q: So four soldiers each holding one ear is that right? There were four soldiers each holding one ear?

B A: Yes until they close to the river. Then they let them because pushing between them. So they were three, they got one. One got him from the ear this side and one from the other side and one from the back, and the one from the back holding his weapon and push him to the river.

Q: Going back to the holding of the ears, four soldiers. Did that include the soldier you described earlier?

C A: Yes, he was one of them or he was the person with his gun on the back of one of them.

Q: Did he put his gun in the back at the time of the holding of the ears?

A: No. When they got close up to the river they seen him pushing them and afraid of water, then they caught him from his hand and that guy from back he push him by his weapon.

D Q: Can you describe any of the other three soldiers?

A: They were tall soldiers.

Q: Can you describe any of the other between three and five soldiers that were there?

E A: They look like each other, same description with light blond hair, green eyes with red face, slightly tall and slim.

Q: Is that one person you are describing?

A: Approximately all of them were that description.

Q: Can you tell us what these other three to five soldiers were wearing?

F A: They were wearing full military uniform but they didn't wear beret or helmet because they were working and washing, and then when he sank into the water they went after him with their full uniform.

G Q: When you saw the ear pulling you said there was four soldiers doing that. At that time were there any other soldiers who weren't involved in that? At the time of the ear pulling could you see any soldiers who were not taking part in the ear pulling?

A: I think one of them was in charge, maybe Sergeant. One at the top of the tank with his weapon they weren't involved.

Q: You've described seeing two civilians being thrown into the river.

H

- A A: Yes.
- Q: Were they thrown in at the same time or was there a gap between them being thrown in?
- A: One by one because he's afraid of the water.
- B Q: How long time between the first one being thrown in and the second one?
- A: Less than a minute in seconds.
- Q: The first person, how was he thrown in?
- A: Pushing. They all push him.
- C Q: How many soldiers were pushing him?
- A: Four.
- Q: Were these the same four soldiers you saw pulling their ear?
- D A: Yes, same soldiers.
- Q: And how were these soldiers ... what were they physically doing? How were they pushing this person?
- A: They got him from his hand and from his back and push him, plus the weapon was in his back.
- E Q: This is the first person the weapon as in his back is that what you said?
- A: At his back. Pointed to his back.
- Q: Who was pointing the weapon?
- F A: The person who brought them.
- Q: Is this the soldier you described earlier with glasses?
- A: Yes.
- Q: Now the first person pushed in you said his name was Munem?
- G A: At first I don't know them. I don't know their names at first.
- Q: Well how did you find out his name?
- H

A A: When they took him out of the river his father came to me later. He told me he's married and he got three kids and I saved his life and he thanked me. By this I knew his name.

Q: When you say the four soldiers were pushing the first person in what was happening to the other person?

B A: He was close to them and there was another soldier at the top with his weapon, carrying his weapon, so the other afraid he cannot run when they pushed that guy.

Q: But at that time was there any soldier actually holding the second person, the other person?

A: No there wasn't.

C Q: And then the second person, how was he thrown in?

A: The same thing.

Q: How many soldiers?

D A: Four soldiers.

Q: Are these the same four soldiers?

A: Same four soldiers.

Q: The same four soldiers who threw the first person in?

E A: Yes the same.

Q: How long were the two civilians standing at the edge of the water before being thrown in?

A: Not more than a minute. Less than a minute.

F Q: At the time of the throwing in did you hear anything being said?

A: He was shouting.

Q: Who was shouting?

G A: The same person who sank in the water. The second person. He was shouting.

Q: Could you hear what was shouted?

A: 'I can't swim, I can't swim', that's what he said.

Q: At that time did the soldiers say anything?

H

A

A: They went to the river, they throw themselves into the river trying to rescue him, they dived. They didn't intend to kill him. It always happen when they caught someone they throw him to the river. It's like a joke. And they didn't know about those. They throw them and they don't know how to swim.

B

Q: Mr Abdul Nabi, when the two civilians you say were standing at the edge before being throw, where were they in relation to the tanks? Were they standing immediately in line with the tanks or were they standing to the side of the tanks?

