

Monday, 17 May 2010

1

2 (10.00 am)

3 THE CHAIRMAN: Good morning, ladies and gentlemen.

4 Mr Moss.

5 MR MOSS: Good morning, Sir. I call Colonel Garraway,
6 please.

7 THE CHAIRMAN: Colonel, may I ask you to stand up, please,
8 and take the oath?

9 CHARLES HENRY BARRE GARRAWAY (sworn)

10 THE CHAIRMAN: Thank you very much. Do sit down and make
11 yourself as comfortable as you can. It is not a very
12 comfortable seat, I gather. If you can speak into the
13 microphone, then we will all hear you.

14 A. Thank you.

15 THE CHAIRMAN: Thank you very much. Yes, Mr Moss.

16 Questions by MR MOSS

17 MR MOSS: If you can start, please, by giving the Inquiry
18 your full name.

19 A. Charles Henry Barre Garraway.

20 Q. Thank you. If we could have on screen, please,
21 BMI08146. I think we will see there that there should
22 be a folder with the hard copy of your statement,
23 Colonel, for you on the table in front of you. Do we
24 see here the final page of your statement? Is it right
25 that this is a statement you provided to the Inquiry on

1 29 April of this year?

2 A. That's correct.

3 Q. You signed the statement. When you did so, were you
4 telling the Inquiry that the contents of the statement
5 were true to the best of your knowledge and belief?

6 A. I was.

7 Q. Thank you. Colonel, everybody has had an opportunity to
8 read that statement and the documents which are
9 associated with it, so my task is simply to ask you some
10 questions on topics arising out of that statement, as
11 I am sure you understand.

12 May I started briefly with your career history? You
13 are a barrister, called to the Bar, I think, in 1972,
14 and were commissioned into the Army Legal Service in
15 1974; is that right?

16 A. Yes.

17 Q. Your statement indicates that you spent your early years
18 in the Army Legal Service doing conventional type of
19 work, for the most part military discipline and legal
20 assistance work; is that right?

21 A. That's correct.

22 Q. I think from the early 1980s, however, you developed
23 a particular working and academic interest in the law of
24 armed conflict.

25 A. Correct.

1 Q. The sum of your posts, from then on, involved
2 operational law aspects, although you were also
3 increasingly interested in the subject academically; is
4 that right?

5 A. That is right.

6 Q. Your particular experience in prisoner of war matters
7 I think is underlined by the fact that you came to serve
8 as legal adviser to the prisoner of war guard force
9 during the first Gulf War; is that right?

10 A. I did.

11 Q. Thank you. In 1994, your statement indicates that you
12 did some work at that stage on several chapters of the
13 tri-service law of armed conflict manual.

14 A. That is correct.

15 Q. A little later I think you spent, was it, just sort of
16 two years as the colonel for ALS3, which, amongst other
17 things, was a post in which you were in charge of army
18 publications?

19 A. No, I think you will find it was slightly shorter than
20 that.

21 Q. Thank you. However, from 1997 to your retirement from
22 the army in 2003, I think you were the colonel -- is
23 this right -- for the Army Legal Services 2, ALS2?

24 A. That is correct.

25 Q. Principally, were you, in that role, responsible for

1 legislation for international law and for the
2 International Criminal Court statute?

3 A. That is right.

4 Q. However, during that time, as you tell us in your
5 witness statement, again you were increasingly involved
6 on the academic side, including, I think, as a visiting
7 professor At Kings in respect of the law of armed
8 conflict.

9 A. Yes, I was.

10 Q. You tell us that in the year 2000, if I've understood it
11 correctly, you effectively passed up the opportunity for
12 promotion to brigadier because you wanted to continue
13 working in international law and LOAC matters, your area
14 of particular interest.

15 A. That is right.

16 Q. You continued as colonel for ALS2, I think, until
17 August 2003, at which stage you went to Iraq as part of
18 the human rights and transitional justice team of the
19 CPA?

20 A. I went on terminal leave in July and, in fact, went out
21 in Iraq in August, towards the end of August, and was
22 there for three months, that is right.

23 Q. Just to complete the picture, I think you retired, then,
24 from the army in September 2003 or your retirement took
25 effect then.

1 A. That is right.

2 Q. Since then you have held a number of senior academic
3 positions and you are also currently the general editor
4 of JSP 383?

5 A. That is correct.

6 Q. May I turn then to some questions, please, about your
7 own training, Colonel? I think you tell us in your own
8 statement at paragraph 4 -- look at that on the screen
9 at BMI08128 -- you, like others, did receive and indeed
10 at times give annual training dealing with the law of
11 armed conflict. Is that right?

12 A. That is right. I underwent the annual training along
13 with everybody else.

14 Q. You tell us there, in paragraph 4, that in relation to
15 that training, you don't recall it covering specifics in
16 terms of how prisoners should be physically handled.
17 Would that be fair?

18 A. That is correct. It was a short training programme that
19 covered a huge area of law.

20 Q. Can I ask you more generally: had you come across the
21 question of hooding of prisoners of war or depriving
22 them of their sight at all during the course of training
23 that you received?

24 A. I had come across hooding in my knowledge of the
25 Irish State case, but I had not come across it

1 specifically in training in relation to prisoners of war
2 because what we were dealing with there was the law of
3 armed conflict not human rights law. What we were
4 dealing with there was the specific humane treatment.
5 I had not therefore specifically dealt with the issue of
6 hooding.

7 Q. Insofar as you were involved in giving training on the
8 law of armed conflict, at whatever levels, can you ever
9 remember training that you gave specifically covering
10 whether prisoners could be deprived of their sight?

11 A. No, because my training would not have gone into that
12 degree of detail.

13 Q. Turning, then, to your role, as will be apparent from
14 the information you have given in your statement this
15 morning about your role and your post, at the time of
16 Operation Telic you were the colonel for ALS2 dealing
17 with those matters touched upon earlier, legislation,
18 international law and so on; is that right?

19 A. That is correct.

20 Q. To whom did you report in that role?

21 A. I reported to the director of Army Legal Services
22 himself.

23 Q. Now, insofar as issues may have arisen during Op Telic
24 as d operational issues relating to international law,
25 were you in the chain of command to provide legal advice

1 on those operational aspects that arose?

2 A. No, I was not.

3 Q. I think you tell us, though, in your statement -- it is
4 this right -- that notwithstanding the fact that you
5 were not within the formal chain of command, you were
6 seen as and, as it were, acknowledged as being the MOD's
7 expert on LOAC?

8 A. I would not necessarily say the MoD's expert on LOAC.
9 I was certainly the Army Legal Service expert on LOAC.

10 Q. Thank you. Did that mean that you were used as
11 something of a sounding board, both by members of the
12 ALS and those within PJHQ, about matters relating to the
13 law of armed conflict and matters relating to prisoners
14 of war?

15 A. Yes, I was, but not specifically on prisoners of war.

16 Q. Before we look at a document in relation to that,
17 I think you tell us in your statement that, while you
18 were happy to give the benefit of your expertise and
19 your experience when you were consulted, you did seek to
20 ensure that the regular chain of command was aware of
21 any advice that you gave when you were consulted about
22 those matters. Is that right?

23 A. Indeed. There is always a dangerous risk when you are
24 advising outside the chain of command.

25 Q. Thank you. May we just really, by way of example, look

1 at one of the early strings of emails before the
2 war-fighting phase to see perhaps the type of
3 involvement that you had? May we look, please, Colonel,
4 at MOD053153? I wonder if the bottom two-thirds could
5 just be expanded a little bit so that it is easier to
6 read.

7 Just to get the context, you will see that this is
8 an email of 28 January 2003. If we just go over the
9 page for a moment, can you see there, towards the
10 bottom, that it was being sent by Major Russell from the
11 AGC and the RMP side. If we go back to the previous
12 page, we can see that he was starting off this email,
13 going to the PJHQ legal advisers in J9, saying:

14 "It seems to me that PJHQ J9 are somewhat behind the
15 curve on the enemy prisoner of war planning and thinking
16 going on over here. I suspect I am guilty of not
17 directly involving them, but I will now try and make
18 amends."

19 Then he sets out how prisoner of war scheme of
20 manoeuvre and planning was due to work, detailing of the
21 different brigades.

22 Then, over the page at (e) -- it may not matter
23 directly to the Inquiry as a point, but I think he was
24 raising, in the third or the fourth line, how 1 Div are
25 probably going to AP3, the EPW at the CHO, but they will

1 not generate the internment serial number.

2 So it is dealing in essence, without going into too
3 much detail, with how prisoners of war were going to be
4 logged in. We will come to your input in the moment,
5 but does that help to give you the context of this?

6 A. Yes, it has.

7 Q. We can see there, if we go back to MOD053152, that
8 Rachel Quick who I am sure you remember from PJHQ, was
9 sending it on to "Charles"; presumably to you?

10 A. That is correct.

11 Q. If we go to MOD053151, the previous page, again just to
12 get the flavour of the sort of input that you gave, you
13 say to Ms Quick:

14 "Rachel, I am safely back."

15 You had spoken to Nicholas Mercer on a secure means
16 and then spoke to Martin. You go on to talk about this
17 e-mail in the second paragraph, saying that:

18 "... [his] email is helpful but has one fundamental
19 flaw. In paragraph (e) he says '1 Div are probably
20 going to AP3 the EPW ... [and so on]. This keeps the
21 process simple ...'

22 So referring to what Major Russell has said. Then
23 you said:

24 "We went through this hoop last time. We became
25 a 'detaining nation' as soon as they are within our

1 power ie on capture. Last time we banded them as UK but
2 even those who were taken straight to the US facility
3 had to be registered first as UK prisoners before they
4 could be transferred."

5 Just pausing there, were you essentially, there,
6 giving the benefit of your experience from the first
7 Gulf War?

8 A. I was indeed.

9 Q. Then, if we go to the last of the emails in this string
10 on the previous page, MOD053150, I think you were giving
11 some further input:

12 "Rachel, two further issues you may want to consider
13 before they become critical ..."

14 You were dealing with war crimes. We see in the
15 third paragraph down, beginning:

16 "Second, there is the issue of how we would try war
17 crimes ..."

18 You make a reference to how it would need to be made
19 ECHR-compliant and, further down the page, the second
20 issue mentioned this morning:

21 "... the thorny question of the use of weapons
22 against prisoners of war."

23 It talked about the drafting of JSP 391:

24 "... authority where a prisoner of war was trying to
25 escape and there was no other way to stop him. This was

1 deliberately omitted from JWP 1-10 due to concerns about
2 the effect of the ECHR ..." and so on.

3 If we look at how Ms Quick was responding to you at
4 the very top of the page, I think we see Ms Quick
5 saying, first of all, in the first two lines, referring
6 to:

7 "I have received some helpful comments from
8 Col Garraway ..."

9 Who she at least described as "our ALS expert on
10 prisoner of war issues".

11 Do you see that?

12 A. Yes, I do.

13 Q. Is that, in fact, how you saw yourself, albeit as an
14 informal role?

15 A. Yes, effectively.

16 Q. Saying to you:

17 "Many thanks for the comments -- and please keep
18 them coming. It is very helpful. I hope you don't mind
19 us continuing to consult you on these issues."

20 Does that again reflect the fact that you were
21 someone who had a expertise and experience in these
22 matters, but were informally lending a hand rather than
23 being formally responsible for them?

24 A. That is right. You will have noticed that I was not on
25 the original distribution list of the original memo that

1 came in on from the RMP officer.

2 Q. Thank you.

3 I would like to turn, if I may, to the question of
4 JWP 383, the manual on the law of armed conflict. Now,
5 I am not going to go through or ask you questions about
6 the entirety of the history of its drafting. You very
7 usefully set it out, if I may say so, in your statement
8 and you refer us to the introductory comments in the
9 manual itself.

10 Just to pick up, I think, the main points, I think
11 you tell us in your statement -- is this right -- that
12 you were initially appointed as general editor for the
13 manual in 1994, when it began to look more likely that
14 the first protocol was going to be ratified; is that
15 right?

16 A. That is right. I believe at around that time the
17 Government had announced their intention to ratify in
18 due course.

19 Q. On any view, it is right, isn't it, that this edition of
20 the manual had an extremely long gestation period for a
21 variety of reasons?

22 A. It did.

23 Q. Once you were fully involved with it, I think production
24 of the final version was put back, if not delayed, in
25 part because it became obvious that it was also going to

1 be effectively a statement of UK policy in this area.

2 Is that right?

3 A. That is right -- not so much policy, but it was going to

4 be a statement of the UK legal position.

5 Q. Perhaps arising out of that, that it was going to have

6 to be cleared at the highest level, so at the

7 ministerial level.

8 A. That is right.

9 Q. You also explain how, in the work on the manual, it was

10 decided that it was going to become tri-service in the

11 sense that it was going to have sections dealing with

12 maritime and air law. Is that right?

13 A. That is correct.

14 Q. Once that decision was made, is it the case that your

15 role changed from being general editor to the editor who

16 was contributing on the land aspects, whereas I think

17 General Rogers took over as the general editor?

18 A. That's right. My role became much less at that stage

19 because General Rogers took over responsibility for the

20 text. My role was purely in checking on the land

21 chapters. I did not contribute the land chapters

22 myself.

23 Q. Thank you. As you may appreciate, one of the reasons

24 why we should look at this is because JSP 383 was one

25 part of doctrinal guidance that did make a reference to

1 deprivation of sight of prisoners. Indeed, it seems
2 from evidence received by the Inquiry so far that there
3 was very little doctrinal guidance on that aspect. So
4 you understand why it is that we are looking at this?

5 A. I do indeed, but I would challenge your use of the word
6 "doctrinal" there because there is a difference between
7 "legal" and "doctrinal".

8 Q. We may come on to that when we look at the relevant
9 passage. Thank you. To follow the chronology through,
10 you tell us also in your statement that there were
11 effectively -- have I understood this correctly -- three
12 schools of thought as to what the manual should actually
13 seek to do. One of them was that it should be a full
14 operational law guidance text, giving detail for
15 operational deployment; is that right?

16 A. That is correct.

17 Q. A second school of thought was that the manual should
18 develop and expand, so that it dealt more fully with
19 international law, including all relevant aspects of
20 human rights law and indeed refugee law.

21 A. That is correct.

22 Q. A third school of thought was that the manual should
23 remain more narrowly focused on the law of armed
24 conflict, as it had done historically.

25 A. That is right.

1 Q. Can you help us with which of those won out or whether
2 the final decision was something of a compromise between
3 them?

4 A. The final decision was to go for the third option, the
5 manual on the law of armed conflict, because it was felt
6 that this was the only way we could keep the volume
7 within the bounds of one volume.

8 Q. Thank you. To what extent, then, was the manual meant
9 to address human rights law aspects?

10 A. It was not specifically meant to address human rights
11 aspects except where they interplayed with the law of
12 armed conflict.

13 Q. Thank you. In terms of any expectation of what other
14 publications might cover, did that have a knock-on
15 effect?

16 A. It was originally designed that this would be part of
17 a cascade of documents, leading down to the soldiers'
18 card at the very bottom that the soldier carries. There
19 would be a series of there what I would call "doctrinal
20 manuals", which would include the more detailed
21 precision advice on how the law was actually applied in
22 practice.

23 Q. So would this be fair, in the context that we are
24 looking at, Colonel, in terms of prisoners of war, in
25 particular interrogation matters and physical handling

1 of them, that the manual of the law of armed conflict
2 would be legal guidance rather than doctrine?

3 A. That is correct. On prisoners of war, for example, the
4 doctrinal advice would be in JWP 1-10, which was the
5 doctrinal publication on prisoners of war.

6 Q. I was going to come on that to that. You rightly
7 predict it. Was it in JWP 1-10 that you would therefore
8 expect the greater level of detail engaging what
9 commanders on the ground would need operationally, but
10 drawing on principles that may be found in the LOAC
11 manual?

12 A. I would indeed.

13 Q. Now, the Inquiry is familiar with the fact that the
14 manual itself was not published until 2004, but it is
15 right, isn't it, that advanced copies of it -- or at
16 least a late draft of it -- were in circulation by the
17 time of Operation Telic. Were you aware of that?

18 A. Yes, I was. That is correct.

19 Q. Had you had any involvement or responsibility in the
20 decision to permit a draft to be circulated?

21 A. I was not involved in that decision at all, but I was
22 aware it had happened.

23 Q. Do you know, if it matters, what, if any, status the
24 draft had as legal guidance at the stage of Op Telic 1
25 in the spring of 2003?

1 A. I can't recall exactly what advice was given, but
2 certainly this was distributed on the basis that it was
3 not yet the final draft and it had not yet had the
4 approval of ministers.

5 Q. Thank you. I would like to come on, if I may, to
6 a passage of particular interest to the Inquiry for
7 obviously reasons, which is paragraph 8.34.2 in the
8 manual itself. Could we start, please, with MOD036433,
9 just to get the context of where 8.34.2 appears. One
10 sees, does one not, that it is in a passage which is
11 subtitled and headed "Interrogation"?

12 A. That is correct.

13 Q. Thank you. It is giving the general guidance at 8.34
14 that:

15 "The capturing power may ask further questions to
16 obtain tactical or strategic information but the
17 prisoner of war cannot be forced to disclose any such
18 information."

19 A cross reference to that has been given to
20 JWP 1-10.

21 If we go over the page, prohibitions from the
22 Geneva Convention on other forms of coercion are set
23 out, the questioning of wounded and sick prisoners.
24 Then at 8.34.2:

25 "Blindfolding and segregation may be necessary in

1 the interests of security, the physical restraint of
2 prisoners of war, or to prevent collaboration prior to
3 interrogation, but these discomforts must be truly
4 justified and be for as short a period as possible."

5 Now, just pausing there, it may be difficult with
6 a textbook as detailed as this, but do you happen to
7 remember whether you personally drafted that section of
8 the manual?

9 A. I did not and I have made some inquiries to try to
10 discover where that text came from. In fact I have
11 spoken with Major General Rogers because we have been
12 trying to discover some of the earlier texts.

13 Q. Yes.

14 A. He thinks it probably predates even the 1994 version
15 that I prepared. It may well have appeared in the 1994
16 version that I prepared, but he has notes which indicate
17 that the text itself goes back even further.

18 Q. Thank you. As you helpfully point out, Colonel, in your
19 statement -- perhaps we can have that put onto the
20 left-hand side of the screen -- it does look as though
21 that passage of the manual is identical to guidance
22 published by the Red Cross themselves. Can we have on
23 the other side of the screen BMI08148, which is the
24 "Fight it right" manual from the Red Cross.

25 If we go over the page on the right-hand side and go

1 towards the bottom, I think we see, at 1405.7, that the
2 that the wording is the same in the Red Cross
3 publication; is that right?

4 A. That is correct.

5 Q. If it matters, did you happen to know whether the
6 Red Cross manual followed the British manual or whether
7 it was the other way round?

8 A. No. Unfortunately neither General Rogers nor I can say
9 that.

10 Q. It may be that you can't answer this in the light of the
11 answers that you have given, but do you know, either in
12 terms of the drafting of this or its approval, whether
13 the passage on blindfolding was intended to permit the
14 use of hooding in extremis or whether hooding, as
15 opposed to blindfolding, was simply something that was
16 not thought about?

17 A. I really couldn't comment on that, I am afraid.

18 Q. Perhaps we could have the right-hand side taken off and
19 just focus back on the left-hand side and the manual
20 itself.

21 You were asked, Colonel, in your witness statement,
22 to address the question of why it was that the case of
23 Ireland v UK was not referred to in the manual. I think
24 you tell us, first of all -- is this right -- that you
25 were well familiar with the case of Ireland v UK.

1 A. I was indeed.

2 Q. Were you also familiar with Prime Minister Heath's
3 ruling or directive, the indications that he gave to
4 Parliament in the spring of 1972 --

5 A. I had become certainly aware of it in my time in ALS2,
6 although I cannot actually recall reading it
7 specifically.

8 Q. -- or the directive that followed in the summer of 1972,
9 which specifically prohibited certain techniques in
10 internal security operations?

11 A. I believe I was aware of it, but I cannot recall
12 actually reading it.

13 Q. If we could look, please, at paragraph 31 of your
14 statement -- if you have that on screen -- you then set
15 out the three reasons, as you recall them, for why
16 Ireland v UK would not have been mentioned. You say,
17 first of all, at 31(a) -- perhaps I should just take you
18 to that:

19 "I do not recall any specific discussion about this
20 at the time ...", but then you make the following three
21 points:

22 "(a) JSP 383 [the manual] was not intended to give
23 detailed practical guidance or instruction for
24 operational commanders on the physical handling of
25 prisoners. It had already been agreed that the services

1 would produce operational manuals as to how the law was
2 to be applied in specific circumstances."

3 Does that go back to the evidence that you gave
4 somewhat earlier this morning to the effect that you
5 would expect that detail to have been included in
6 JWP 1-10?

7 A. I would have expected detail in general to be contained
8 in JWP 1-10, yes.

9 Q. Then in 31(b):

10 "Insofar as JSP 383 deals with physical handling
11 prisoners in terms of segregation and blindfolding, this
12 is in the context of security and not interrogation."

13 Now, if we can just go back to the passage, please,
14 at MOD036433, as we saw earlier, it in fact comes under
15 the heading of "Interrogation", does it not?

16 A. It does indeed. It is exactly the same section as
17 appears in the ICRC manual.

18 Q. If we go back over the page, while one follows that
19 security is being mentioned in 8.34.2, is it really
20 right to say, as you do in your statement in 31(b), that
21 where it appears in the manual, it is in the context of
22 security and not interrogation?

23 A. I think what I meant by that is it is saying
24 "Blindfolding and segregation may be necessary in the
25 interests of security, the physical restraint of

1 prisoners of war or to prevent collaboration prior to
2 interrogation, but these discomforts must be truly
3 justified and be for as short a period as possible". It
4 is not dealing with interrogation itself and does not
5 seek to justify the use of blindfolding in the situation
6 of interrogation.

7 Q. It may be said that security was only one of the aspects
8 that is dealt with at 8.34.2 and that another was
9 collaboration prior to interrogation, so it was
10 indicating that that might be a legitimate circumstance
11 in which blindfolding might be used, to prevent
12 collaboration prior to retaliation.

13 A. I can accept that. It was perhaps unfortunately worded.

14 Q. Thank you. If we go back -- thank you -- to
15 paragraph 31 of your statement at BMI08138, the third of
16 the reasons that you give is that:

17 "The prohibitions in LOAC in context are stronger
18 than those contained in human rights law as it is
19 prohibited to expose prisoners during interrogation 'to
20 any unpleasant or disadvantageous treatment ...'"

21 You cite Article 17 of the Third Geneva Convention.
22 Is that right?

23 A. Correct. You could also take Article 31 of the Fourth
24 Convention dealing with internees as well.

25 Q. Thank you. Now, later on in your statement, you explain

1 to us that, as the general editor of the manual now, you
2 are at a stage of taking input or about to take input
3 from a variety of sources. Do you happen to know
4 whether there is likely to be a change to this paragraph
5 in the manual to deal with the prohibition on hooding?

6 A. I don't know because we haven't reached that stage yet.
7 I am, in fact, meeting some of the editorial team
8 tomorrow.

9 Q. That leads us on, I think, to hooding more generally.
10 Moving away now from the manual, could we look at
11 paragraph 32, please, of your statement? You say that
12 your view was that "... hooding as an aid to
13 interrogation was not legal, but that a hood may be used
14 to deprive a prisoner of sight for security reasons as
15 a last resort where there are no blindfolds or other
16 more suitable solutions".

17 Just pausing there, can you help us as to why it was
18 that you phrase this part of your statement in that
19 tense, your view "was that hooding may be used"? Had
20 it, in fact, arisen as an issue at a previously stage?

21 A. I can correct that. "My view is that hooding ..." --
22 I am perfectly happy with that. Whether it had arisen
23 in relation to hooding as an aid to interrogation,
24 I cannot recall it.

25 Q. You go on to say that you can't in fact, recall any

1 specific incidents in which you were asked to advise on
2 that, but you give two examples of contexts in which it
3 may have arisen. Can we look at the first of those,
4 please? It is at paragraph 34 of your statement at
5 BMI08139.

6 You deal there with certain advice that you gave in
7 respect of conduct after capture training. You say that
8 part of this training was to prepare high-risk
9 categories such as air crew and special forces for
10 unpleasant treatment by the enemy and that you recall
11 being asked to advise on whether there would be immunity
12 from prosecution if someone was injured or died as
13 a result of such an illegal act. You refer to some
14 documentation which the Inquiry has, which I don't need
15 to take you, to where your advice is referred to by
16 others.

17 Just in respect of that, if hooding did come up in
18 that context, it would have been in quite a different
19 context and scenario, wouldn't it, as to whether there
20 were legal risks involved in using it on consenting --
21 effectively -- soldiers who were being trained.

22 A. There is the further point that it would have been used
23 deliberately as something which was illegal and was
24 being used to train soldiers against -- in resisting
25 activities that would be illegal under of the

1 Geneva Conventions.

2 Q. So even if it did arise in that context, that would not
3 really amount to legal advice on the operational use of
4 hooding on prisoners taken by the British?

5 A. Most certainly not. In fact precisely the opposite.

6 Q. Thank you.

7 The second example you give is in respect to
8 Operation Granby, the first Gulf War, where you say
9 that, in respect of transport of PWs from the
10 battlefield to the PW camp by helicopter, you recall
11 that:

12 "... such transportation enabled sight of sensitive
13 areas and, although I do not specifically remember, it
14 seems likely that sight deprivation by some means,
15 possibly hooding, was discussed."

16 In relation to that, do you now have any
17 recollection of any guidance being given in that respect
18 during the first Gulf War?

19 A. No, the statement still accurately reflects what my
20 memory is.

21 Q. Do you have any recollection of descending to the level
22 of detail of, "Well, you can deprive sight if you are
23 taking a helicopter and even the inside of the
24 helicopter is sensitive or what you can see from the
25 helicopter is sensitive, but you should do it by

1 blindfolds, not hoods"?

2 A. I cannot recall actually giving any specific advice on
3 that. My role in Granby was essentially at the prisoner
4 of war camp after the prisoners had arrived, although
5 I do vaguely recall that there may have been some
6 conversation about how to get the prisoners to the camp,
7 which is -- that's the incident I have referred to.

8 Q. In any event, you don't have a recollection, for
9 example, of any written guidance arising out of that
10 issue coming up from Op Granby --

11 A. No, I don't.

12 Q. -- or of that being any part of the lessons learnt
13 process after Op Granby?

14 A. No, I don't. I haven't seen the lessons learnt document
15 for a very long time. Whether it appeared in that or
16 not, I am not too sure.

17 Q. Thank you. Can we move on, then, to hooding in the
18 context of Operation Telic? Do you, in fact, recall
19 hooding coming up at all as an issue on which you
20 advised or gave an informal view or were involved in
21 discussions in the context of Op Telic?

22 A. No, I don't recall it at all.

23 Q. May I seek your assistance, please, with evidence that
24 the Inquiry has received from Colonel Barnett? I think
25 he will be known to you.

1 A. I do know Colonel Barnett well.

2 Q. Thank you. I think you will be familiar with
3 paragraph 37 of his Inquiry statement. May we look at
4 BMI06594 please? We will just have paragraph 37 if we
5 may. What Colonel Barnett said to the Inquiry in his
6 statement is that:

7 "I remember that hooding was discussed informally in
8 about May or June 2003 in the UK before I went to Iraq."

9 It was discussed, he says, between lawyers,
10 including Colonel Conway, chief operational law, and,
11 he believes, you. He goes on to say it was discussed
12 with Rachel Quick and Nicholas Clapham when he visited
13 PJHQ prior to deployment."

14 He went on to say:

15 "I was informed about a debate that had taken place
16 (to which I was not a party as I was abroad) in which
17 there was a disagreement between Ms Rachel Quick and
18 Lieutenant Colonel Mercer."

19 He went on to say that he could not remember the
20 full details, but that he took away from this the fact
21 that hooding was prohibited.

22 Now, I know that you will be familiar with that
23 passage. Does it, in fact, bring back any recollection,
24 first of all, in relation to the question of there
25 having been some disagreement in this area?

1 A. I was aware of disagreements between Rachel Quick and
2 Colonel Mercer, but not on this issue.

3 Q. Thank you.

4 Do you think that Colonel Barnett may be right in
5 suggesting, as he does in this passage of his statement,
6 that you had been involved in informal discussions which
7 may have related to the question of hooding?

8 A. I have no recollection of any such discussions and would
9 in fact have expected to have a recollection because it
10 would have instantly set up warning bells if it had
11 happened.

12 Q. I think you tell us more generally, a little bit later
13 on in your statement, that you don't, in fact, recall
14 any concerns about the physical aspects of prisoner
15 handling being raised at this stage either.

16 A. No, not to me.

17 Q. As you are probably aware, Colonel, the Inquiry has
18 received quite a lot of evidence now about a concern
19 having been raised in theatre by the Red Cross about the
20 use of hoods on prisoners and the fact that they were
21 made to sit in the sun for what was thought to be
22 lengthy periods and about Colonel Mercer and a number of
23 other officers in theatre having concerns, having
24 witnessed that hooding and prisoners being left in the
25 sun. Did any of that come to your attention in the

1 spring/early summer of 2003?

2 A. No. It was complete news to me when I actually read the
3 statements given to me by the Inquiry.

4 Q. To the extent that there may be a difference between
5 your evidence, Colonel, and that of Colonel Barnett,
6 obviously it is something for the chairman, but
7 can I ask this? If you had been alerted to the use of
8 hooding in theatre and to controversy about it, what
9 would your reaction have been?

10 A. It depends on what I had been asked or what had been
11 discussed because, as I was not in the chain of command,
12 I had no direct role, but certainly, if anything came up
13 that I had concerns about -- and I would have
14 undoubtedly had concerns if the issues which had been
15 raised by the tribunal had been brought to my
16 attention -- I would have undoubtedly discussed them,
17 probably with Rachel Quick at PJHQ just to make sure
18 that everything was in order.

19 Q. Would you, in that context, have sought to encourage or
20 ensure that guidance was given on whether or not hoods
21 could be used and, if so, in what circumstances?

22 A. I would have had no authority to do that, but I would
23 certainly have tried to ensure that clear instructions
24 were given to the troops so that they knew exactly what
25 they could do and what they couldn't.

1 Q. Again, as you may be aware, the evidence would tend to
2 suggest that in theatre for Op Telic 1, at divisional
3 level at least, an order had been given by General Brims
4 to the effect that hooding was to cease as a practice.

5 If you had known that -- and I appreciate it may be
6 a theoretical -- if you had known that, but also that
7 there had been some disagreement about the use of hoods
8 in theatre, would you have seen a pragmatic, if you
9 like, divisional level order prohibiting hooding as
10 being sufficient to deal with the matter? Would you
11 have had a view on that?

12 A. Orders themselves are never sufficient. They have to be
13 passed down the chain of command and go right down
14 to the bottom. So you would not only have had to make
15 sure that the order was issued, you would have had to
16 make sure that it was properly carried out.

17 Q. It may be said that, in addition to the cascading down,
18 that a divisional order in theatre didn't deal with the
19 dispute because there was no higher level guidance
20 determining the issue and giving final clarification.
21 What would you say about that?

22 A. If an order is given, an order is an order and that is
23 the end of the matter. Insofar as the legal debate is
24 concerned, yes, it would have probably helped to have
25 had some clarity, but that would have come up through

1 PJHQ into the MoD civil legal adviser and, if necessary,
2 to the Attorney. I would not necessarily have been
3 involved.

4 Q. The Inquiry knows that, in fact, JWP 1-10, at this time,
5 didn't give any guidance at all on the question of
6 whether or not prisoners could be deprived of their
7 sight. Is that something which had come to your
8 attention -- that omission, if it be an omission --
9 prior to Op Telic?

10 A. I knew of JWP 1-10, so I had obviously read it and
11 looked at it. I had not noticed that particular gap.

12 Q. May I turn, I think more briefly, please, Colonel, to
13 the question of stress positions? You explain in your
14 statement what you describe as your common sense view of
15 what a stress position involves: a position which
16 somebody is compelled to adopt which becomes
17 uncomfortable over time.

18 What, may I ask, was your understanding at this
19 time, 2003, about the use of stress positions?

20 A. Are you asking me under international humanitarian law,
21 the law of armed conflict or under human rights law?

22 Q. Can we start with simply what advice you would have
23 given as to, at the time, your understanding as whether
24 such stress positions could be used?

25 A. Stress positions, as I have defined them, do not

1 necessarily become illegal until they become stressful.
2 Once they become stressful and cause discomfort, they
3 would be prohibited under the law of armed conflict.
4 Once they reach the state where they are inhumane, then
5 they would be prohibited under human rights law as well.

6 Q. Their use before they become, in your words,
7 "stressful", did you have an understanding of where
8 those positions might legitimately be used prior to
9 becoming stressful?

10 A. Yes. Inevitably if you are handling prisoners of war
11 and trying to keep them under control, you need to, for
12 example, order them to sit, possibly with their hands on
13 their heads. That is a perfectly acceptable position.
14 But you must allow them to move their hands at regular
15 intervals so that it does not become stressful.

16 Q. You tell us of your own involvement in one such issue in
17 operation Granby where you say -- we may look
18 at paragraph 40 of your statement -- that you saw that
19 "... prisoners waiting to be registered were being held
20 for extended periods in a seated position with hands on
21 their heads. Although there was no reason to suppose
22 that this was for any reason other than security,
23 I spoke to the camp commandant and the prisoners were
24 thereafter permitted to move their arms at regular
25 intervals".

1 A. That is correct.

2 Q. If we look at BMI08151, I think we see your diary, which
3 you again kindly provided to the Inquiry, dealing with
4 this, which you said documented this. If we go down so
5 that we have it, there is a passage that says:

6 "Today was a hot day and by midday some of the PW
7 were beginning to look distinctly ill. There were cases
8 of cramp and I spoke on two occasions to
9 Lieutenant Godley, the platoon commander who was
10 marshalling the prisoners."

11 You go on to say that one prisoner collapsed and had
12 to be put on a drip and referring to you and the doctor
13 making representations about the use of shade. Is what
14 the incident to which you are referring to, cramp coming
15 on and so on?

16 A. That is the incident to which I am referring. It has
17 not quite yet come up on the screen. It needs to go
18 down a little further.

19 Q. I am so sorry.

20 So that was what you witnessed in Op Granby. That
21 can come from the screen. Thank you very much.

22 Can I just ask you this? That use of positions for
23 control, sort of stress positions, as you would see
24 them, were you aware of whether there was any guidance,
25 whether in a legal manual or in doctrinal guidance on an

1 operational level, detailing the circumstances in which
2 such control positions could be used or the limitations
3 on their use or giving the guidance "You must allow them
4 to move their hands or move to a different position"?

5 A. No, I was not aware of any such detailed guidance.

6 Q. Would you have thought that there ought to be such
7 guidance or would it be a matter of common sense for
8 commanders on the ground?

9 A. I think to a large extent it is common sense for
10 commanders on the ground and it depends on the
11 particular situation. We were, on Granby, designed to
12 receive a comparatively small number of prisoners per
13 day and there should have been very little requirement
14 to keep them sitting in that sort of situation. It was
15 because we received numbers far in excess of what we
16 were expecting that that happened.

17 Q. You say, do you, that it is only where a shortage of
18 guards in the ratio relative to the number of prisoners
19 justifies the use of such positions that they should be
20 used?

21 A. No. I think the problem that we had on Granby was
22 largely the lack of registration facilities, rather than
23 guards. But once you actually have the prisoners there,
24 you have to exercise control over them. Of course the
25 number of guards plays a part in that, but you allow as

1 much freedom as you can. Once the prisoners were in
2 their compounds, they moved around perfectly freely.
3 There was absolutely no need to impose any sort of
4 control on them at all. But here they were in
5 a compound waiting for registration.