A: Between those two tanks. There was one tank here and the other here and they were between them.

C

Q: Immediately before being thrown where were they standing in relation to the tanks?

A: About 1½ or 2 metres away from the tanks.

Q: Is that 1½ to 2 metres towards your side of the tank or was that the other side of the tank away from you?

D

A: No, to my side.

Q: And at the time you saw the throwing, apart from the soldiers and the two civilians were there any other people in that area?

A: You meant Iraqis or British?

E

Q: Well either. Any.

A: The Iraqis were following and there were two British, one of them at the top of the tank and one away near the river.

Q: You mentioned that before the throwing a woman had spoken to you and she was standing at the corner of the water project: When you saw the throwing was that woman still at the corner of the water project?

F

A: Yes she was.

The Interpreter requested a comfort break.

The Formal Preliminary Examination adjourned at 1217 hours.

G

The Formal Preliminary Examination reopened at 1310 hours.

ABDUL NABI HAMEED ABDULLAH having returned is further examined by the CONDUCTING OFFICER as follows:

H

CONDUCTING OFFICER: You marked on a photograph where you were standing when you saw the throwing into the river.

A

A: Yes.

Q: Could you see both persons being thrown in when you were standing in that same place? When you were standing in that place that you marked, did you see both persons being thrown in?

B

A: I've seen both of them thrown but not together, one by one. About one minute between them.

Q: But to clarify, you were standing in the same place when you saw both getting thrown in?

C

A: Same place.

Q: And you also mentioned at the time of the throwing there was one British on top of the tank and one British far away doing nothing is that correct?

A: Yes, near the river.

D

Q: Okay, and the British standing away doing nothing, can you describe that person?

A: No I can't.

Q: Was that person a soldier?

A: No, the person in charge of them.

E

Q: So the person in charge of them was standing far away doing nothing?

A: There were a ship far away and I told the person in charge there's a fire in it if you can just look that down.

Q: When did you tell the person about the fire?

F

A: The first time when they arrived.

Q: So that is before the throwing in?

A: Yes, and I went with one of them to that ship.

Q: And that was before the throwing in?

G

A: Yes, before.

Q: At the time of the throwing in you said earlier there was one British standing far away doing nothing.

H

A: Yes.

A

Q: After you saw the throwing in it's correct you went to the water is that correct?

A: I was near the window between me and them about 3 to 5 metres.

Q: And you went to the waterside.

B

A: When I went to take a look to the machines?

Q: After you saw the throwing of the men into the river you then went to the water?

A: When they thrown them I went and brought a rope to take them out.

C

Q: Where did you get this rope from?

A: There were a cannon nearby me and there was a big rope tied to it.

Q: There was a what nearby?

A: Cannon.

D

Q: I'll show you photograph number 9. Can you see in that photograph the cannon and the rope you're talking about?

A: That is the rope.

Pointing to the photograph.

E

Q: And who did you throw that rope to?

A: To that guy Munem.

Q: And did that guy get out of the water?

A: Yes I took him out of the water.

F

Q: And how did he get out? Did he climb up the rope?

A: When they throw him in it was about 2 or 3 metres away and I thrown that rope to him and he caught it and I took him out.

G

Q: That person that came out, was he the first person who got thrown into the water or was he the second?

A: First person thrown.

Q: Dealing then with second person who got thrown in did you see him again?

H

A: Yes. He was standing.

A

Q: Where did you see him?

A: I was standing there.

Q: And where was the person after the throwing?

B

A: When they thrown them there was just that distance between the two. I took that guy out of the river but I couldn't rescue this guy.

Q: Did you try and rescue the other guy?

A: I thrown the rope but he just went into the water.

C

Q: Did anybody else try and rescue that guy?

A: No, just me.

Q: Did anybody else go into the water at that time?

D

A: When he sank after that, when some people heard the shout and a few of them went into the river.

Q: The people who went into the river, were they Iraqis or British or both?

A: First the British soldiers they went to the river and then the Iraqis?

Q: How many British soldiers went into the river?

E

A: Four.

Q: Were those the same four that you saw doing the pushing?

A: Yes, same.

F

Q: How many Iraqis went into the river?

A: In the first 15 minutes about eight persons.

Q: The person that you helped out of the water, what did he do when he got out?

A: He escaped.

G

Q: What do you mean by escaped? What did he physically do?

A: When I took him out of the river he just run. I haven't seen him again.

H

Q: Can you help, what was the height difference between the top of the water and the dock?

A

A: 15 to 17 metres.

Q: I was asking the drop between the water and the dock. How far you would have to fall from the dock to hit the water?

B

A: 2 to 3 metres.

Q: And the 15 to 17, what was the 15 to 17 metres? What was that?

A: From the bottom to the water.

Q: You then mentioned right at the start that another vehicle arrived, is that correct?

C

A: Yes, and stopped behind them.

Q: Was this a British military vehicle?

A: Tank.

D

Q: A tank. And were there any soldiers with this new vehicle?

A: The person who were at the top of the tank communicated with his HQ and then that tank arrived with an officer and when he came he started to speak with the father of that guy, the second guy who they couldn't rescue. He called them down so the tanks would withdraw and he took those tanks and went off.

E

Q: You say this officer who had just arrived spoke to the father of the second person who was pushed in?

A: Yes, the second one who drowned to the water.

Q: Did you hear what was said between those two people?

F

A: The officer told to the family of the second guy's father and his uncle about compensation and we will stand to your side.

Q: Did the officer say that in English or Arabic?

A: In English.

G

Q: How did you understand that?

A: There was a person who can speak English. Maybe you'll see him. He will come after me.

Q: Did that person translate what the officer said into Arabic?

H

A: He's one of the witnesses and he started to speak with that officer.

A

Q: Is that person the same as the earlier interpreter you mentioned?

A: No, not the same guy.

Q: How long in time between the pushing into the river and the new tank arriving?

B

A: About 20 to 30 minutes.

Q: You also mentioned at the start of the evidence that a diver was brought to the river.

A: The father of second person brought him because the officer said our diver is in Al Amarah and needs five days to come.

C

Q: Just for me, the father of the second person, do you know him?

A: No, I don't know him.

Q: How did you know he was the father of the second person?

A: He said that and he started to cry and he throw himself into the river trying to find him.

D

Q: Just going back to the diver, did you see the diver turn up? Did you see the diver arrive?

A: Yes.

E

Q: And I think you said this was some hours after the throwing into the river? This was some time after the throwing into the river.

A: Yes. About five hours.

Q: And did you see the diver recover a body from the river?

A: Yes.

F

Q: How many other people were there at that time?

A: A lot. More than 100 person.

Q: How long was the diver in the river before he recovered a body?

G

A: Not longer than 20 minutes. 15 to 20 minutes.

Q: And did you see the body that he got out of the water?

A: Yes. I saw it. I get by my hands.

H

Q: And is that the same person that you saw thrown into the river?

A

A: Yes.

Q: Mr Abdul Nabi, thank you, I have no further questions but there will be some more questions for you.

Cross-examined by Mr WHITEHOUSE as follows:

B

MR WHITEHOUSE: You speak some English don't you?

A: No.

Q: None at all?

C

A: No.

Q: You didn't speak English to a British soldier?

A: They frequently come to me and speak with my sons.

Q: And you speak some English.

D

A: No.

Q: Very well. Were the hands of either of the two men tied?

A: No.

E

Q: Never?

A: No.

Q: Two days after the accident do you remember talking to an Iraqi who works with the Black Watch regiment which was stationed very close by?

F

A: About what?

Q: Did you speak to a person?

A: Today there is a lot of people come to me.

G

Q: Did you speak to a person called [REDACTED] N37

A: He's interpreter for the commander.

Q: He's an interpreter for the Black Watch, yes.

A: He's interpreter for the commander.

H

A

Q: The commander?

A: Yes.

Q: Very well. Do you remember talking to him about the incident two days after it?

B

A: Yes.

Q: He knows you and knows that you're a guard at the port doesn't he? He knows you.

A: He knows me by the nature of my work, the position.

C

Q: Because of your job, yes.