6 Q. Thank you. I think the last of the five techniques that
7 I wanted to ask you questions about was in relation to
8 sleep deprivation. May we look, please, at paragraph 46
9 of your statement? You say there:

10 "I do not recall giving advice in relation to this
11 particular issue during my ... career ... and I have
12 never received or given any training on this issue."

13 Does that mean that the prohibition on sleep
14 deprivation arising out of the Heath ruling, the
15 directive in 1972, Ireland v the UK, isn't something
16 that you were ever specifically taught?

17 A. I was aware of it. But when you say "the prohibition",
18 could I, with respect, point out that this was
19 a prohibition under human rights law. When we are
20 dealing with the law of armed conflict, the interplay
21 between human rights law and the law of armed conflict
22 is extremely complex and whether human rights law
23 actually applies in relation to the handling of
24 prisoners of war to its full extent is a matter that is
25 still unclear.

1 Q. Your understanding of it on an operation such as Telic,
2 then, in relation to whether British troops could
3 deliberately deprive prisoners of their sleep would be
4 what?

5 A. I would have applied law of armed conflict rules and,
6 under the law of armed conflict, clearly sleep
7 deprivation in these circumstances is illegal,
8 regardless of the Heath directive or the Irish State
9 case.

10 Q. Because it is a form of inhumane treatment?

11 A. It is a form of discomfort.

12 Q. Is that only in the context of interrogation or does
13 that apply more generally?

14 A. That is in interrogation and, more generally, you have
15 the ban on inhumane treatment and there, if a prisoner
16 must be treated humanely, depriving him of sleep to that
17 extent is inhumane.

18 Q. The context -- and I make clear that there is no
19 evidence to suggest you would have been aware of it at
20 the time -- in which this appears for this Inquiry first
21 in time in relation to Op Telic was at the JFIT in the
22 early war-fighting stage.

23 The Inquiry has heard and received evidence that it
24 was, for a period of time, a standard operating
25 procedure to keep prisoners at the JFIT awake, at least

1 prior to their initial interrogation, so that they
2 weren't refreshed before being first interrogated. The
3 Inquiry has heard evidence to the effect that the way
4 that this was done was by the guards gently nudging it
5 the prisoners to keep them awake prior to their first
6 interrogation. What would your understanding have been
7 as to whether that was a legitimate practice?

8 A. I have read in the documents that they were to be kept
9 awake for up to 24 hours and I consider that to be in
10 breach of the law of armed conflict.

11 Q. In relation more directly to the treatment of Baha Mousa
12 and those detained with him, the Inquiry has received
13 evidence, for example, of a pole being banged on the
14 floor of the detention room during the night of their
15 detention deliberately to keep them awake. Presumably
16 that is an a fortiori case?

17 A. I could see no justification for that.

18 Q. Thank you.

19 There is one final matter which I wish to ask you
20 some questions about, which is the evidence which you
21 give in relation to the ECHR, in particular to
22 Colonel Mercer. Could we have a look at paragraph 16 of
23 your statement, please, at BMI08132? You tell us there
24 that you were asked whether you had seen the Attorney's
25 advice on the application of the ECHR and you say that

1 you did not, nor did you know of its existence, but that
2 you remember commenting informally to Colonel Mercer
3 that you held the view that he should behave as if the
4 Geneva Convention did apply in Iraq.

5 You go on to say that you can't recall the precise
6 circumstances or details of the conversation. You
7 personally took the view arising out of Bankovic that
8 the Convention could be held to apply in relation not
9 only to detention, but also generally during the
10 situations of occupation.

11 I think you will have received and been encouraged
12 to read quite a number of documents. Have they helped
13 you at all to remember the circumstances in which this
14 issue arose with Colonel Mercer?

15 A. No, I still do not recall the specific circumstances in
16 which it arose with Colonel Mercer. But it was
17 a general point of discussion at the time as to the
18 extent that we had ECHR responsibilities outside the
19 United Kingdom.

20 Q. The Inquiry knows that two of Colonel Mercer's concerns
21 were, first of all, those that I have mentioned to you
22 in terms of physical aspects of prisoner handling at the
23 JFIT -- what he saw, hooding and so on -- but there is
24 also documentation showing that he was concerned about
25 the review of internees' detention and what standards

1 should apply, who the reviewing authority should be.

2 Are you able to help us as to whether it is likely to

3 have been in one or other of those contexts that this

4 issue arose or might it have been something else

5 altogether?

6 A. I have thought about this because, in particular, with

7 the review process, I was aware of the issue of the

8 review process, but my recollection is that I became

9 aware of it when I was actually in Iraq working for the

10 Foreign Office rather than when I was at ALS2, so

11 I don't think it could have been in this context that

12 I spoke to Colonel Mercer.

13 MR MOSS: Thank you. Those are my questions.

14 THE CHAIRMAN: There will be questions from other people

15 now, Colonel.

16 Mr Singh.

17 Questions by MR SINGH

18 MR SINGH: Colonel, I would like to ask you some more

19 questions about the MoD manual on the law of armed

20 conflict. Could I start, please, by looking at your

21 witness statement at BMI08135? It is paragraph 23 in

22 particular. In the second line of that paragraph,

23 Colonel, you say, in relation to the manual, that it

24 would also be a statement of UK policy and therefore

25 would need to be cleared at the highest levels.

1 In the light of some of the answers you have given
2 to Mr Moss this morning, do you stand by that statement
3 or do you want to modify that?

4 A. No, I was referring to it in the sense of customary
5 international law because customary international law,
6 of course, includes both the practice of states and
7 opinio juris. Therefore what we needed to do was to
8 ensure that what we said in the manual, even if it was
9 not treaty law, was our view of customary law as well.
10 So this was a statement of UK law, but inevitably there
11 were some policy issues in it, I agree.

12 Q. Just to be clear, Colonel, when you referred there to
13 "UK policy", were you using that phrase in the context
14 or in the sense of a statement of UK practice?

15 A. I was using it in the sense of insofar as it was the
16 view of the UK as to what was law, both customary and
17 treaty law.

18 Q. I see. Can I look at another passage in your witness
19 statement, please, at BMI08137? At the bottom of that
20 page, paragraph 30, there you are referring, Colonel, to
21 the case of Ireland which you have mentioned today as
22 well. You say that you were:

23 "... certainly well aware of this ... and considered
24 it reflected not only human rights law but also
25 principles of LOAC ..."

1 In other words law of armed conflict. Do you stand
2 by that statement?

3 A. I do indeed.

4 Q. Does that embrace the holdings in that cause in relation
5 to hooding, stress positions and sleep deprivation?

6 A. As an aid to interrogation, absolutely.

7 Q. As an aid to interrogation, yes.

8 A. Where I would perhaps cast some doubt is to the
9 applicability of it as a matter of law.

10 Q. But so far as the substantive --

11 A. The substantive issue I have no difficulty with at all.

12 Q. And it would reflect, in your view, the principles of
13 LOAC; is that right?

14 A. It would indeed. In fact, I still say that LOAC goes
15 further.

16 Q. In that case, wouldn't it have been helpful, Colonel,
17 for there to be some reference to Ireland in a manual
18 dealing with LOAC in its own terms?

19 A. If one was dealing with LOAC in its own terms, to
20 introduce a human rights decision that might not even be
21 legally binding would be confusing in terms of the law;
22 where the Irish State case comes in is whether, as
23 a matter of policy, we consider that it should apply
24 even in areas where LOAC applies by itself. That is
25 a slightly different matter.

1 Q. Are you aware, Colonel, of any case law on LOAC itself
2 which has the specific prohibitions on things like
3 hooding, sleep deprivation and stress positions as an
4 aid to interrogation?

5 A. I anticipate that there may be some in the Yugoslav
6 tribunal, but I am not personally aware of any,
7 certainly in 2003/2004.

8 Q. In the light of that, I ask you again, Colonel, would it
9 not be helpful to turn to the one case that does contain
10 specific prohibitions because, as you accept in your
11 statement, it reflects principles of LOAC?

12 A. Not necessarily in a manual dealing purely with the law
13 of armed conflict and insofar as this was one small area
14 of a very large manual. If we were going to include
15 that sort of detail in the manual in every area, then
16 the manual would have been several volumes long. That
17 was the sort of thing that I would have anticipated
18 would be in the operational and doctrinal manuals below.

19 Q. Can we look, please, at BMI081136 -- again a passage in
20 your statement -- and to the top of that statement.
21 I think that is really the answer that you have just
22 given me, that it was expressly decided -- "A conscious
23 decision was taken that the manual should not deal with
24 human rights law directly".

25 But you say this:

1 "... only where it impacted on LOAC provisions."

2 A. That is correct.

3 Q. Is the case of Ireland not such an example.

4 A. It is an example of where it illustrates cases and types
5 of action which would be prohibited under LOAC, yes.

6 Q. Yes.

7 A. But we did not include every single activity that might
8 be prohibited because that would have made the book far
9 too voluminous.

10 Q. If I go to MOD036556, please. This is 11.19 from the
11 manual. Do you recall this passage, Colonel?

12 A. I don't recall it specifically.

13 Q. If you take time to read it obviously now if you wish
14 to.

15 A. Could I be shown footnote 40, please?

16 Q. Yes, certainly. Do you have that now?

17 A. Yes, thank you.

18 Q. Thank you. This is an example of a passage in the
19 manual, is it not, Colonel, where there is express
20 reference to human rights law?

21 A. There is express reference, yes.

22 Q. So that indicates, does it not, that this manual is not,
23 as it were, hermetically sealed and doesn't deal
24 exclusively with IHL or international humanitarian law?

25 A. Absolutely.

1 Q. It does refer, as you have seen from the footnote, to
2 the case of Bankovic. On reflection, Colonel, would you
3 agree with me that it would have been helpful if there
4 were a health warning, as it were, somewhere in this
5 manual -- possibly in this passage -- which says to the
6 reader that, "If you wish to have more detailed guidance
7 on principles of human rights law, you should go to the
8 appropriate textbooks on that"?

9 A. It is an interesting point. Certainly if you look at
10 paragraph 1.2 of manual, you will find in that it
11 specifically deals with what the manual covers. One of
12 the difficulties that we had with the preparation of the
13 manual was, of course, all these texts had been prepared
14 at different times and putting them all together was an
15 extremely complex process. The chapter on occupation
16 was actually the last one written.

17 Q. Colonel, I want to be fair to you. Would you take the
18 view -- as I understand it you do -- that the term
19 "LOAC" is a technical term and distinguished from human
20 rights law?

21 A. No. I take the view that the term "LOAC" -- law of
22 armed conflict, international humanitarian law, law of
23 war -- is a branch of public international law.

24 Q. Yes. Is it distinct conceptually from --

25 A. It is distinct from human rights law and I would suggest

1 that point is made plain in the judgments of the
2 International Court of Justice, in particular the
3 Barrier(?) case as well as the Nicaragua case.

4 Q. You and I, Colonel, if I may say so, understand that
5 technical conceptual distinction, but would you agree
6 with me that many readers -- possibly even some lawyers
7 reading a book about the law of armed conflict -- might
8 be forgiven for thinking that it is exactly what it says
9 on the cover, it is the law of armed conflict, not in
10 any technical sense, but in the lay person's sense?

11 A. I would hope that they would think precisely that, that
12 it is the law of armed conflict, but it is not the law
13 of military operations.

14 Q. I see.

15 Finally, Colonel, I would like to ask you a little
16 more about the stress positions. Is it right that the
17 manual to which we have been referring doesn't, in
18 terms, tell the reader anything about the law relating
19 to stress positions?

20 A. Not to my knowledge.

21 Q. You have referred the Inquiry to Article 17 of
22 Geneva Convention III and Article 31 of
23 Geneva Convention IV --

24 A. That is right.

25 Q. -- the references to "unpleasant or disadvantageous

1 treatment" which, as you have said, would actually
2 protect people in a way that the ECHR might not.

3 A. I think that is right. I think LOAC is stronger.

4 Q. Sure. In the light of that -- again on reflection --
5 would you agree with me that it would be helpful if the
6 manual on LOAC did, in express terms, deal with the
7 question of stress positions?

8 A. I am not so sure it was designed ever to go into that
9 sort of detail. With hindsight, we are going to be
10 looking at this particular chapter very carefully,
11 understandably, but again we have a problem of how much
12 detail do we go into because the next problem may arise
13 in targeting. In that case, do we have to completely
14 expand the chapter on targeting? It is a very difficult
15 balance.

16 MR SINGH: Sir, thank you very much. Sir, those are my
17 questions.

18 THE CHAIRMAN: Thank you. Ms Edington?

19 Questions by MS EDINGTON

20 MS EDINGTON: Sir, my primary topics have been covered by
21 both Mr Moss and Mr Singh, thank you, but if I could
22 just ask one very small point of Colonel Garraway.

23 Colonel Garraway, when Colonel Mercer spoke to you
24 and you advised him informally that he should use the
25 ECHR as his baseline, if we take it that point, were you

1 able to speak to anybody else up the chain of command to
2 say that you had informally advised him of your advice?

3 A. Yes. Certainly Rachel Quick was aware of that, as were
4 others at PJHQ.

5 MS EDINGTON: Thank you very much.

6 That is my question, Sir, thank you.

7 THE CHAIRMAN: Thank you.

8 Ms Simcock?

9 MS SIMCOCK: No, thank you, Sir.

10 THE CHAIRMAN: Thank you. Mr Garnham?

11 Questions by MR GARNHAM

12 MR GARNHAM: Thank you, Sir. How long was it that you spent
13 as Colonel ALS3 in charge of publications? Mr Moss
14 asked you that question, but we didn't get the --

15 A. Indeed. I would have to look at my statement just to
16 remind myself of the exact length of time.

17 Q. Let's have that statement on the screen, then, if we may
18 and paragraph 11.

19 A. Yes, it was June 1995 to March 1997, so it was about
20 a year and a half, yes, that's right.

21 Q. Thank you.

22 A. My memory led me to think it was slightly shorter.

23 Q. You have told us your view as to the effect of LOAC in
24 comparison with Article 17 of the Third Geneva
25 Convention and 31 of the Fourth Geneva Convention. Your

1 view is that LOAC imposes higher standards, as
2 I understand it.

3 A. That's right.

4 Q. Higher standards in the sense that more activity would
5 be restricted by LOAC than would be restricted by the
6 ECHR Convention?

7 A. That is correct.

8 Q. Might there a danger, do you think, Colonel, in adding
9 reference to Ireland v UK and its prohibition of five
10 particular techniques to a text that sought to identify
11 the restrictions imposed -- rather more severe
12 restrictions imposed -- by the Third and Fourth Geneva
13 Conventions?

14 A. There is always a danger, if you start listing
15 prohibited activity, that then everybody thinks that
16 anything that isn't listed there can then be done.

17 Q. The point being that there might be more than those five
18 techniques, you would say, prohibited by Articles 31
19 and 17?

20 A. Certainly.

21 Q. If you had been asked in 2003 for your view on the
22 legality of hooding for security purposes -- if, in
23 other words, the conversation that Colonel Barnett
24 recollects occurred did in fact occur -- what advice
25 would you have given?

1 A. The advice that I would have given is actually very
2 similar to that that is contained in Colonel Barnett's
3 own statement. My view is that hooding is permitted as
4 a means of ensuring security, but can only be done for
5 as short a time as possible and, furthermore, every step
6 needs to be taken to ensure that the discomfort of
7 hooding is minimised to the maximum extent possible and
8 that includes medical problems.

9 Q. You have, I think, been referred to the evidence both of
10 Commander Brown and Colonel Mercer in relation to this
11 debate.

12 A. I have.

13 Q. You will have seen from that that Colonel Mercer takes
14 a particular position that hooding in any circumstances
15 whatsoever is inhumane.

16 A. I disagree with that --

17 Q. I was going to ask you -- sorry, Colonel. If you had
18 been asked at the time and you knew of that debate, on
19 which side of the line would you have given your
20 opinion?

21 A. I would have supported Commodore -- as he now is --
22 Commodore Brown's position.

23 Q. You have explained, in answer to some of the questions
24 you have already been asked, your view about the effect
25 of Ireland v UK. If LOAC had applied in Northern

1 Ireland in the 1970s, in your view would there have been
2 a need for the Heath doctrine, the Heath decision?

3 A. That's a very difficult decision because, if LOAC had
4 applied in Northern Ireland, it would not have been the
5 Geneva Conventions to their full extent. It would only
6 have been common articles 3, which applies to
7 non-international armed conflict, which is much less
8 restrictive than in fact the Third Geneva Convention.

9 Q. I didn't explain the hypothesis on which I was asking
10 you the questions very clearly. Assume that Northern
11 Ireland was a foreign country and that LOAC applied in
12 its full extent, would there then have been a need for
13 the Heath doctrine?

14 A. In my view, no.

15 Q. Because ...?

16 A. Because the law of armed conflict would have covered it
17 straight off. Those activities would have been war
18 crimes.

19 Q. Thank you.

20 Lastly this: you have told Mr Moss that it would
21 have been your view, in 2003, that to keep a man awake
22 for 24 hours to deprive him of sleep for that period
23 would have been unlawful.

24 A. Not necessarily unlawful, but it would have depended
25 again on the context. But if you have a standard

1 practice that anybody who arrives in your organisation
2 is to be kept awake for 24 hours, that, I consider, is
3 almost certainly unlawful.

4 Q. Where is the dividing line? Many of us might enjoy
5 a sleep after lunch. Not many of us get it, but many of
6 us might like it --

7 THE CHAIRMAN: Not in this Inquiry you don't.

8 MR GARNHAM: No, certainly not, Sir.

9 But if, for example, a prisoner who had had
10 a perfectly good night's sleep the night before and was
11 going to have a perfectly good night's sleep the
12 following night was disturbed from a post-prandial nap
13 at 2 o'clock in the afternoon, is that sleep deprivation
14 so as to make it unlawful?

15 A. Most certainly not. I would have no difficulty with
16 that at all.

17 Q. So where is the dividing line? When does it become
18 unlawful to deprive somebody of sleep?

19 A. It is very difficult to say, but certainly if you are
20 deliberately using sleep deprivation as an aid to
21 interrogation, then that is clearly unlawful.