A: Yes.

Q: Did you tell him that you had seen everything?

A: Yes.

D

Q: Did you tell him that the British soldiers had tied the hands of two local Iraqis?

A: No.

Q: You say you didn't say that?

A: No, I didn't say that.

E

Q: Did you tell him that they had done it with phone wire? Did you tell him that they had done it, tied their hands, with phone wire?

A: No, I didn't say that.

F

Q: Did you tell him that they had then pushed them in the water?

A: Yes, I told him that.

Q: Did you tell him that there were very many witnesses?

A: I didn't tell him because I was stand just by myself. If there were any people around they would rescue one of them.

G

Q: About a week after this conversation did you have another conversation with [REDACTED]?

A: He came and told me that the Royal Military Police want me.

Q: Did you tell him that the family of the dead boy had threatened you?

H

A

A: I didn't because I don't know them.

Q: Had you not spoken to them?

A: No.

B

Q: Did you tell him that you had only seen one of the Iraqis thrown into the water?

A: No, I told him two.

Q: Did you tell him that their hands had not been tied?

A: I didn't mention that about tied.

C

Q: Did you say that there were not many people in the area when it happened?

A: I says there weren't any people.

Q: Did you say there was only you, a woman, a teenage boy on a bike, some children and some fisherman on the other side of the dock?

D

A: The fisherman was the interpreter himself.

Q: That's right. You told him this.

A: The interpreter is 75 metres away and there were men standing.

E

Q: So let's go back. Did you tell him the only people were yourself, a woman, do you agree? You said there was you and a woman, that you said there was teenage boy on a bicycle?

A: No, there wasn't any kid or 18 years boy, just that fisherman 75 metres away.

Q: And there was no one else there.

F

A: No, there wasn't anybody else.

Q: Thank you. Now the interpreter on the other side of the dock, do you know his name?

A: I know his name but I don't know where he lived.

G

Q: His name is Walid Jasim isn't it?

A: Yes, Walid Jasim.

Q: Do you remember going to his home one time?

H

A: Yes.

A

Q: Did you go alone or with some other people?

A: I took the interpreter and the British.

Q: When you went to Walid Jasim's house who was with you?

B

A: The interpreter.

Q: The interpreter was the person whose house you went to?

A: Yes.

C

Q: You didn't need an interpreter to talk to him because he could speak your language.

A: So we started to search for him.

Q: Who was helping you to search for him?

A: Me and the interpreter.

D

Q: What was the name of this interpreter?

A: [REDACTED]

Q: [REDACTED], the man we were taking about before.

E

A: Yes. When we went to him he was afraid and he escape from his house.

Q: He was afraid and he escaped from his house. Did you tell Walid Jasim that the family were looking for him?

A: No I didn't. I didn't but he was afraid and escaped.

F

Q: Yes, he was afraid. He was afraid that the family were going to kill him.

A: No, we told him that they want you to come to be a witness.

Q: What, that the family want him to be a witness?

A: No, the British wants him.

G

Q: You told him that the British want him to be a witness for them?

A: They just want him to be a witness to speak.

Q: Yes. Did you tell him that the family wanted him not to be a witness?

H

A A: We asked about the people who are with are fishermen with him and we start searching. He rent a house and when we went to him we didn't find him. He was afraid and he escape.

Q: Why was he afraid?

B A: He's a fresh young person. He couldn't go through this. He saw someone die and he just couldn't take it and go and make his escape.

Q: Did you tell him that the father of the boy was offering him some money?

A: When I went with the British as a witness he caught me from my hand and he told me don't go and say that the British thrown an Iraqi because that British is a young person, I want just to say the truth.

C Q: Did you tell him that the father wanted him to be a witness against the British?

A: They want just to ask him but he was afraid.

Q: Did he say that he was afraid because it was possible that the family might reach his house and kill him and his family?

D A: No.

Q: Because they considered that he, the interpreter, was the cause of the incident.

A: He expected that. He thought.

E Q: He thought that the family felt it was Walid Jasim's fault that the incident had happened.

A: No the family didn't mention anything, they didn't say.