22 MR GARNHAM: Thank you very much. Thank you, Sir.

23 Further questions by MR MOSS

24 MR MOSS: You indicated that so far as your own view of
25 hooding would have been or what it would have been in

1 2003, although hooding would be legitimate in some
2 circumstances, every step would have to be taken to
3 minimise the discomfort; is that right?

4 A. That's right.

5 Q. It goes a little further than that, doesn't it, at least
6 so far as your statement is concerned, in that you would
7 say -- if we look at paragraph 32 --that hooding should
8 not be used at all if other means were available. As
9 you say in paragraph 32, it should be "... as a last
10 resort where there are no blindfolds or other more
11 suitable solutions".

12 A. I agree. Hooding automatically involves a degree of
13 discomfort that, for example, blacked-out goggles don't.
14 If blacked-out goggles are available, they should be
15 used because they cause less discomfort.

16 MR MOSS: Thank you.

17 Questions by THE CHAIRMAN

18 THE CHAIRMAN: Colonel, how many textbooks are there in
19 relation to military law?

20 A. Sir, do you mean military law in general or the law of
21 armed conflict?

22 THE CHAIRMAN: In general. It may be you can't tell me, but
23 give me a --

24 A. Comparatively few, I think.

25 THE CHAIRMAN: What sort of books, textbooks, would you

1 expect to be taken by a lawyer going into theatre?

2 A. Very few. When I went on Operation Granby, I had
3 a battle box in which I took a couple of manuals with
4 me, including the then 1958 manual. But nowadays we try
5 and do it all electronically, which makes life a lot
6 easier.

7 THE CHAIRMAN: I suppose that's right. One forgets that.

8 The manual of LOAC in its draft form, if it was
9 about, would that come in the sort of textbook that
10 Mr Singh was holding in his hand?

11 A. No, I believe it was simply in a photocopied version, so
12 it was in fact quite substantial.

13 THE CHAIRMAN: Would it have been available electronically?

14 A. In 2003 I am not sure it would have been. I think it
15 was only in hard copy and that's why it was only held by
16 the lawyers.

17 THE CHAIRMAN: Yes, I see.

18 I am sure you would not think that the average
19 soldier would have it in his hip pocket.

20 A. He certainly wouldn't. The average soldier would have
21 been carrying in his hip pocket a thing called the
22 "soldiers' card", which lays out the simple rules.

23 THE CHAIRMAN: And it is on that that the soldier needs to
24 concentrate and indeed his commanders on seeing he
25 understands?

1 A. Absolutely.

2 THE CHAIRMAN: When it comes down to the fine detail and
3 academic detail, does it come to this, what you are
4 saying about stress positions, hooding and the like: to
5 a large extent as to whether it becomes unlawful depends
6 upon common sense in the application of those two
7 conditions -- is that right -- techniques?

8 A. I agree. The law of armed conflict is always considered
9 to be a balance between military necessity and humanity
10 and that inevitably requires contextual decisions.

11 THE CHAIRMAN: And you would not expect anybody really
12 applying the standards of common sense to say that
13 hooding someone for 36 hours in a huge heat of, say, 40
14 or 50 degrees centigrade could be anything other than
15 contrary to the law of armed conflict --

16 A. Absolutely.

17 THE CHAIRMAN: -- or, indeed, putting him or her in a stress
18 position if those conditions for a period of time
19 longer, perhaps, than 15 minutes?

20 A. I entirely agree, which is why I intervened in
21 Operation Granby.

22 THE CHAIRMAN: Yes.

23 I see. Now help me about one other thing. The
24 evidence that I have heard is that the TDF at
25 Battlegroup Main contained no kind of furniture -- I use

1 the word fairly loosely -- beds, chairs, tables,
2 anything of that nature. Would you regard that as
3 contrary to the law of armed conflict, to keep someone
4 in those conditions for, let's say, a period of 24 hours
5 or not?

6 A. Again it depends on what was available. If that was
7 being deliberately used as a means of depriving somebody
8 of something that was available, it may well be. But
9 if, for example, there was no furniture available and
10 everybody was in the same position, then probably not.
11 It is a little bit like what happened at the end of the
12 Falklands War where everybody was on the airfield.
13 There was no tentage and it was pouring with rain. You
14 could not prisoners under cover because there was no
15 cover to put them under. Eventually they were put on
16 the ships.

17 THE CHAIRMAN: It may be that there ought to have been
18 proper facilities available, but why doesn't it still
19 constitute inhumane treatment? Merely that it is being
20 shared by the guarding force, why does that make any
21 difference?

22 A. Because the law of armed conflict is intensely
23 practical. It deals with reality and the reality on the
24 ground. If something cannot be done, the law of armed
25 conflict does not demand that it be done. It doesn't

1 set absolute standards to that extent.

2 THE CHAIRMAN: So that, if we were to go back to hooding and
3 if a soldier or soldiers have nothing else to use for
4 security purposes other than a hood rather than a piece
5 of material or goggles or the like, are they entitled to
6 use that on the basis that it is the only practical way
7 of achieving security?

8 A. If that is the only practical way of achieving security,
9 yes, they are.

10 THE CHAIRMAN: Right.

11 May I ask you about one other matter? If you are
12 a lawyer in theatre and there is, as there was -- and
13 I think you now know there was -- an area of dispute
14 between lawyers, Colonel Mercer on one side and others
15 on the other side, would you expect those lawyers,
16 despite the fact that there had been a ban on the order,
17 nevertheless to push for a resolution of that dispute?

18 A. It is very difficult to say because, of course, there
19 was, if I may say so, a war on at the time and they were
20 looking at other issues.

21 THE CHAIRMAN: Yes.

22 A. I would have expected them to at least have marked it up
23 as an issue that needed to be resolved when the
24 opportunity arose. If, in effect, the matter had been
25 resolved by the divisional order, which I understand it

1 was, then I can understand the lawyers taking the view,
2 "Well, it is now theoretical, therefore we don't need to
3 push it up at this stage". But it should certainly be
4 marked for later attention.

5 THE CHAIRMAN: That's what they all say and one can
6 understand that at divisional level and possibly even at
7 PJHQ level. But wouldn't somebody still need to put it
8 up at the time to ensure that it was resolved?

9 A. At the time, certainly all the lawyers would have been
10 working absolutely flat out on issues as they arose --

11 THE CHAIRMAN: Yes.

12 A. -- but certainly it should have been dealt with at some
13 stage. That I entirely agree with.

14 THE CHAIRMAN: By whom?

15 A. I think it would have gone into the lessons learnt and,
16 therefore, been referred up as a matter that needed to
17 be resolved for the future.

18 THE CHAIRMAN: When does the lessons learnt stage come in?

19 A. Again it depends on the particular operation. In
20 a long-running operation, then lessons learnt would be
21 going on the whole time. In Granby, as soon as we got
22 back from Saudi Arabia, we instantly sat down and
23 drafted our "lessons learnt" document.

24 THE CHAIRMAN: We know that Op Telic went on for a lot
25 longer than anybody considered. At the end of the stage

1 of war fighting, would you consider that to be a time
2 when lessons learnt were put in process.

3 A. We would certainly -- should have started putting in the
4 lessons learnt process at this stage and, as the
5 pressure died down, I would have expected that sort of
6 issues to be referred up.

7 THE CHAIRMAN: Yes. I have heard quite a lot of evidence
8 that they all expected it to go up, but for some reason
9 nobody pushed it up -- or didn't push it up -- and it
10 never got to the top and if, it did, nothing happened.

11 A. That is unfortunate.

12 THE CHAIRMAN: Yes, perhaps it is. Because, of course,
13 Op Telic 1 finishes, but you have Op Telic 2, 3, 4, 5
14 and so forth where it might become very relevant.

15 A. Indeed.

16 THE CHAIRMAN: All right.

17 A. I think the point we should perhaps make there is that
18 there was the divisional order. Whether that divisional
19 order carried on to the succeeding division, I wouldn't
20 be sure.

21 THE CHAIRMAN: Yes.

22 May I just then ask you one other matter which
23 arises out of something you said? Granted, as you say,
24 that a lot of the -- I say a "lot"; that something -- it
25 depends in terms of the techniques on common sense -- if

1 you are an army lawyer advising about hooding, would you
2 expect to make clear that when young soldiers -- 18 to
3 20 -- are dealing with hooding, perhaps the best
4 safeguard would be to tell them not to or is that
5 outside the lawyer's responsibility?

6 A. In my view, the advice given by General Brims or the
7 decision taken by General Brims was absolutely right.

8 THE CHAIRMAN: Yes.

9 A. Hooding is something that is -- to some extent
10 inherently has difficulties. It causes excessive
11 discomfort and therefore it should only be -- it should
12 be the exception rather than the rule. And in those
13 circumstances, normally what one says to soldiers is
14 "Don't do it unless you have specific authority to do it
15 from further up the chain of command".

16 THE CHAIRMAN: Is that the sort of advice that you would
17 expect lawyers to give?

18 A. Yes.

19 THE CHAIRMAN: Does the same apply to stress positions?

20 A. It depends on your definition of "stress position" of
21 course.

22 THE CHAIRMAN: I appreciate that.

23 A. Certainly, if you were talking about stress positions as
24 it has been defined by others, where -- which are
25 effectively conditions that become stressful and are

1 designed to be stressful, then in my view those are
2 prohibited had anyway.

3 THE CHAIRMAN: I understand that, but would you expect
4 a lawyer to say, "Equally, there are great dangers in
5 putting people in a position of discomfort, which you
6 may not appreciate, but are stressful. Don't do it"?

7 A. Not necessarily. For example, soldiers are expected to
8 stand to attention for long periods anyway, so, in
9 a sense, to have a prisoner ordered to stand to
10 attention for a short period or to sit on the ground
11 with his hands on his head would be perfectly normal
12 practice. So I would not expect specific prohibitions
13 to be imposed there.

14 THE CHAIRMAN: I will not take you up on it, but no doubt
15 civilians are not trained to stand for long periods of
16 time to attention.

17 A. Indeed.

18 MR GARNHAM: Sir, one question arising if I may.

19 THE CHAIRMAN: Please do.

20 Further questions by MR GARNHAM

21 MR GARNHAM: The chairman asked you how you would expect
22 a dispute on a legal matter to be resolved and you
23 described the process that might happen in lessons
24 learned and so on. Given the character of this
25 particular dispute, by whom would you expect it to be

1 resolved? How far up the chain would you expect that to
2 go?

3 A. It would have gone up through the Permanent Joint
4 Headquarters to the MoD civil legal advisers. If
5 decisions could not have been reached there, then
6 I would have expected it to have to go to the Attorney.

7 Q. If decisions could be reached there?

8 A. Then that would be sufficient.

9 MR GARNHAM: Thank you. Thank you, Sir.

10 THE CHAIRMAN: Thank you very much.

11 Yes, well, I was in the middle of saying thank you
12 for coming to the Inquiry and giving your evidence.

13 I am extremely grateful. You are now free to go.

14 A. Thank you, Sir.

15 MR MOSS: Sir, would it be convenient to take our morning
16 break before Commodore Brown?

17 THE CHAIRMAN: It would be extremely convenient. Ten
18 minutes.

19 (11.25 am)

20 (A short break)

21 (11.35 am)

22 THE CHAIRMAN: Yes.

23 MR ELIAS: Sir, may I recall Commodore Neil Brown, please?

24 NEIL LOGAN BROWN (recalled)

25 THE CHAIRMAN: Commodore, I don't personally think it is

1 necessary for you to be resworn. You are still under
2 oath from the previous evidence that you gave, although
3 there has been a gap. If anybody dissents from that, no
4 doubt they will say so.

5 A. Thank you, Sir.

6 Questions by MR ELIAS

7 MR ELIAS: Commodore, you will recall that on the last
8 occasion when you gave evidence, we were awaiting the
9 ruling from the chairman in relation to certain advice
10 given by the Attorney and, for that reason, an area of
11 questions to you was deferred.

12 A. Yes, sir.

13 Q. I just have very few questions to ask you, to take to
14 you two documents. In fairness to you, I think we
15 should go back to look at paragraph 55 of your statement
16 at BMI05870, just because it sets out, as I understand
17 it -- but you will correct me if I am wrong -- your
18 impression and understanding, as it were, of the law and
19 the position as it existed after the debate and issue
20 involving, amongst others, Colonel Mercer had arisen.
21 That's right, isn't it? That's the timing of this?

22 A. Yes, sir.

23 Q. What you say at paragraph 55 is:

24 "It was my impression that in discussions it was
25 understood by all the lawyers and other staff officers

1 I dealt with that hooding for the purposes of
2 interrogation was not permitted by the UK."

3 So that wasn't an issue in any shape or form, was
4 it? That was agreed on all sides, as it were.

5 A. It was agreed.

6 Q. "This accorded with my general knowledge of the case law
7 and Heath directive and I was given assurances that
8 hooding was not taking place for this purpose although
9 I cannot recall whether this was from legal or other
10 officers or both."

11 So you were assured -- you knew and you believed
12 everyone else understood -- that hooding for the
13 purposes of interrogation was off limits.

14 A. Yes, sir.

15 Q. And you were given the assurance, you tell the Inquiry
16 in this statement, that you understood that it wasn't
17 taking place for that purpose in Iraq.

18 A. That is correct, sir.

19 Q. "It was also my view (and I advised) that the law of
20 armed conflict did not permit hooding for the purposes
21 of interrogation, but did not prohibit the use of
22 hooding in other situations and that it could be
23 legitimate in limited circumstances, namely to protect
24 the immediate physical safety of UK troops and/or
25 operational security where, for example, PW were being

1 transferred from one area to another within a UK
2 facility. This issue was widely discussed with key NCHQ
3 staff and I am certain that I also discussed it with
4 Lieutenant Colonel Clapham, Rachel Quick and
5 Major Davies. However, I made it clear in the advice
6 I gave that hooding was permissible only so long as
7 absolutely necessary in these limited circumstances."

8 A. Yes, sir.

9 Q. So if it isn't clear enough -- and I think perhaps it
10 is -- but just, as it were, to enshrine your position,
11 you would have advised in 2003, and did advise, did you,
12 that hooding was permissible in these -- what you call
13 "limited circumstances"?

14 A. Yes, sir.

15 Q. -- but with the caveat "only so long as absolutely
16 necessary"?

17 A. Yes, sir.

18 Q. That would have involved, would it, considerations, for
19 example, as to whether there were some other means of
20 depriving sight available, apart from hoods?

21 A. Yes, sir.

22 Q. Now bearing in mind that, may we look please at two
23 documents? We find it at MOD020204, please. As we can
24 see, the date at the top, 11 May 2004, now, of course.
25 This, if I put it in shorthand, which I hope you will

1 understand, is, of course, when the balloon has gone up,
2 as it were, as to allegations of abuse and matters of
3 that kind in May 2004 are you responding to inquiries
4 now being made about the use of hooding. That is right,
5 isn't it?

6 A. Yes, sir.

7 Q. What you say in this email is this:

8 "My understanding is that the banning of hoods by
9 the Heath government related to NI/UK."

10 Were you saying at that time, May 2004, that you
11 understood that the hooding ban by Heath related only to
12 operations in Ireland and the UK?

13 A. Certainly not, sir.

14 Q. So what does that mean or what did that mean?

15 A. It meant that the ban arose from a case which arose out
16 of operations in Northern Ireland and the ban, as
17 I understood it, was therefore applied generally in army
18 doctrine for all interrogation in operations anywhere.

19 Q. So you had never interpreted -- because that sentence
20 might be so read -- the Heath Government ban as being
21 restricted to operations in Northern Ireland or in the
22 UK and Northern Ireland?

23 A. Certainly not, sir.

24 Q. You go on:

25 "Hooding has been SOP in the army [standard

1 operating procedure] throughout ..."

2 By your reference in the brackets, you are referring
3 to training also, aren't you?

4 A. Yes, sir.

5 Q. "... and was in place for Telic as an SOP."

6 A. Yes, sir.

7 Q. Was that information that was given to you or reported,
8 as it were, from your own knowledge, that hooding was
9 an SOP?

10 A. Sir, it was information that I got in discussions while
11 serving in the NCC in 2003 from operational -- from
12 intelligence and from army legal specialists and it
13 related to the use of hooding other than for
14 interrogation.

15 Q. I understand that. Did you appreciate, for example,
16 that hooding -- I am talking about at the time, in
17 2003/2004 -- was more or less routine at the point of
18 capture?

19 A. Yes.

20 Q. What did "SOP" mean to you in this context?

21 A. My understanding was that, because soldiers were issued
22 with sandbags, that where it was necessary to achieve
23 control and security, then their training was to use
24 those sandbags at the point of capture. In terms of its
25 use being widespread, I didn't take from it that it was

1 being used in every case against every Iraqi soldier who
2 fell under their control or who surrendered or who was
3 captured, but only when the security situations existed.

4 Q. I understand. But means of depriving sight for dealing
5 with the security situation where it existed you
6 understood was hooding, which was itself an SOP --

7 A. Yes, sir.

8 Q. -- and hooding with a sandbag?

9 A. Yes, sir.

10 Q. You go on in the email to say this:

11 "In Telic the use of hooding in the JFIT
12 (under-resourced and struggling with numbers) exceeded
13 the guidelines which were for safety/security
14 et cetera."

15 In what ways did you understand that the use of
16 hooding in the JFIT exceeded operational security
17 reasons?

18 A. I think, sir, what I was setting out here is captured in
19 the brackets in the sentence, that the problems in the
20 JFIT were caused by resource problems because the JFIT
21 was not configured for the very large numbers of
22 prisoners which were passed to it in the early stages of
23 Telic 1. Therefore -- I am not suggesting that there
24 were different reasons for hooding, but that its use was
25 more extensive than I think any of us had anticipated or

1 could have anticipated.

2 Q. By "exceeding the guidelines for safety and security",
3 what did you mean? We do understand -- and the Inquiry
4 has heard other evidence about it -- the position of the
5 JFIT when it was first set up, the difficulty of keeping
6 prisoners separated, unable to see each other and
7 matters of that kind.

8 A. The sentence is capable of other interpretation. The
9 key wording, I think, is in the brackets, that the issue
10 at the JFIT was one of capacity and resources and not
11 purpose for hooding.