Q: I'm lost. Let's move on. You were standing in a position where the tank was between you and the two men who finished up in the water.

F A: About that distance.

Q: You were the distance you are now away from me.

A: Yes.

G Q: How many metres is this away?

A: About 3.50 cm.

Q: It's more than that isn't it? 5 or 6 metres?

H

- A A: Less than 5. 5 and less.
- Q: It's not a market place. Were you attending to your machines when the incident began?
- A: Yes, next to the window. Most of the machines.
- B Q: Because Walid Jasim told you that the youths had been stealing cable. That's right isn't it?
- A: There weren't any cables in that area.
- Q: Did Walid Jasim tell you at the scene that the youths had been stealing cable?
- C A: I started to speak to the interpreter and I heard there were cables and I went to the machines.
- Q: Checking your own cable.
- A: And that area the people who lived in there wasn't any cable.
- D Q: I have a transcript of your evidence to the military police and do you remember that you said, 'I was standing up. There was a window'?
- A: Yes I said that.
- Q: 'I heard a translator' – this is Walid Jasim – 'who said a group was stealing a cable. I work as an operator for the water pump'.
- E A: Yes.
- Q: 'So when I heard about the cables I ran to the machines to see if the cables they were stealing were the machines cables.'
- A: No.
- F Q: Well did you say that?
- A: I didn't say.
- Q: We have a recording of you saying it.
- G A: No, I didn't say. When I heard the word 'cable' when Walid speak. When I heard 'cable' of course I knew it was electricity cable and I went to the window and I just saw the machines work.
- Q: You didn't just hear the word 'cable' you also heard that they had been stealing cable.
- H

- A A: I didn't understand that in English, just he cable, I know cable.
- Q: Mr Abdul Nabi, you wouldn't be worried about your cable unless there had been talk about cable being stolen.
- B A: Because that soldier when he brought them the first to u he said Ali Baba, I told him no Ali Baba and we went and brought that interpreter.
- Q: But you wanted to check that your cables had not been stolen.
- A: Yes, when I heard the word 'cable' I went to the machines but the place when they found them there's no cable. On that place there is just like a guard and there's some grass there.
- C Q: There had been a trench in the ground to get at the cable, had there not?
- A: I don't know. I haven't seen that place.
- Q: Didn't you see the hole that they had made in the ground afterwards?
- D A: No.
- Q: Didn't you see the spades?
- A: No.
- Q: You understood that didn't you?
- E A: I didn't go there.
- Q: You understood before it was translated.
- A: Yes, little bit.
- F Q: Yes. You speak some English don't you?
- A: Just a little bit.
- Q: So your back was turned towards the men when the incident happened?
- A: Yes, my back was turned.
- G Q: Until the lady shouted when you turned round.
- A: Yes.
- Q: I wondered if you turned round after the first person had gone in the water as you told the interpreter for the army.
- H

A A: No, they hold them from the ears and the woman told me and I turned to see them.
Q: When the machine was running you could hear the noise of the machine could you?
A: Yes.
Q: So you knew they hadn't stolen your cable.

B A: Yes.
Q: On the 14th June 2003 you went to see the military police for the second time to have an interview with them.
A: Yes.

C Q: And you said that you wanted to tell them something more because your first interview had not been correct. Do you remember?
A: They asked for me.
Q: They asked for you?
A: Yes.

D Q: Well how would they know that you wanted to correct your first interviews unless you said something to somebody?
A: They arrested a thief and that thief told them that he is a liar.

E Q: Who is the thief they arrested?
A: The one arrested by British forces.
Q: What is his name?
A: I don't know. I haven't seen him and I don't know him. They told me.

F Q: You told the police that you wished to correct your first information to them.
A: No.
Q: You said that you had drawn a sketch plan for them.

G A: He asked me to draw a plan.
Q: You said that when you had gone the first time to have an interview with the police---

H

The first interview was three tapes and a half, plus they took some pictures and they wanted me to act the incident.

Q: And did you do that?

A: Yes, and they got it.

B Q: And they filmed it did they?

A: They filmed it, audio and radio and they got three tapes and a half.

Q: And was that done at Basrah Palace or was that done at the scene of the incident?

C A: Shaibah Logistic Base at Shaibah Airport. The Intelligence of the military police.

Q: Now did you tell them that the people with you who had gone with you to the police had not been witnesses to the incident?

A: At the time of the incident I told if there is another people they would help me to rescue the second one. I rescue one but if there is anybody else who would rescue the second one? So if there is any person that they would be about 75 metres away.

D Q: The people who were 75 metres away were the interpreter, Walid Jasim, who was fishing, and another fisherman with a black face and a baseball cap on.

A: The black guy is a liar. I don't know him and he doesn't know me.

E Q: You told the military police that there was a black guy with a baseball cap on who was watching what was happening, didn't you?

A: No I didn't. Just they came and told me to come to that interview.

Q: You told him that he used to sell ice from a cart. That the man with the hat sold ice from a cart.

F A: They gave a description for some black guy and I know just one black guy he sell ice and he's got a cart and he's very honest, so if he find a gold in the ground he will not grab it or take it, but if there's another black guy I don't know him, maybe he jut want to help himself on that situation.

G Q: On the 14th June the point you wanted to make to the police was that Basim and Sabah Mutalib who were with you on that day had not been witnesses to the incident. Sabah has died and is now dead, but h was with you on the 29th May when you went to the police the first time.

A: He wasn't at the time of the incident but after that he came with the crowd.

Q: Yes, exactly. You knew that he was going to the police to tell lies didn't you?

H

A A: Yes, because he was in there with me and I mentioned if there is another people with me they would rescuer the other person.

Q: He had admitted that he wasn't there at the time to you hadn't he, Sabah Mutalib?

A: He said that.

B Q: He said he was not there at the time, he came afterwards.

A: Yes, he wasn't there.

Q: And the same applied to Basim.

A: Like a psycho, a crazy.

C Q: Basim is half crazy.

A: Yes.

Q: Basim is mentally disturbed is he? So you knew that they had not told the truth to the police?

D A: Yes.

Q: Why didn't you tell them when you went to the police the first time on the 29th May?

A: What did I tell them? I mentioned that first there was another person with me they would rescue the second guy.

E Q: Do you remember that you offered to the police to get Basim and Sabah Mutalib to say this on a tape which you would record?

A: I didn't say that to the police but I said that my sentence if there was anybody else they would.

F Q: All right, very well. And did you go on to say, as you have just said now, that there were no other witnesses apart from those who were a long way away that he talks about?

A: Yes.

Q: And I want to see if you are an accurate witness.

G A: Yes. because I swear to Allah.

Q: I'm checking what you say against some facts we know.

A: No. I just said the truth and what I witnessed by my own eyes.

H

A Q: You said today that the boy who drowned was wearing what?
A: He was wearing dish-dash.
Q: He was wearing a dish-dash. That is a Jalabah, a long gown like the on you're wearing now?
B A: No, a grey one.
Q: He was wearing a grey one.
A: A grey one, yes.
C Q: When you were interviewed by the police you told them that he was wearing a trousers and shirt.
A: One of them wearing trousers and shirt the other wearing dish-dash that's what I said.
Q: The question was what was Sa'ad wearing and you said---
A: Yes. I don't know them.
D Q: You knew that the youth who had died was called Sa'ad by the time you were interviewed by the police.
A: It was at an interview with police. I didn't know his name before.
E Q: And you were asked what this man was wearing and you said trousers and shirt, a striped shirt of brown and white stripes.
A: I didn't remember this question.
Q: That he was wearing brown or black trousers.
A: I don't remember that. Even the question I don't remember.
F Q: You don't remember. Now I want to move on to the vehicle, another test of whether you're accurate. Do you remember telling the police officers that you had seen the number 400 on one of the tanks?
A: I didn't know about that. I didn't look at that. I don't know. I can't remember.
G Q: Well you could have forgotten.
A: Yes, I forgot.
Q: Well I would ask for a break.

H

A **The Formal Preliminary Examination adjourned at 1413 hours.**

The Formal Preliminary Examination reopened at 1505 hours.