12 Q. Putting it straightforwardly then, Commodore, was the
13 position, as you understand it, that prisoners were
14 being kept hooded within the JFIT, albeit for security
15 reasons apparently, but for periods of time whilst they
16 were there?

17 A. That's the initial report that I received.

18 Q. Is that what this means, this sentence --

19 A. Yes, sir.

20 Q. -- in essence?

21 A. Yes, sir.

22 Q. Thank you. You go on to say what we have just seen you
23 said in your statement to the Inquiry:

24 "I advised (at NCHQ) that hooding for strictly
25 limited purposes was not unlawful.

1 "1 Div established a more conservative policy and
2 banned hoods."

3 That would be the Brims' ban, would it?

4 A. Yes, sir.

5 Q. "Blacked-out goggles were used as a compromise."

6 Did you see any distinction between the use of
7 blacked-out goggles and the use of hoods for this
8 security purpose?

9 A. Yes, sir. Where goggles or other means were available,
10 they were preferred because they carried less risk of
11 asphyxiation or discomfort that have been associated
12 with hooding. So goggles were proposed by the ICRC at
13 a meeting in, I believe, early April 2003 and endorsed
14 by us as a better way of achieving sight deprivation at
15 the JFIT and the PW camp.

16 Q. Thank you.

17 You go on in the last three lines of this email,
18 don't you, to comment effectively that it appears the
19 hooding policy was not handed over to 3 Div. It
20 resurfaced in September 2003, as we know, through
21 Baha Mousa at least and hooding was then banned by the
22 CJO in October 2003, as we shall hear -- and the Inquiry
23 has heard and we will hear from the man who banned it
24 later on today.

25 A. Yes, sir.

1 Q. In the light of the answer that you have given to the
2 chairman a moment or so ago that hooding carried with it
3 inherently a possible risk of asphyxiation and maybe
4 other discomfort, did you ever consider, Commodore,
5 whether hooding per se might be inhumane?

6 A. I did, sir, yes.

7 Q. What was your view about that?

8 A. Sir, I looked at the issue in the context of law of
9 armed conflict, which allows combatants to kill
10 combatants, which allows combatants to use force to
11 capture combatants and to use force to keep combatants
12 interned and even to use force -- and in extreme
13 circumstances lethal force -- to prevent prisoners
14 escaping. It seemed to me, therefore, that with the
15 limitations that I have described already and the
16 limitation in terms of the occasions when it is used and
17 the duration of its use, that it was permissible,
18 particularly upon capture.

19 Q. Would you agree, if that be the correct view -- and
20 I don't comment on whether it is or not, of course -- if
21 that be a correct view, would you agree that the
22 necessity for those who operate it, if you like, the
23 troops on the ground, to understand the conditions --
24 namely that it is to be, as it were, used extremis if
25 there is nothing else, that it is to be time limited,

1 that perhaps there should be medical checks of those who
2 are hooded on a regular basis or at least perhaps just
3 a routine check by the guard -- would you agree that
4 those factors at least it is important should be known
5 to those who have to carry out that process if it is
6 permissible?

7 A. Yes, sir.

8 Q. Could we then look, please, at the last document that
9 I take you to? It is at MOD020218. It is now 14 May.
10 It is another email, isn't it, in the same chain, as it
11 were, still dealing with the issues that are arising in
12 May 2004 in this regard?

13 As we can see -- I am not going to read the whole of
14 it, Commodore -- in the first paragraph you are
15 indicating that "... it might be helpful to provide
16 a brief synopsis of the relevant events last year ..."

17 You stress it is to the best of your recollection,
18 12 months after the event and after an overnight flight,
19 but you think it is accurate is really what --
20 I summarise paragraph 1. You say in paragraph 2:

21 "Hooding was not part of any Op Telic mission
22 directive from CJO or the NCC and was not, as such,
23 ordered by those commanders."

24 It would have been equally truthful to say, would it
25 not, that it was not prohibited either?

1 A. Yes, sir.

2 Q. "It was not referred to specifically in any orders.

3 A significant amount of training was however provided on
4 behaviour of troops in an armed conflict and this
5 included the treatment of prisoners of war ..."

6 You go on in the next paragraph to talk of, first,
7 hearing of hooding when you were contacted by
8 Colonel Mercer and his concerns about his visit to the
9 prisoner of war camp, the JFIT, the large number of
10 prisoners being left hooded for long periods. He spoke
11 of "many hours" was your recollection.

12 A. Yes, sir.

13 Q. You were made aware of that at the time, of course.

14 A. Yes, sir.

15 Q. You then go on in the next paragraph -- and because I do
16 not read it, I am not underestimating the issue which
17 you raise -- but you describe the difficulties of
18 dealing with prisoners, not least because were they, as
19 it were, appropriately prisoners of war or were they
20 not?

21 A. Indeed, sir. That led to, I think, confusion at unit
22 level and that those being captured participating in
23 hostilities may have been of high intelligence value --

24 Q. Understood.

25 A. -- which led to a larger number of captures and a much

1 larger number of prisoners being passed to the
2 interrogation facility.

3 Q. You encapsulate the problem, don't you, in the next
4 paragraph:

5 "This resulted in large numbers of prisoners being
6 forced to wait in some cases for days prior to
7 questioning and rendered useless what limited facilities
8 which were available to keep prisoners of war separate
9 prior to questioning and between questioning sessions.
10 The ICRC local representative also expressed concern
11 about the use of hoods in these circumstances. I took
12 the view ..."

13 By this, you mean this was the view you took at the
14 time, is that right?

15 A. Yes, sir.

16 Q. "... that in very clearly defined circumstances (eg as
17 an accepted method for ensuring safety/security
18 immediately after capture) and for short periods the use
19 of hoods would not be unlawful. Without going into any
20 detail I had in mind the direction of the Attorney that
21 ECHR did not apply (and UK case law in this area was as
22 I understood it ECHR-related) and "the Third Geneva
23 Convention" was the *lex specialis*. I determined this
24 was a proper application of [Geneva Convention III] in
25 what was an armed conflict. That said, the view of

1 1 Div was that a more conservative approach (a general
2 ban) would not compromise operational effectiveness.
3 That was of course an option available to the [general
4 officer commanding] 1 Div."

5 I do not specifically -- so that there is any
6 concern to anyone who may read the transcript,
7 Commodore -- ask you about the Attorney's advice for the
8 reasons that you will be well aware of and I do not ask
9 you, therefore, to comment on what you say as to that in
10 the paragraph.

11 May I ask you this question in the light of what you
12 there wrote? In the circumstances then pertaining in
13 Iraq, whether ECHR applied or no, did it make any
14 difference in your view as to the way in which prisoners
15 could properly be treated?

16 A. Sir, in our preparation for the operation, carefully
17 assessing GC III, a Convention devoted entirely to
18 prisoners of war, with the 140 articles setting out in
19 great detail all of the protections and rights of
20 prisoners of war, detaining states, receiving states and
21 the ICRC, I found in that body of law the comprehensive
22 guide, if you like, to the legal obligations that we had
23 to meet. But in terms of the fundamental protections of
24 prisoners, I didn't for a moment believe that
25 Articles 13 and 14 in any way differed from other

1 obligations, for example under the ECHR, in relation to
2 torture and inhumane treatment.

3 Q. So if I put it in terms of the use of hoods or the use
4 of what are sometimes called "the five techniques" --
5 and you will understand what I mean by that, I think --
6 was the position altered, as it were, whether the ECHR
7 applied or not, as to the treatment of detainees?

8 A. No, sir.

9 Q. Was that your view in 2003?

10 A. Yes, sir.

11 Q. Has that always remained your view?

12 A. Yes, sir.

13 Q. You go on, if I may miss the next paragraph, please, to
14 the penultimate paragraph on the page, where you say:

15 "I was surprised when I joined PJHQ in January this
16 year [2004 therefore] to hear that there had been a
17 recurrence of the practice of hooding (for
18 interrogation?) ..."

19 Why did you put that?

20 A. Sir, I think I was asking the question of the officer
21 whom I was sending the email to because I was unclear.

22 Q. You were unclear what purpose it had been used for?

23 A. Correct, sir.

24 Q. "... and also that CJO had issued orders which I think
25 significantly duplicated the policy issued by GOC 1 Div

1 6 months before. I can't account for what may appear to
2 have been the reappearance of this policy, perhaps
3 because the use of hooding for security/safety reasons
4 is a common procedure."

5 What you were saying there, if you will forgive me
6 for saying so, may be absolute common sense, if
7 I understand it correctly. It had been such, as it
8 were, an SOP that, in order to get the message home, it
9 was going to have to be clearly -- can I use the
10 expression -- round down to the very bottom of the chain
11 so that every soldier understood it.

12 A. Yes, sir.

13 Q. Would that be fair?

14 A. Fair, sir.

15 Q. In the next paragraph you refer to something you had
16 heard about Chicksands.

17 "[They] ... denied teaching hooding and suggested
18 that there may be confusion in the minds of those who
19 have completed the conduct after capture course during
20 which [as the Inquiry has heard] students are hooded."

21 You say about that:

22 "I find this implausible. The people I have spoken
23 to are not stupid. It seems to me more likely that
24 hooding is taught but for actions immediately on capture
25 or for prisoner handling (moving around a facility to be

1 questioned, et cetera) but not as a means of softening
2 up on interrogation."

3 That was your view, was it, having spoken, what, to
4 a number of those who will have been involved in the use
5 of hooding or knew about it?

6 A. It was, sir, yes.

7 Q. "The impression I have is based on informal discussions
8 here in recent weeks but is consistent with the
9 permission I had last year."

10 A. Yes, sir.

11 MR ELIAS: Yes, thank you very much.

12 THE CHAIRMAN: Yes, if you would like to wait there.

13 Mr Singh?

14 Questions by MR SINGH

15 MR SINGH: Sir, thank you.

16 Commodore, I would like to go back for a moment, if
17 I may, to MOD020218, your email of 14 May. Can we
18 please look particularly at the middle of that page at
19 the paragraph which begins "This resulted in large
20 numbers"?

21 Now, like Mr Elias, I make clear, Commodore, that
22 I do not want you to say anything which would tend to
23 disclose the content of any advice from the
24 Attorney General. I see you are nodding. You
25 understand that point?

1 A. Yes, sir.

2 Q. First I would like to ask you about the fourth line
3 when, in brackets, you begin -- well, you say this:

4 "... (eg [for example] as an accepted method of
5 ensuring safety/security immediately after capture) ..."

6 Did you have anything else in mind other than that
7 example?

8 A. No, I don't think so.

9 Q. Next I would like to ask you about two lines further on,
10 when you say in brackets:

11 "... (UK case law in this area was as I understood
12 it ECHR-related) ..."

13 What UK case law were you there thinking of?

14 A. Sir, the only case I had in mind was Ireland v UK.

15 Q. Is it your evidence that you had that in mind when you
16 were thinking about these questions in the spring of
17 2003?

18 A. I was aware, sir, of the case and that the decision in
19 the case was that the five techniques together -- and
20 used for the purposes of interrogation -- amounted to
21 cruel and inhuman treatment or inhuman and degrading
22 treatment. Sir, I was aware of no case law relating to
23 the application of IHL.

24 Q. I see. Given the answer you have just given me,
25 Commodore, would I be right in saying that your

1 understanding of Ireland was that it prohibited hooding
2 as a means to interrogation?

3 A. Yes, sir.

4 Q. But your view was also that IHL -- in other words the
5 Geneva Conventions -- prohibited hooding as an aid to
6 interrogation; is that right?

7 A. Yes, sir.

8 Q. So why mention the ECHR in this context at all?

9 A. I think, sir, I was trying to set out very briefly
10 a complex issue which had been running for about a year
11 and I mentioned it in relation to case law simply to say
12 that I knew of no IHL cases when I was interpreting
13 GC III. I relied on my studying of legal texts and
14 legal publications and writings about IHL. I didn't
15 know of any cases.

16 MR SINGH: Commodore, thank you. Sir, those are my
17 questions.

18 THE CHAIRMAN: Thank you. Mr Garnham?

19 MR GARNHAM: No, thank you, Sir.

20 MR ELIAS: Sir, I have no further questions.

21 THE CHAIRMAN: I have not either. Thank you very much for
22 coming back to the Inquiry, Commodore. I hope it was
23 not too inconvenient to you to come back, but
24 nevertheless I am grateful.

25 A. Not at all, Sir.

1 THE CHAIRMAN: You are now free to go and we don't start
2 again until 1.30; is that right?

3 MR ELIAS: Sir, if we could rise until 1.30, General Sir
4 John Reith will be available then.

5 THE CHAIRMAN: Very well. 1.30. Thank you.
6 (12.00 noon)

7 (The short adjournment)

8 (1.30 pm)

9 THE CHAIRMAN: If I could ask you to remain standing for
10 a moment, please, General, and then I will ask you to
11 take the oath.

12 MR ELIAS: Sir, I call General Sir John Reith, please.

13 JOHN GEORGE REITH (sworn)

14 THE CHAIRMAN: Thank you very much. Do sit down. I am told
15 that it is not a very convenient place to sit to give
16 your evidence, but if could you get as close as you can
17 to that microphone, then hopefully we will all be able
18 to hear you, which is, after all, the object of the
19 exercise.

20 A. Okay. Thank you.

21 THE CHAIRMAN: That is fine. Thank you.

22 Questions by MR ELIAS

23 MR ELIAS: Would you give the Inquiry your full name,
24 please?

25 A. John George Reith.

1 Q. You joined the army in December 1967, you tell us in
2 your statement to this Inquiry, and I think you retired
3 from the army in 2008; is that right?

4 A. Correct, March 2008.

5 Q. And your then rank?

6 A. Full general, four star.

7 Q. General, could I then please ask you to look to a folder
8 which I hope is to your right-hand side. You should
9 find therein a copy of the statement that you made to
10 this Inquiry. If you go to the last page of it, please,
11 which is our BMI08261, and confirm that we find your
12 signature above the date of 6 May this year.

13 A. That is correct. It is my signature.

14 Q. When you signed that statement, General, did you do so
15 attesting that the contents of it were true to the best
16 of your knowledge and belief?

17 A. Correct.

18 Q. Thank you very much.

19 If you would put that document aside then, please,
20 and if we need to look at any documents or part of the
21 statement, it should appear on the screen to your right.

22 May I begin just by asking you a little -- and it
23 can only be a little -- about your army career. 1967
24 until 2008, you tell us in your statement to this
25 Inquiry -- and I am not covering all the ground that you

1 set out -- that you spent four and a half years in
2 Northern Ireland, platoon commander through to military
3 assistant to the general officer commanding in
4 Northern Ireland. You served for rather more than ten
5 years in Germany, mostly, you say, during the cold war,
6 where, amongst other things, you were adjutant of a
7 battalion.

8 A. Not an adjutant to the battalion in Germany -- oh, yes,
9 in Berlin, sorry, I apologise.

10 Q. I am just taking from your statement what you have told
11 the Inquiry. I hope it is right.

12 A. Yes, correct.

13 Q. From 1990 to 1991 you were chief of staff of 1 (UK)
14 Armoured Division and, in this post, participated in the
15 first Gulf War.

16 A. Correct.

17 Q. In 1999 you were appointed commander of the Albania
18 force during the Kosovo crisis.

19 A. That is correct.

20 Q. You have spent two years as assistant chief of the
21 defence staff for defence policy in the Ministry of
22 Defence, before taking up appointment as the
23 United Kingdom chief of joint operations, the "CJO", as
24 it is known.

25 A. That is correct.

1 Q. You were CJO -- just to get the dates correct -- you
2 tell us between August 2001 and 23 July 2004.

3 A. That is correct.

4 Q. Can we have a look, please, at paragraph 5 of your
5 statement to this Inquiry at BMI08247? You say that you
6 were appointed as the CJO on the dates that I have
7 outlined and, as the CJO and joint commander, you
8 commanded and were responsible for the planning and
9 execution of joint operations abroad. From PJHQ in
10 Northwood you exercised operational command of UK
11 operations in Iraq, but, as you stress in your
12 statement, amongst a number of other places. You also
13 held operational command of British forces in five
14 permanent joint operating bases, which you there set
15 out.

16 Then, in paragraph 6, you tell us your role as
17 assigned to Op Telic.

18 "... CJO and joint commander of UK forces ...
19 responsible for planning and advising the chiefs of
20 staffs and ministers on the conduct of military
21 operations in Iraq."

22 You exercised operational command of UK forces when
23 major combat operations began in March 2003, reporting
24 to the chief of the defence staff, but you were also, as
25 you say, responsible for informing the chiefs of staff

1 committee and ministers. That is something which was
2 done more frequently and, you tell us, by video
3 conferencing during the war phase itself.

4 A. That is correct.

5 Q. Thank you. You go on in paragraphs 7 and 8 to deal with
6 the elements, if you like, of command. You deal with
7 "full command" in paragraph 7 and "operational command",
8 which, in the middle of that paragraph, you describe as
9 "the authority delegated to a commander to assign
10 missions or tasks to subordinate commanders". You say:

11 " 'Operational control' is the authority to direct
12 assigned forces to accomplish specific missions or tasks
13 assigned within an area of operations. 'Tactical
14 control' is the detailed direction and control of troops
15 in order to achieve assigned missions or tasks."

16 I think, although it is now perhaps some months ago,
17 the Inquiry had heard these terms being used earlier in
18 the Inquiry.

19 Can I check this, please, in paragraph 8? You say:

20 "In relation to Op Telic, I exercised operational
21 command of forces on the operation. Full command of
22 forces remains with the commanders-in-chief of the
23 individual services. They retain responsibility for
24 training and the discipline of the soldiers, sailors and
25 airmen that deploy on operations. Operational [the word

1 that is used in this paragraph is 'command'] ... of all
2 coalition forces, including UK troops, is exercised by
3 the commander of coalition forces, who was
4 a US general."

5 Is that correct?

6 A. Yes. You have the ability to delegate downwards or
7 sideways, particularly with a coalition operation.

8 A coalition operation -- we retain a UK chain of command
9 into the operation and clearly I was overseeing that UK
10 chain of command to ensure that the US general that had
11 been delegated did not move outside of parameters that
12 we had agreed.