ABDUL NABI HAMEED ABDULLAH having returned is further cross-examined by Mr WHITEHOUSE as follows:

B MR WHITEHOUSE: When you were giving your evidence to the military police on the 29th May 2003 you were asked about the vehicles and you told the Flight Sergeant that one of them was a transporter with the number 400.

A: Maybe but I'm not sure.

C Q: Later on, you were asked by Sergeant Kendall the vehicle, the one you saw, the carrier transporter, did it have any marks and you told him it had number 400 and you repeated that. Did you remember that number yourself or had you been told that number by one of the other people who live on your base?

A: At that time one of the people just come in to find out what happened. Maybe one of them record that number and I heard it.

D Q: Yes. And did they tell you that they had recorded that number at the time?

A: It has a number but I cannot remember it right now.

Q: Did you discuss what had happened in this accident with some of the other people?

E A: The peoples still there from 11.30 to five o'clock at the scene of the accident, incident scene.

Q: Yes, and so were you talking with them about what had happened?

A: Yes.

Q: Did one of them tell you that the number was 400?

F A: No, no one said but there was a conversation and the vehicles stood in front of us for a long time.

Q: I'm trying to find out how much conversation there was. Did it go into detail like the number on one of the vehicles?

G A: I can't remember but the people started to speak and the people blocked the way so the vehicles couldn't move until that officer came.

Q: I want to turn please to the river. There are sunken boats in this river aren't there? There are sunken boats in this river.

H

A A: At that time there weren't any but now yes.

Q: Well weren't there sunken boats when you were being interviewed by the military police?

A: No.

B Q: So you couldn't have told the military police that it was dangerous because there were sunken boats?

A: No.

Q: Did you not tell the police there are dangerous areas because of the boats? There are areas which have sunken boats, it is dangerous there.

C A: No, I said there is no reason to told them that.

Q: I want to ask you about the ship which was on fire. This was a large boat which was moored alongside the quay.

D A: It was a very big ship called As Samuud.

Q: Thank you. The ship was moored alongside the quay where the military vehicles were parked.

A: Yes.

E Q: There was smoke coming out of it.

A: Inside the ship there is an engine got a tank of fuel dropped and there is a fire coming from that.

Q: It was on fire in the engine.

F A: I informed them and I went with one of the British soldiers.

Q: You went up to the captain who was in charge of the two vehicles.

A: Yes, I informed him.

Q: And he went with you to the ladder up to the ship.

G A: He sent one with me. He sent one of the British soldiers with me.

Q: He came with you himself.

A: No, he sent one of his soldiers with me. He ask maybe to escape or to see what happened.

H

A Q: The soldier who came with you climbed up the ship.

A: Yes, he climbed and he just pointed to the fire.

Q: And went to have a look inside.

B A: They climbed and they just get in to the ship.

Q: They? It was one soldier.

A: Both me and the soldier.

Q: You and the soldier.

C A: And he saw the fire and we talked to the person in charge of them and he might be told him about that fire.

Q: And they radioed through for help?

A: He saw the fire and we came back and he informed his boss and his boss communicate with his unit or his HQ and he then said 'I'm sorry I can't'.

D Q: I want to ask you about the photographs of the scene of the incident. Could he be given photograph number 7?

Photograph handed to the witness.

E Q: Help m, on the right-hand side of that photograph is a wall with a tree above it and to the left of that someone has put up some corrugated metal sheeting.

A: I put those metal things.

Q: It was you who put them there?

A: Yes.

F Q: And they go to the edge of the dock.

A: Yes.

G Q: If you look at photograph 10, we can see the end of that sheeting near to the photographer held up by a chair.

Photograph handed to the witness.

H Q: If you look at photograph number 10 can you see the far end of that sheeting where it comes to the dock? I'm holding it up can you see there is the other end of that sheeting from the wall? That one there.

A A: Yes.

Q: And did you put that there?

A: Yes.

B Q: If we turn on please to photograph 12?

Photograph handed to the witness.

Q: We can see you've put some sheeting beyond that sheeting haven't you?

A: Yes.

C Q: Thank you very much. And if we turn back to photograph 10, can you see on the right-hand side just above the cannon that you've put some more sheeting up there?

A: There is nothing. I cannot see.

Q: Right. Can you see the ship which is on the right-hand side of that photograph on dry land? This one here. Would you please look? Look here, see that ship there?

D A: Not the same ship. This one's not the same ship.

Q: No, I know. This isn't the ship that was on fire this is a ship which is on dry land lifted up off the ground, and beneath it can you see there is some sheeting put up as a fence?

A: Yes.

E Q: Was the reason you put the sheeting there to stop people from swimming in this area?

A: I don't need people to pass to protect the project.

Q: To protect the project?

F A: The project, yes.

Q: And to protect people from falling in.

A: My house is here and the project as well so I don't want any person to pass to my house so I just put those to protect the project and my house.

G Q: Very well. That's all I wanted to ask this afternoon, thank you.

The Conducting Officer asked that Mr Abdul Nabi Hameed Abdullah not discuss the evidence he has given and to be back for the Formal Preliminary Examination at 0830 hours on Saturday morning.

H

A

The Formal Preliminary Examination adjourned at 1525 hours.

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DAY THREE

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B

The Conducting Officer formally dissolves the Formal Preliminary Examination

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H

A **The Formal Preliminary Examination reopened at 1003 hours.**

CONDUCTING OFFICER: Thank you, gentlemen. I will shortly be bringing this FPE to a conclusion slightly earlier than first thought. The reason for that, having heard the evidence which I have, I am clear in my mind that the FPE has served its purpose and I see no benefit or point in hearing from any further witnesses, and the purpose of course of the FPE was to assist me in reaching a decision whether or not to institute court-martial proceedings in this case, and the decision I have reached is that no court-martial proceedings will be instituted against Captain [SO70], against Corporal [SO71] or against Lance Corporal [SO72]

B

What will happen once I get back to Germany a formal letter of non-institution will be issued setting out the reasons for my decision; it will be promulgated to the chain of command, including the Commanding Officer 32 Engineer Regiment, and he will formally advise Captain [SO70] Corporal [SO71] and Lance Corporal [SO72] of that decision.

C

A couple of other points just to tidy up a few loose ends. The witness yesterday, Mr Abdul Nabi, did mark three documents. I would like to give them just for the purposes of the record exhibit numbers. Firstly photograph 12 which he marked the position of his house will be Exhibit 4; the sketch plan which he marked will be Exhibit 5, and photograph 8 which he marked the position of where he was standing when he saw what he claimed to see will be Exhibit 6.

D

And finally a few thank yous, firstly in respect of counsel and solicitors for their assistance throughout the hearing. I'm very grateful for the approach they have taken to this case, which I have found to be extremely helpful. And secondly, as a practical exercise I'm firmly of the view this FPE went as well if not better than I could ever have hoped for and a lot of thanks go to all those involved, particularly sitting at the back Major Ken Rustidge, who I know has put in a huge effort to make this happen, and I don't underestimate the effort he's put in and my thanks to him for that.

E

Unless there are any other points at this stage?

MR LESLIE: Yes. Can I on behalf of the bar, being the only legal counsel left, say how grateful we are both to the army as a whole, to you, Major Murray and Lieutenant Colonel Bartlett, for the way that you've dealt with us and dealt with the case. It made it much easier for us to deal with it, made it much easier for us to cooperate and to come to the conclusion that's been reached.

F

I'd also like to thank on behalf of the lawyers both Major Rustidge formally and all the army and air force officers who've made our stay wholly bearable and helpful. It's ensured that each of us has been able to operate effectively, which must be in the interests of the FPE, which I why we're all here. It would be invidious for me to name anybody who is not here or a large number of people who could actually be named, but on behalf of all of us I'd like to thank you and everybody who has participated in the admin, and may I say not least the stenographer who has acted amply throughout.

G

CONDUCTING OFFICER: Indeed. Well I'm grateful for that, Steven. Unless there are any other points then, I formally bring this FPE to a conclusion.

H

A

The Formal Preliminary Examination is concluded.

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