13 Q. I follow. It may not matter tuppence, if I dare say so,
14 from the point of view of this Inquiry, but I just
15 wanted to be sure of what you meant.

16 It is right, isn't it, that you visited theatre in
17 Iraq from the time of the conflict on a once-monthly
18 basis.

19 A. On about a monthly basis, yes.

20 Q. Could we have MOD030335 on the screen, please? Your
21 name is in the left-hand column. It sets out the
22 command structure; is that right? You comment on that
23 in your statement and we there see it, as it were,
24 graphically: Air Marshal Brian Burridge answerable to
25 you; you to Admiral Sir Michael Boyce, the chief of the

1 defence staff, later replaced by Sir General Michael
2 Walker; and through him to the Secretary of State,
3 Geoff Hoon.

4 A. Correct.

5 THE CHAIRMAN: That means, does it, looking at this graph,
6 that the United Kingdom maritime component command and
7 the ones that precede, looking at the page to the left,
8 all come under your command?

9 A. Yes, all the components through Brian Burridge came
10 under my command.

11 THE CHAIRMAN: Again, I am sorry to interrupt, but I would
12 just like to get this clear in my own mind: the National
13 Contingent Command with Air Marshal Burridge, that was,
14 as I understand it from your statement, an offshoot from
15 the PJHQ just for the purposes of the war-fighting
16 phase, is that right, or do I have that wrong?

17 A. I used the UK Joint Force Headquarters, which is an
18 offshoot of PJHQ, and that was reinforced to give him
19 the functionality he needed to carry out his command in
20 theatre.

21 THE CHAIRMAN: Right. I think at one stage in your
22 statement you called it the "joint force HQ". Is that
23 right?

24 A. The Joint Force Headquarters is the deployable piece
25 from the PJHQ.

1 THE CHAIRMAN: Thank you. And it was in Qatar --

2 A. It was in Qatar, co-located in the same compound with

3 General Franks and his headquarters CENTCOM Forward.

4 THE CHAIRMAN: The war-fighting phase, when it ended, it

5 came back and was subsumed into PJHQ again; is that

6 right?

7 A. The JFHQ returned to the UK after the war-fighting

8 phase.

9 THE CHAIRMAN: Thank you very much.

10 A. Thank you.

11 MR ELIAS: You set out what I think we see in that and some

12 other chain of command graphics in paragraphs 10 and 11

13 of your statement. I don't need to trouble you with

14 that. Could we look, please, at paragraph 12 at

15 BMI08250, where you tell the Inquiry that you worked

16 very closely with Air Marshal Brian Burridge, speaking

17 to him on a daily basis.

18 A. That is correct.

19 Q. You refer to the fact that, initially anyway, it seems

20 to have been targets that were the early issues,

21 I suppose.

22 A. They were very much an issue because we were influencing

23 the Americans to, shall we say, use restraint.

24 Q. I will come back, if I may, to Iraq in just a moment or

25 so.

1 May I just break off to ask you a little about
2 hooding? You had experience, as we have seen, in
3 Northern Ireland. You deployed there, you tell us in
4 your statement, in about 1976. Were hoods then used on
5 prisoners?

6 A. I was working at that stage in Springfield Road Police
7 Station and by that stage the police had primacy.
8 I don't believe hooding was used other than for moving
9 prisoners through the building -- when I say
10 "prisoners", "detainees" -- through the building,
11 because, of course, if the IRA had been able to get the
12 layout of the building, we would have had a serious
13 problem. So for security purposes hooding was used
14 then, but not for any other purpose.

15 Q. In paragraph 16 of your statement to the Inquiry at
16 BMI08251, please, you will see in the middle of the
17 paragraph, having said that hoods were used for the
18 purpose of moving a prisoner, what I might call security
19 reasons, you go on to say:

20 "I remember that this was the only purpose for which
21 the hoods were used and that no distinction was made
22 between using a hood or any other methods to deprive an
23 individual of their sight."

24 It was the only reason, was it, that you recall in
25 Northern Ireland?

1 A. Yes, just for security.

2 Q. When you say "no distinction was made between using
3 a hood or any other methods to deprive an individual of
4 their sight", did you see any other methods adopted in
5 Northern Ireland?

6 A. No, because we had sandbags -- because at that time we
7 were still using sandbag emplacements, so it was the
8 easiest way of them not being able to see.

9 Q. Now in paragraph 17 you begin the paragraph by saying
10 that you weren't aware of the Heath ruling and you
11 hadn't seen the directive from the Cabinet Office, which
12 now the Inquiry has seen many times -- I will not put it
13 up -- you had not seen that document from 1972.

14 A. I hadn't seen it.

15 Q. Plainly you were in the army before Heath and for some
16 years before Heath. Does it follow, General, that you
17 would not have heard anything specifically about the
18 Heath ruling when you were in the army?

19 A. I had never heard anything about it at all.

20 Q. So, what, your first knowledge of it as a document, if
21 you like, was in preparation for this Inquiry?

22 A. Yes. Correct.

23 Q. Having regard to the fact that it appears to be
24 a document which deals with the question of hooding and
25 indeed bans it for the purposes of interrogation anyway,

1 do you find it surprising now that you were not aware of
2 that at any stage in your army career?

3 A. Yes, I do. But I would ask -- if I could perhaps just
4 say was it just relevant, though, to Northern Ireland
5 rather than operations generally?

6 Q. Well, you are beginning to answer a question I was going
7 to ask you. Was that an impression that you had
8 about --

9 A. As I say, I didn't know about it so I had no impression.

10 Q. You go on to say, you see, in paragraph 17 -- perhaps we
11 just need to clarify what you mean by this:

12 "... I am aware of the changes that this directive
13 introduced in the 1970s (and I was aware of them at the
14 time)."

15 I have understood that -- correct me if I am
16 wrong -- to mean that you were aware of some change of
17 policy in this area at the time, the early 1970s.

18 A. Yes, I, in 1970, did a resistance to interrogation
19 course, where I was subjected to hooding, white noise
20 and various other techniques and I know that that
21 stopped. That -- I made an assumption that now, having
22 seen that document, that that document caused that
23 change.

24 Q. So would you have been aware in the early 1970s that
25 hooding for the purposes of interrogation at least --

1 and I underline the last words -- was banned?

2 A. In the early 1970s I was a platoon commander, bottom of
3 the military food chain, so to speak, and certainly we
4 weren't using hooding.

5 Q. But it sounds as though the answer to my question is you
6 may not have been aware that it had actually been
7 banned.

8 A. I was not aware of any policy that had been set.

9 Q. Thank you.

10 Now you go on in paragraph 18, if we could look at
11 that, please, to say this to the Inquiry:

12 "If I had been aware that hooding for the purposes
13 of interrogation, stress positions, white noise and/or
14 the deprivation of food, water and/or sleep were being
15 used in 2003, I would have ordered this to cease
16 immediately."

17 So hooding for the purposes of interrogation or
18 indeed any of the other so-called conditioning
19 techniques -- I put that in shorthand -- if you had been
20 aware that any of those were being used in 2003, you
21 would have ordered them to cease immediately?

22 A. Correct.

23 Q. Why?

24 A. Because I had understood after -- I mentioned the
25 tactical questioning course I did and that had been

1 stopped, that this was no longer policy. And I also
2 knew that to be able to interrogate or tactically
3 question somebody, you actually need to look them in the
4 eyes because you have to develop a rapport with them.

5 Q. So did you also have some understanding or belief that
6 the ban on hooding related to hooding whilst questioning
7 was going on?

8 A. Yes.

9 Q. You didn't understand that it actually related to the
10 process leading up to questioning that hooding should
11 not take place?

12 A. As I say, my understanding was hooding can be used for
13 security reasons and no other.

14 Q. You go on, as we can see in paragraph 18, to say this:
15 "... if prior to my order in October 2003 [which of
16 course we will come to] ... I had seen a prisoner
17 hooded, I would not have ordered the hood to be removed
18 if the prisoner was being transported and the hood was
19 being used for security purposes only."

20 A. Correct.

21 Q. So your position in October 2003 would have been hooding
22 for security reasons was permissible?

23 A. Was acceptable and my understanding was that under the
24 Geneva Convention it is.

25 Q. Would you have considered at the time, in 2003, whether

1 hooding for whatever purpose was humane?

2 A. I would have considered that we would be humane and we
3 needed to use hoods for security purposes.

4 Q. That's perhaps to put, as the Inquiry has now heard from
5 quite a number of witnesses, the two sometimes competing
6 issues together, isn't it, the need to hood for security
7 purposes and the need to be humane?

8 A. There is much more to being humane than somebody
9 temporarily deprived of vision.

10 Q. Of course. But when you use the word "temporarily", you
11 are already putting, as it were, some condition on the
12 use of hoods, aren't you?

13 A. That is correct.

14 Q. So was a hood being used for security purposes in any
15 way, in your view, tempered in order to make it continue
16 to be humane?

17 A. I don't understand the question.

18 Q. Well, for example, would there have been any time limit
19 that should have been put on the wearing of hoods for
20 security reasons or could a hood be legitimately kept on
21 a prisoner for as long as the security operation
22 required it?

23 A. No, the hood should only be kept -- and I think
24 I mentioned it in my statement -- should only be while
25 the prisoner is being moved from one location to

1 another.

2 Q. So, in your view, would hooding for hours have been
3 justifiable?

4 A. No.

5 Q. But hooding for minutes might be?

6 A. Yes.

7 Q. Did you consider or would you have considered -- you are
8 saying in this paragraph what you would have thought if
9 you saw -- would you have considered that prisoners
10 being hooded might need regular checking, for example,
11 lest there were any health issues involved in hooding
12 them?

13 A. Yes, they should have been. It was the responsibility
14 of those in authority in the units involved to do that.

15 Q. So putting it broadly, you would have appreciated, would
16 you, that there were what I might call health and safety
17 issues involved in hooding as well which would have to
18 be looked out for?

19 A. Absolutely.

20 Q. Just to complete the picture, if we look at
21 paragraph 19, throughout your army career you say you
22 have been aware of the requirement to act in accordance
23 with the Geneva Conventions and the law of armed
24 conflict.

25 A. That is correct.

1 Q. As many witnesses have told the Inquiry now, you would
2 confirm, would you, that your training, from basic
3 soldier up to the top, would have instilled the
4 necessity for humane treatment of all prisoners?

5 A. That is correct, and there is an army training directive
6 whereby one has to go through a period of being taught
7 that again every year.

8 THE CHAIRMAN: Generals as well?

9 A. Generals as well.

10 MR ELIAS: You tell us in your statement that you delegated
11 responsibility for prisoner handling to the in-theatre
12 commander. That is right, is it?

13 A. That is correct. And I don't see it on the screen, but
14 I --

15 Q. Forgive me --

16 A. -- but I did in my directive --

17 Q. Forgive me, paragraph 14, please, at BMI08251. You were
18 asked by the Inquiry if you could identify the
19 postholders within PJHQ who had input or responsibility
20 for prisoner-handling issues.

21 A. Yes.

22 Q. You refer to ACOS J1:

23 "[Apart from] ... ACOS J1, I am unsure who, or what
24 branches, had responsibility for such issues in the
25 campaign preparations or when prisoner abuse allegations

1 became prominent in May 2003. During Op Telic 1,
2 I delegated responsibility for prisoner handling to the
3 in-theatre commander, AM Burridge, who delegated it
4 onwards."

5 A. The delegation of authority is also a delegation of
6 responsibility.

7 Q. So does that mean, so we understand that, that, as it
8 were, having delegated it -- and I don't mean this in
9 any derogatory way -- you could wash your hands of it?

10 A. No, I still have a responsibility to monitor down my own
11 chain of command.

12 Q. So "monitoring" means what in this context?

13 A. Again, I don't understand the question.

14 Q. Well, you say you had a responsibility to monitor.
15 What, in practice, did that mean?

16 A. That means that I go and visit in the theatre, I see
17 what's going on, and then, if I see something not going
18 well, I will talk to the commander involved and get it
19 adjusted. Clearly I also read all the reports that come
20 up the chain to me from the chain of command.

21 THE CHAIRMAN: I am sorry again to interrupt, but just -- it
22 is not strictly relevant, but at page BMI08250,
23 paragraph 11, you set out the various J1, J2, J3. What
24 is the generic term for those? Is it a "branch" or is
25 it a --

1 A. Yes, they are branches. They are what's called
2 "J branches" which represents "joint" -- the "J" is for
3 "joint" -- and I have listed what they are there.

4 THE CHAIRMAN: I follow. But the right term is a "branch",
5 is it?

6 A. A branch, yes.

7 THE CHAIRMAN: Thank you.

8 MR ELIAS: Just staying with hooding, if we may, just for
9 a little while longer, the Inquiry has heard now quite
10 a lot of evidence of debate in theatre in the spring of
11 2003 as to the rights and wrongs of the use of hooding,
12 its legality or otherwise. Were you aware of such
13 debates taking place --

14 A. No, I wasn't.

15 Q. -- at the time?

16 A. And when I went into theatre nobody had raised it with
17 me.

18 Q. You say in paragraph 30 -- perhaps we should have that
19 on the screen, please, at BMI08256 -- that before
20 Baha Mousa's death, you don't remember any concerns
21 being raised in relation to prisoner handling.

22 A. Correct.

23 Q. So you weren't aware of any issue, if it were reported
24 to the minister's private office, of any complaint by
25 the ICRC, for example?

1 A. I was not aware.

2 Q. You were aware, you tell us in paragraph 31 -- if we can
3 just have that please -- that ICRC visited theatre.

4 A. Yes, I am well aware of that. In fact I directed that
5 our temporary holding facility should take advice from
6 ICRC in how we set it up.

7 Q. But you were not aware at any stage -- at least before
8 the death of Baha Mousa -- of any complaints that ICRC
9 had made?

10 A. No, I wasn't.

11 Q. Again, if that were a complaint dealing with the abuse
12 of prisoners or their ill-treatment, for example by
13 being left hooded for hours, is that something that you
14 would have expected to have learnt about?

15 A. If it had been a written complaint, I certainly would
16 have seen it.

17 Q. Why do you draw the distinction, so we understand it,
18 between the written and the oral complaint?

19 A. Because I have worked with the ICRC myself at various
20 times and they normally go to the in-theatre commander
21 and discuss problems with him so he can rectify them.

22 Q. The Inquiry has heard evidence -- as I think you will be
23 aware -- of Major General Brims' order, perhaps of
24 3 April, banning hooding in theatre. You tell us in
25 your statement that you were not aware of that and

1 indeed not aware of it -- and we will look at the detail
2 in due course -- at the time that you made your order in
3 October 2003.

4 A. And that is correct.

5 Q. Had you understood, General, as many witnesses have now
6 told this Inquiry they did, that the hooding of
7 prisoners for security purposes was an SOP on the
8 ground?

9 A. Sorry?

10 Q. A standard operating procedure.

11 A. No, no, no, I know that, but where on the ground?

12 Q. In Iraq.

13 A. An SOP with -- I mean, each unit has its own SOPs.

14 Q. Yes. And the evidence to this Inquiry anyway is that so
15 far, for example, as 1 QLR were concerned, in many
16 cases -- it is not every witness -- soldiers arresting
17 detainees/internees, it was an SOP to hood the prisoner
18 at the point of capture frequently.

19 A. Right, I was not aware of that.

20 Q. Does it surprise you to learn that such was the case, if
21 indeed it were?

22 A. It does surprise me. As I said to you, my understanding
23 is it would only be used for security purposes.

24 Q. Well, I am putting to you on the basis that it was
25 an SOP said to be for security purposes and not for

1 other purposes.

2 A. Well, then it's interpretation of the SOP we are talking
3 about.

4 Q. If there had been an order by Major General Brims in
5 early April banning hooding in a situation where hooding
6 had been used quite extensively on the ground, again
7 isn't it surprising, as the CJO, that you had not heard
8 of such an order?

9 A. No, it is not surprising at all.

10 Q. Because ...?

11 A. At the end of the day, when we apply mission command,
12 I pass down the chain what I want achieved, what the
13 outcome should be and how they apply it, and how they do
14 that is entirely up to the subordinate commanders with
15 the resources they have been given. So, in this
16 particular case, with the NCC, with Brian Burrige
17 between me and him, I would not see any reason to have
18 known about it. It was within his remit to make
19 decisions.

20 Q. And if he made the decision you would not have expected
21 to learn of it?

22 A. No reason whatsoever.

23 Q. May I ask you, please, about a document that we find at
24 MOD049310. This is your directive, is that right, to
25 ComBritFor for HUMINT operations in support of UK forces

1 deployed on Op Telic?

2 A. Correct.

3 Q. We can see the date of 27 February 2003 in the top
4 right-hand side. We will just come back to that
5 document in a moment, but may we look, please, at what
6 you say about it at paragraphs 23 and 24? You say:

7 "The ... directive ... in support of UK forces ...
8 were staffed through the PJHQ branches. The HUMINT
9 directive was drafted by my (then) ACOS J2, Commodore
10 Chris Munns. I would have approved of this directive
11 before it was distributed."

12 That's right, is it?

13 A. That's correct.

14 Q. "The PJHQ guidance would also have been prepared for me,
15 by one of the staff branches, although I am unable to
16 say precisely who prepared this guidance. It was normal
17 procedure however for these documents to be sent to the
18 legal branch for clearance before they were
19 distributed."

20 At paragraph 24 you deal, don't you, with the
21 adequacy of the documents, as you put it.

22 A. Correct.

23 Q. "I believe that both are sufficient clear and that
24 interrogation, debriefing and prisoner handling and
25 tactical questioning operations were to be conducted in

1 lined with the Geneva Convention. The PJHQ guidance
2 refers to JWP 1-10, the Geneva Conventions and the law
3 of armed conflict. Neither of these documents reference
4 the 1972 directive [the Heath directive]. As to this,
5 I would comment that I did not know of the existence of
6 this document at the time, and that in any case, the
7 purpose of these documents [that is this directive,
8 is it?] was to define the concept of operations and
9 command and control arrangements for HUMINT operations
10 [redacted] ... supporting Op Telic, rather than to go
11 into the detail of how that responsibility would be
12 exercised."

13 A. That is correct.

14 Q. So how do you say that the detail of how that
15 responsibility would be exercised, getting down, if you
16 like to the soldier on the ground, would be determined
17 and cascaded?

18 A. This document was -- is related to C2X HUMINT and
19 interrogation is done by trained interrogators who have
20 done the course at Chicksands. Obviously they are
21 taught the relevant procedures that they have to adhere
22 to whilst they go through their training.

23 Q. What, and so their training would, as it were, cover the
24 way in which they should act on the ground?

25 A. I would expect so. It should influence their actions.

1 Q. If we just go back to look at the document again,
2 please, at MOD049310, under "Scope" halfway down the
3 page:

4 "This HUMINT directive gives formal direction to
5 ComBritFor for ... HUMINT operations (less special
6 forces) in support of UK forces deployed on Op Telic.
7 This directive is for planning purposes only. It draws
8 authority from reference A and should be read in
9 conjunction with reference B to F."

10 We see F is JWP 1-10, prisoner of war handling.

11 If we go through, please, to MOD049314, annex B, the
12 same date as we can see, the references are shown
13 as A, JWP 1-10, and then B, AJP 2.5.

14 Can I take you then particularly over the page to
15 what is paragraph 4(c). Forgive me, we should just go
16 back to the start of 4:

17 "Throughout the interrogation phase [captured
18 persons] shall be ..."

19 Then(c):

20 "Given no opportunity to observe sensitive and
21 critical activities, equipment and procedures involving
22 coalition or national forces."

23 That directive plainly implied, didn't it, that on
24 occasion there may be the need to deprive sight of
25 a prisoner?

1 A. For security reasons.

2 Q. Of course. That's what was implied by that.

3 A. Although there is more implied than that. What is
4 implied is that we should not be setting up, for
5 instance, a handling facility or whatever close to
6 sensitive -- other sites.

7 Q. Of course. There may be a number of ways in which the
8 opportunity could be denied, but one of them would
9 undoubtedly have involved, where necessary, deprivation
10 of sight.

11 A. For reasons of security.

12 Q. Yes.

13 So, what, if any, instruction did you envisage -- if
14 you did at all -- would be given, General, for those who
15 were tasked, as it were, with carrying out that
16 directive on the ground, depriving of sight in that
17 example?

18 A. I would have expected -- remembering that this was
19 HUMINT staff, I would have expected, with their
20 training, that they would interpret it in a very
21 sensible way and a human way.

22 Q. As to the actual detail of what they may or may not do,
23 for example if prisoners were to be hooded to deprive
24 them of sight, that it should be for the minimum period,
25 that there should be somebody tasked with ensuring that

1 the health and safety aspects were being looked after --

2 A. I would expect that, yes.

3 Q. -- who was to give that detail to those on the ground?

4 A. As I say, that -- Chicksands holds a responsibility for

5 policy and training for the handling -- for the

6 interrogation of prisoners.

7 Q. Certainly this directive, your directive, did not go

8 into that sort of detail.

9 A. And nor would it at the operational level because what

10 we are talking about is tactical activity.

11 Q. If we come back to your paragraph 24 of your statement,

12 at BMI08254, you say at the last four lines -- having

13 said "... rather than to go into the detail of how that

14 responsibility would be exercised", you then say this:

15 "UK armed forces work on the basis of the principle

16 of 'mission command' which meant that it was not for me

17 to set out every detail but rather the broad order."

18 Is that how you saw it?

19 A. Yes.

20 Q. "It was for those delegated the task, who had the

21 requisite in-depth knowledge, to fill in the detail."

22 A. That is correct.

23 Q. Could we have a look, please, at another document? We

24 find it at MOD041753, please. This is a document you

25 will see dated 21 July 1997. You tell us in the course

1 of your statement that this, amongst a number of other
2 documents, was a document that you do not believe you
3 had ever seen.

4 A. Correct.

5 Q. That's correct, is it?

6 A. Yes.

7 Q. "Policy for interrogation and related activities", you
8 see that at its head.

9 A. Yes.

10 Q. Then may I just take you to annex A, please, dated
11 21 July 1997, "Policy for interrogation and related
12 activities". Under (a):

13 "The UK's existing service interrogation capability
14 should continue to prepare and train in peace-time for
15 tasks involving the questioning of prisoners of war
16 during conventional operations ..."

17 Then at (d):

18 "Procedures used by UK interrogators in an
19 operational theatre should be governed by a detailed
20 directive that incorporates current legal advice and is
21 issued on behalf of the UK joint commander."

22 "Procedures used by UK interrogators in an
23 operational theatre should be governed by a detailed
24 directive ...", which this appears to suggest, in 1997,
25 should have been issued on your behalf.

1 A. Yes, but I have never seen this document. This document
2 is earlier than the formation of PJHQ and I would say
3 that my directives, when developed, were developed in
4 conjunction with the MoD. They saw the drafts. And
5 I would have expected that, if somebody was aware of
6 this, they would have raised the issue at the time and
7 we would have adjusted accordingly.

8 Q. That, of course, may well be so. But the fact remains,
9 does it, that no detailed directive incorporating
10 certainty legal advice for procedures used by those
11 questioning in theatre was indeed prepared by you, not
12 least because you didn't know about this?

13 A. I produced the detailed directive. What I didn't do was
14 give any reference to hooding.

15 Q. Forgive me, but are you telling the Inquiry that the
16 directive we just looked at was the detailed directive
17 which you think that that 1997 directive requires?

18 A. The HUMINT directive -- and that's why it is a separate
19 directive, I would think.

20 Q. Incorporating current legal advice?

21 A. Yes. Anything staffed in my headquarters at PJHQ had
22 a legal input into it.

23 Q. So you tell the Inquiry, do you, General, that the
24 directive that you issued, albeit that you didn't know
25 of this provision in annex A of the July 1997

1 directive -- that the directive that you issued in fact
2 complied, as it were, with what is set out in
3 sub-paragraph (d) there?

4 A. I would understand that it would comply. I don't know
5 whether it complied because I didn't know of the
6 directive.

7 Q. In relation to what are there said to be "procedures
8 used by UK interrogators", where do we find the
9 procedures in your directive? Do you want to go back to
10 that? Can we look at that document again, please, at
11 MOD049314, and over the page, please.

12 A. There is a heading, "Interrogation procedures".

13 Q. So categorised according to their assessed intelligence
14 value and then setting out the natures of categories, as
15 we can see they do. At 8 it says that the definitions
16 are only a broad guide. At 9:

17 "The timely interrogation and exploitation of
18 [prisoners] in category A and B is vital ..."

19 Nothing in this, you would agree, wouldn't you, in
20 relation to the use, for example, of hoods or indeed any
21 other techniques or indeed their prohibition?

22 A. I say it doesn't include anything to do with hoods, but
23 it does cover procedures.

24 Q. In your view that was adequate, was it?

25 A. In my opinion that was adequate, otherwise I wouldn't

1 have released it.

2 Q. May I move on then, please, to look at MOD052345? This
3 is the chief of the defence staff's directive to you in
4 respect of Op Telic; is that right?

5 A. I am just reading it. One second, please. Yes, this is
6 the execute directive.

7 Q. At paragraph 25 of your statement to the Inquiry, you
8 say this about the document -- BMI08254, please:

9 "These documents also all evidence the principle of
10 'mission command'. JWP 1-10 is referred to in the
11 documents in respect of how prisoners of war and
12 detainees are to be handled ..."

13 Indeed we can see that in the document, but I won't
14 trouble you to look at it with me.

15 "and I would not expect these documents to cover any
16 further detail as the detail will be developed further
17 by those who had more knowledge of the areas."

18 How would that detail in practice have been
19 developed further and handed down, General?

20 A. You are going to have to be more specific, please.

21 Q. Well, if there were to be detail along the lines of, to
22 take but one example, "Hoods may be used in
23 circumstances where operational security issues arise,
24 but in those circumstances only if there is nothing
25 else, only for the minimum period of time, only as long

1 as some health and safety checks are carried out and
2 matters of that kind", who was going to be responsible
3 for ensuring that the man on the ground, hooding, or the
4 commander of those who were hooding knew that there were
5 these strictures to be placed upon it?

6 A. The officers in the unit would have been trained and,
7 clearly from their training, they would be applying that
8 within their SOPs.

9 Q. That's what you would have assumed, is it?

10 A. Yes. I mean, if I may add, there are various levels in
11 the command chain, ranging from strategic through
12 operational down to tactical. Of course each level
13 focuses on its responsibilities within that level. So,
14 in this particular statement in this paragraph, the
15 chief of defence staff was looking at policy and the
16 strategic political and military interface. I was
17 looking at providing the support into the MoD and
18 obviously directing people below me, but with a mission
19 directive that was applying mission command. I would
20 not get into the tactical detail.

21 Q. Does it also follow -- and again this isn't by any means
22 a criticism of you -- that it was not, as you saw it,
23 your part to ensure that there was adequate written
24 doctrine to deal with the detail, as we have been
25 calling it?

1 A. I had no responsibility for doctrine whatsoever. There
2 is joint doctrine and the single services each have
3 their own subordinate doctrine from that, and clearly
4 that guides -- together with training -- the various
5 SOPs applied by formations and units.

6 Q. So if you look, please, at the document at MOD052847, we
7 find here, don't we, your directive to
8 Air Marshal Burridge?

9 A. That's correct.

10 Q. That is, as it were, passing on down the chain that
11 which has been passed through your hands. You refer in
12 your statement to the Inquiry to paragraph 18. Can we
13 have a look at that, please, at MOD052852, where under
14 the heading "Conduct of operations," you told
15 Air Marshal Burridge through this directive:

16 "All military operations by UK forces ... are to be
17 conducted in accordance with the UK's obligations under
18 the law of armed conflict ... and UK national law."

19 And specifically in relation to prisoners,
20 paragraph 25 over the page, please:

21 "PW and detainees. The processing of PWs and
22 detainees is to be in accord with the provisions of the
23 law of armed conflict. You have a legal liability to
24 acquaint yourself with the Geneva Conventions and
25 protocols and you are responsible for ensuring all

1 members of UK contingents and components comply with
2 them. Any prisoner of war and detainee handling by UK
3 forces is to be conducted strictly in accordance with
4 the provisions of JWP 1-10."

5 You tell us -- if we could have paragraph 26 and the
6 second half of it on the page, please -- at BMI08255,
7 the second half of paragraph 26, General, five or six
8 lines up from the bottom:

9 "This directive would have been staffed through all
10 branches at PJHQ, including legal. I do not recall any
11 particular concerns that arose through that process and
12 I am content that the directive is sufficient for the
13 purposes of which it was drafted, again having regard to
14 the principle of mission command."

15 So it would be fair to say, would it -- and you
16 would say no possible criticism of you -- that, having
17 regard to the principle of mission command, you were
18 giving the concept but not the detail?

19 A. Correct.

20 Q. And the detail was now a matter, amongst other things,
21 for Air Marshal Burrridge or for him to pass on down?

22 A. Again, correct.

23 Q. At paragraph 27 -- can I just try to take this quite
24 shortly -- you were referred by the Inquiry to guidance
25 provided to theatre by PJHQ in respect of the law of

1 armed conflict, prisoner handling, interrogation,
2 guarding and escorting of prisoners of war, detainees or
3 internees. You were referred to the four documents that
4 are there set out. You say this:

5 "in my view, these documents adequately set out the
6 guidance that applies to those areas that the Inquiry
7 has referred me to. In terms of who was responsible for
8 ensuring that the orders/guidance were implemented, this
9 fell to the various different levels within the chain of
10 command."

11 That is really to repeat the ground that we have
12 already covered, isn't it?

13 A. Correct.

14 Q. If in fact -- and perhaps will you take it from me if
15 you don't already know it -- those documents to which
16 you were referred do not refer to hooding in any shape
17 or form, its use or otherwise or the conditions in which
18 it may be used and do not refer, for example, to any
19 prohibition on the use of what are sometimes called "the
20 five techniques", the conditioning techniques with which
21 I think you will now be familiar, would you have
22 regarded that as being, nonetheless, adequate guidance?

23 A. I think here it is easy to look at things in hindsight
24 and I would say to you that if I knew what I know now,
25 I probably would have made sure those things were

1 inserted. But I didn't know that there was any practice
2 of those going on at the time and what I put in the
3 directive I considered adequate for what was required.

4 Q. Would this be a fair way of putting matters then? Had
5 you known that hooding, for example, was -- can I use
6 the word "quite extensive" because that, I think, is
7 a fair reflection of the evidence that the Inquiry has
8 heard, quite extensive on the ground -- you would agree,
9 would you, that it would have been desirable anyway that
10 further guidance in relation to the use of hoods and/or
11 the deprivation of sight should have been given?

12 A. Indeed, and I think that General Brims obviously
13 perceived that this was going on on the ground and
14 that's probably why he stopped hooding.

15 Q. Yes. Another document, if we may move on now, please.
16 It is at MOD053750. It is now 30 May 2003. I think you
17 say in your statement to the Inquiry that this was
18 a seminar which you remember.

19 A. Yes, I chaired it.

20 Q. You recall that the key lessons you say in your
21 statement to the Inquiry were in relation to logistics.

22 A. Correct.

23 Q. But I think you take issue, don't you -- can we go
24 through, please, to MOD053753, to the first full
25 paragraph under the redacted paragraphs, "PW handling":

1 "[Prisoner of war] handling was said to be
2 under-resourced ..." is the note from the meeting.

3 "The folk wisdom about needing a company per
4 500 prisoners of war had turned out to be surprisingly
5 accurate."

6 You say in your statement to this Inquiry that you
7 don't agree with the statement that prisoner of war
8 handling was under-resourced.

9 A. Correct. We got far fewer prisoners of war than we
10 needed and we actually had more than enough people to
11 cope with them.

12 Q. So does that comment of yours -- and perhaps we should
13 look at it at paragraph 33 of your statement to the
14 Inquiry at BMI08256:

15 "... I do not agree with the statement that
16 [prisoner of war] handling was under-resourced or that
17 one company for every 500 prisoners was required."

18 Two propositions there, as I understand it, with
19 which you are disagreeing with both.

20 A. I am disagreeing with both. My experience from the
21 Gulf War in 1991 was that actually three men could hold
22 500 prisoners.

23 Q. So prisoner of war handling was not under-resourced.
24 Again, so that the Inquiry understands your evidence
25 about this, are you saying that it was not

1 under-resourced at any stage through the fighting phase,
2 through the so-called peace-keeping stage?

3 A. Correct.

4 Q. Further, you disagree with the proposition that one
5 company was required for every 500 prisoners.

6 A. As I say, my experience in the first Gulf War was we
7 needed far less.

8 Q. And in planning, what arrangements would you have made
9 for every 500 prisoners, since that's the scale, as it
10 were, that is adopted here?

11 A. I can't remember the figures now, but we had worked out
12 a figure and we got the resources that were required for
13 it.

14 Q. May I just make a slight diversion while we are looking
15 at the question of resources obliquely anyway? Are you
16 able to help the Inquiry -- and of course you will say
17 if you can't -- as to the level of drawdown of forces as
18 between, let's say, the fighting phase in March 2003 and
19 perhaps July or August of 2003, the percentage of force
20 that was in Iraq in July compared to that which was
21 there in March?

22 A. In that period the UK -- in fact it took slightly longer
23 than that, but the intent was to bring the UK commitment
24 in Iraq down from a division to a reinforced brigade.
25 But at the same time we were bringing in other nations

1 with us, including the Italians and the Danes and
2 various others.

3 Q. Tell me if you can't, obviously, answer the question.
4 In terms of the reduction in British forces -- you say
5 it took long rather longer than going through to
6 July/August -- in terms of the reduction in round
7 percentage terms, can you indicate what was the
8 proportion of British forces still in Iraq in, say,
9 September, compared to those who had been there in
10 March?

11 A. I would think that we were down to about half the level
12 that we had been when we actually went in on the combat
13 phase.

14 THE CHAIRMAN: What was the level you went in on the combat
15 phase?

16 A. We -- all up, including air and maritime, we were just
17 under 47,000.

18 THE CHAIRMAN: And on land, how much would that have been?

19 A. I would have said two-thirds of that was land.

20 THE CHAIRMAN: Was it primarily the land force that was
21 reduced or were the other forces reduced?

22 A. The maritime reduced dramatically, as did the air, very,
23 very quickly. The land force -- of course moving those
24 formations took much longer.

25 THE CHAIRMAN: Yes. Again, a question no doubt of no huge

1 relevance, but I would like to know the answer. The
2 1st Division was known as "1 (UK) Division"; is that
3 right?

4 A. Correct.

5 THE CHAIRMAN: 3rd Division became, did it, "3 Division
6 Multinational (South-East)" --

7 A. Correct.

8 THE CHAIRMAN: -- to indicate that you had taken in other
9 forces --

10 A. Absolutely.

11 THE CHAIRMAN: -- and it was in control of the south-eastern
12 area?

13 A. Part of the country, correct.

14 THE CHAIRMAN: Thank you.

15 A. And, of course, within that headquarters we took
16 international staff as well, mixed in with our own.

17 THE CHAIRMAN: All right.

18 MR ELIAS: Just coming back for one moment, please, to the
19 "lessons learnt" meeting and two other aspects of it, if
20 you can help, at MOD053753. That paragraph, the very
21 top paragraph with some of the redactions in it, just
22 below the redaction do you see the sentence reporting
23 "Medical record-keeping was poor, yet again"? Do you
24 have any recollection of that matter being raised at
25 this meeting?

1 A. The meeting was a very wide-ranging meeting. We were
2 using it to take opinion from individuals. This
3 particular document has no status. It was a personal
4 document written to a superior in the MoD by somebody
5 who attended the meeting. We went through in some
6 detail to confirm or otherwise the statements made by
7 individuals and then we issued a formal "lessons
8 identified" document later.

9 Q. I follow. Do you have any recollection --

10 A. And I don't have any recollection of that particular
11 statement.

12 Q. What you are telling us is it might have been raised by
13 one person, for example.

14 A. Correct.

15 Q. Then, lest it does trigger anything, towards the foot of
16 the page, please, immediately above the redaction at the
17 bottom:

18 "Doctrine is becoming too voluminous and
19 prescriptive, but we did learn from history..."

20 "Doctrine is becoming too voluminous and
21 prescriptive ...", do you recall anything of that kind
22 being discussed at the meeting?

23 A. I have an adage that "Doctrine is for the guidance of
24 wise men and the adherence of fools". The key is read
25 the doctrine and then put it away and apply it to the

1 realities on the ground.

2 Q. Can we come then, please, to your order of October 2003
3 at MOD020274? It is from you to Major General Lamb,
4 then commander of MND(SE), dated October 2003. I just
5 want to run through some parts of this, please.

6 "During the Op Telic combat phase, the hooding of
7 prisoners of war, internees and detainees by UK military
8 attracted the attention of the international media and
9 the ICRC. The adverse comments prompted an examination
10 of long-standing standard practices by UK forces in
11 prisoner handling."

12 Were you there referring to hooding as

13 "long-standing standard practices"?

14 A. Yes, because I investigated after this incident and that
15 was the information that was brought back to me.

16 Q. I understand.

17 "Subsequently, legal advice was for the practice of
18 hooding to stop. The recent events have again focused
19 attention on the standards and practices employed by our
20 forces when apprehending Iraqi civilians and I believe
21 further clarification is now required."

22 You then go to refer to the Baha Mousa case, don't
23 you?

24 "It appears hooding may be a re-emerging procedure."

25 Again, that is, what, something that you would have

1 been told when you made inquiry?

2 A. That is what I was told.

3 Q. "This is to stop and you are to direct all under your
4 command to immediately cease the hooding of persons
5 detained."

6 Was that an intention that it should be stopped for
7 all purposes, as it were?

8 A. I did it -- in the last sentence you will see that
9 I said they could blindfold detained personnel in the
10 circumstances listed above.

11 Q. But not hood?

12 A. We, at this stage, decided it would be better not to
13 hood at all.

14 Q. What was the rationale for not hooding at all at this
15 stage?

16 A. Because I believed that we could achieve the same in
17 terms of security without putting a hood over somebody.

18 Q. What were, if you like, the downsides of putting a hood
19 on somebody?

20 A. Sorry, I don't know what you mean.

21 Q. Why was it that you wished now to bring in blindfolding
22 as opposed to hooding?

23 A. Because of the adverse publicity we had been getting
24 with hooding and we could do it in another way.

25 Q. So was it really solely the adverse publicity that

1 hooding generated or were there other considerations?

2 A. No, I asked the purpose of why we were hooding and I was
3 told that we were hooding for security purposes, and
4 I said "Are there other ways that this can be done?"
5 They came back and said, "Yes, we could use blanked-out
6 goggles or blindfolds", and I said, "Well, let's do
7 that".

8 Q. Do I understand your evidence to be that the reason that
9 you did that was because of the adverse publicity that
10 hooding had generated?

11 A. Indeed, because, of course, hooding for security
12 purposes was still legal, but I personally decided that
13 we could do it in a better way.

14 Q. So, as you go on to say:

15 "Notwithstanding this direction, I am advised that
16 blindfolding is an acceptable alternative and accept
17 this advice on the basis that it is used only to offer
18 security for our own forces and locations ... protection
19 to the detained personnel (through prevention of
20 identification by other detainees).

21 "Thus you should instruct those under your command
22 that they may blindfold detained personnel in the
23 circumstances listed above. This should only be used
24 for the minimum period necessary ..."

25 Was that on some advice or your own judgment?

1 A. That was my own judgment.

2 Q. Over the page:

3 "... and medical personnel should regularly assess

4 the physical condition of the blindfolded, detained

5 personnel."

6 A. Correct.

7 Q. Again on some medical or other advice?

8 A. I believe that that advice was already extant.

9 Q. What, that, there should be medical examination of any

10 prisoner whose sight had been deprived over a period?

11 A. Any detained person.

12 Q. Did you understand that depriving sight might

13 disorientate?

14 A. I'm sorry?

15 Q. Did you understand that depriving a prisoner of his

16 sight might disorientate him?

17 A. I don't think that is relevant to this letter.

18 Q. Forgive me?

19 A. I wasn't trying to deprive sight to disorientate

20 anybody.

21 Q. No, I am not asking you that question, whether you were

22 trying to. I am asking whether you understood that that

23 might be a consequence.

24 A. If you lose a sense, then there will always be a degree

25 of disorientation.

1 Q. I am simply asking, General, whether the reason for, as
2 you set it down here, regularly assessing the physical
3 condition might have been, for example, because it would
4 have been perfectly apparent to anyone who thought
5 about it that depriving someone of sight might, for
6 example, disorientate them and require them to be
7 medically examined from time to time. Is that one of
8 the things that you would have had in your mind?

9 A. No, I had the advice that we were meant to medically
10 examine detainees and keep regular checks on them.

11 Q. You seem to be suggesting in this document, that medical
12 personnel should regularly assess the physical condition
13 of the blindfolded detained personnel. I am not
14 suggesting that others might not also have been
15 medically examined, but what was the purpose of
16 medically examining the physical condition on a regular
17 basis of blindfolded personnel?

18 A. I was just applying a common rule to this particular
19 letter.

20 Q. Then you say in the last paragraph -- I just take you to
21 that please:

22 "In light of our experiences during Op Telic, I feel
23 we need to examine our doctrine and review the training
24 of our forces with regard to prisoner of war and
25 detainee handling."

1 You were there raising the issue, were you, of the
2 need to examine the written doctrine and also to review
3 training?

4 A. Correct.

5 Q. "The responsibility for both lies with CDI and I have
6 written to him explaining the current situation and
7 asking that he reviews them. I enclose a copy of my
8 letter."

9 THE CHAIRMAN: "CDI" is ...?

10 A. "Chief of defence intelligence", Sir.

11 THE CHAIRMAN: Thank you.

12 MR ELIAS: At paragraph 37, in relation to that document,
13 General -- we are coming towards the end of what I have
14 to ask you -- you say:

15 "I have reviewed my letter to Major General Lamb.
16 I do not recall now to whom I spoke in drafting the
17 letter but I would expect to have been briefed by my
18 ACOS J1. It is also clear to me that I had advice from
19 the legal team in relation to blindfolding. I decided
20 to order the cessation of all hooding as it had become
21 particularly emotive in the light of the death of
22 Baha Mousa. In any event, given the change in the
23 nature of operations, the security reason for hooding
24 prisoners had, for the most part, fallen away ..."

25 What had been the security reason which had, for the

1 most part, fallen away, do you recall?

2 A. We were no longer at war.

3 Q. So that applied in your view, did it, from, as it were,
4 the end of the war-fighting phase?

5 A. The end of the combat phase.

6 Q. It would then be difficult thereafter to justify any
7 security implications?

8 A. It would depend on the individual prisoner. Clearly if
9 they were directly involved in a terrorist-like
10 incident, then one would have to look at them more in
11 line with the Geneva Convention as a prisoner of war,
12 but a large proportion at this stage were just
13 criminals.

14 Q. You go on to say in this paragraph:

15 "If prisoners needed to be deprived of their sight,
16 either for our force security or for the protection of
17 the detained person, this could be done by way of
18 blindfolding."

19 It follows, does it, when you gave your order in
20 October 2003, that you must have been satisfied by what
21 you were told, that it was practicable, as it were, to
22 blindfold; there was no practical reason why it couldn't
23 be done?

24 A. That is correct and I specifically asked the question
25 before I made the decision.

1 Q. I will be corrected if I am wrong -- but again I will
2 try to take this shortly -- it is right, isn't it, that
3 the order that you gave in October 2003 related to Iraq
4 alone at that stage?

5 A. Yes, although I then applied it to other theatres as
6 well.

7 Q. I think that occurred in May 2004 or thereabouts.

8 A. Yes.

9 Q. Do you know why there was such a time lag, as it were?

10 A. I can't recall now. I think it was an oversight and
11 then I spotted that we hadn't done it.

12 Q. Can we look, please, MOD054028. We are now into
13 May 2004, when you may recall that the issue of prisoner
14 abuse, so-called, and hooding and matters of that kind
15 were now in the press.

16 It is from the Secretary of State, sent to you, as
17 we see at the top of the page.

18 A. Yes, I see.

19 Q. "Iraq -- policy on 'hooding' prisoners", dated 10 May
20 2004:

21 "As a follow-up to today's statement in the House of
22 Commons, the Secretary of State is keen to understand
23 the current position on the use of 'hooding' as
24 an interrogation technique. There are two specific
25 areas ..."

1 Then at 2:

2 "Firstly, for CJO, what was the policy that was in
3 place at the commencement of Op Telic, when the policy
4 was changed, what new instructions were issued, and what
5 the current policy is (if different). Secondly, Mr Hoon
6 is interested to know what the current training policy
7 is ..."

8 If we go through, please, to MOD052687, we there see
9 a memo, don't we, from Mr Baldwin, which you tell the
10 Inquiry in your statement you would have seen, which is
11 dealing with the query that has been raised and you are
12 copied into it, aren't you?

13 A. Yes.

14 Q. Where it says:

15 "... [the] reference for the current training policy
16 on the use of hooding as an interrogation technique.

17 "2. The only formal courses in respect of prisoner
18 handling, tactical questioning and interrogation are
19 undertaken at the Defence Intelligence and Security
20 Centre ... All personnel attending these courses are
21 explicitly taught that the use of hooding is
22 unacceptable as an interrogation technique and
23 potentially harmful to the health of the detainee."

24 You tell the Inquiry in your statement that that is
25 the position as you would have understood it at the

1 time; is that right?

2 A. Could you show me where in my statement, please, I said
3 this?

4 Q. Yes. Could we look, please, at BMI08259? At the very
5 top of the page, do you see the reference at the very
6 first line, looking at the document dated 11 May,
7 MOD052687, the document we have just looked at:

8 "... in response to the APS/Secretary of State and
9 I agree with its contents."

10 A. Yes, thank you.

11 Q. So you agreed -- just looking at the very last line of
12 the document itself, "potentially harmful to the health
13 of the detainee", you would have understood that, would
14 you?

15 A. Yes, because post the incident I understood that.

16 Q. So, if you like, that's what Baha Mousa brought out to
17 you?

18 A. Yes.

19 Q. Can we look, please, at MOD051973, please? This is a
20 memo dated 12 May. Again you are copied into it, aren't
21 you? "... questions on the handling of combatants and
22 non-combatants".

23 There is a reference in paragraph 1 to the questions
24 that have already been asked, advice on two specific
25 points, training and the dissemination of guidance.

1 "The latter of these falls to PJHQ to answer."

2 Then this:

3 "CJO's mission directive to the UK component
4 commanders for Operation Telic contains direction on the
5 handling of prisoners of war, detainees and internees.
6 This states that the processing of these categories of
7 people is to be in accordance with the law of armed
8 conflict. It informs component commanders that they
9 have a legal liability to acquaint themselves with the
10 relevant provisions of the Hague regulations and
11 Geneva Conventions and protocols and ensuring that
12 forces under their command comply with them.

13 Then, over the page -- and you will see this is
14 under the hand of Richard Johnson -- you say that you
15 would have seen this response as effectively it is being
16 made on your behalf; is that right?

17 A. Correct.

18 Q. At 3:

19 "A reference document to the CJO directive is
20 deployed operating instruction 005 in respect of
21 prisoner of war handling, and this in turn refers to
22 JWP 1-10. Hooding is not mentioned in any of these
23 documents."

24 Then in brackets and in handwriting:

25 "VCOS [the vice chief of the defence staff] is

1 pursuing the issue of doctrinal guidance on hooding."

2 If you had seen that, as you say you had, General,
3 that would have been flagging up again, would it, the
4 matter that you referred to in the document we looked at
5 a few minutes ago now, that perhaps there was some
6 question about whether doctrinal guidance was adequate?

7 A. I think by this stage I had already written to
8 General Ridgway.

9 Q. We are going to look at that in a moment.

10 A. Okay.

11 Q. But you were aware at this stage, certainly, that the
12 question of doctrine was something that at least needed
13 to be looked at?

14 A. Doctrine and training.

15 Q. If we look, please, at your letter to Colonel Ridgway.
16 We find it at MOD022203, 24 October 2003, so we are
17 going back now seven or eight months, aren't we, from
18 documents we were looking at?

19 "The need to review UK military doctrine and
20 practice for prisoner handling, tactical questioning and
21 interrogation."

22 You refer in the first paragraph to something you
23 say before.

24 "... the hooding ... [had] attracted the attention
25 of the international media and the ICRC and brought

1 with it some adverse criticism. I might add that during
2 Op Telic 2, our forces adopted different practices.
3 Some units hooded [prisoners of war] as a matter of
4 routine, whilst others were more selective."

5 Again we should understand that this would have been
6 something you had been told from inquiries that you
7 made?

8 A. Exactly. This letter was written at exactly the same
9 time as I wrote to General Lamb on the same basis, this
10 one going up the chain of command to obviously look to
11 make sure that we did have our doctrine and training
12 right and the other one giving clear direction down the
13 chain of command.

14 Q. Giving the order that it should stop?

15 A. Indeed.

16 Q. This one goes on:

17 "Once this practice was exposed, legal advice at the
18 time was that the practice should stop."

19 Again, that would have been something you were told,
20 would it?

21 A. Yes.

22 Q. "Recent events and some apparent re-emergence in the use
23 of hooding have prompted me to stop this practice on
24 anyone detained by British forces. However, I have
25 accepted that blindfolding is an acceptable alternative

1 to hooding, but on the basis that it be used only to
2 offer:

3 "(a) Security.

4 "(b) Protection to the detained personnel ...", as
5 we saw in your order.

6 "This change should protect the rights of detainees
7 also; and it ... protects our troops from accusations of
8 breaching Geneva Conventions 3 and 4.

9 "Clearly we need to address our prisoner handling
10 techniques and I believe it would be appropriate to
11 review both our doctrine and training, in order to
12 ensure compliance with obligations under current
13 international law. I believe that the responsibility
14 for this lies with you ..."

15 You were writing to Major General Ridgway.

16 A. Correct.

17 Q. "... and I would be grateful if you could take
18 appropriate action."

19 We see his response. It has now moved to
20 27 November:

21 "Thank you for your letter in which you highlight
22 your concerns regarding the media impact surrounding
23 poor Prisoner Handling procedures. I share your
24 concerns and if we are to avoid further adverse
25 allegations ..." --

1 A. Sorry, I do not have it up on my screen.

2 Q. Forgive me, I am going too quickly. It is at MOD030341.

3 It is entirely my fault. Sorry.

4 It is Major General Ridgway's response to you; all
5 right?

6 THE CHAIRMAN: Do take your time to read it if you would
7 like to.

8 A. Thank you.

9 MR ELIAS: Fourth line into the first paragraph:

10 "Responsibilities in this area are complex.
11 Interrogation and tactical questioning policy and
12 training are my responsibility. Development of PH
13 policy on the other hand is the responsibility of
14 DCDS(C). Management of the Prisoner of War Handling
15 Organisation in theatre is a J1 (provost)
16 responsibility, supported by J2 and J3, and therefore
17 appropriately lies with DCDS (Pers)."

18 It goes on over the page:

19 "The practice of hooding detainees is not, and never
20 has been, taught on any of the TQ or interrogation
21 courses run at Chicksands ..."

22 Did that accord, do you recall, with your belief at
23 the time?

24 A. That it had never been taught at Chicksands?

25 Q. Yes.

1 A. Yes, correct.

2 Q. "... and some UK forces in theatre may have followed
3 suit. As you point out blindfolding is permitted under
4 the Geneva Convention for force protection and OPSEC
5 purposes and is accepted under the law of armed
6 conflict. I do, however, agree that there is need for
7 better instruction to emphasise the negative IO effects
8 of this activity and that the use of blindfolds should
9 be the exception rather than the rule. My research
10 suggests that, within ... JFIT hooding was used to
11 protect interrogators from recognition by terrorist
12 suspects but this practice ceased during early Op Telic
13 following medical advice. Darkened sunglasses are now
14 used instead.

15 3. Whilst the tightening up of both interrogation
16 and TQ training at Chicksands and the procedures within
17 JFITs will have some effect, the majority of alleged
18 incidents seem to have occurred during the arrest and
19 detention of detainees before they reached the JFIT and
20 entered the formal questioning process. This suggests
21 that arresting units in the PH role are not clear on the
22 procedures for the treatment of prisoners of war and
23 detainees."

24 Would you have agreed with that conclusion as is
25 suggested here?

1 A. That's certainly the impression I gained after we had
2 carried out the investigations.

3 Q. Thank you.

4 "To impose this situation the following action is
5 required.

6 "Reference A requires revision to include clear
7 guidelines on PH procedures for capturing units."

8 "Reference A" being JWP 1-10.

9 The second bullet point:

10 "The content and frequency of unit LOAC training
11 should be reviewed."

12 Thirdly:

13 "Better education of units and individuals prior to
14 operational deployments is needed ...

15 "[4]. Departmental responsibility for the PWHO and
16 PH policy and training need to be reviewed."

17 You therefore, would you, General, have agreed with
18 all those bullet points as being some area where some
19 action is needed?

20 A. Yes.

21 Q. "In the meantime I will ensure that instruction at
22 Chicksands is updated to provide clearer guidance for
23 specialist TQ and interrogators."

24 A. Could we just see the distribution on that, please?

25 Q. At the foot of the page.

1 A. You can see on that distribution that all those people
2 that he has suggested action have been copied that
3 letter.

4 Q. That's what you say to us in your statement, isn't it?
5 If we just go back up the page -- I am sure we are all
6 familiar with it now -- but those departments, if you
7 like, to whom reference was made by whom action was
8 needed to be taken, if these points were to be taken
9 forward, were copied into this document. That is the
10 point that you make in your statement to the Inquiry.

11 A. Yes.

12 Q. My question to you, however, General, is whether, having
13 regard to the fact that it must have been apparent to
14 you now, over a period of time, that there were apparent
15 failings not only in training but in doctrine, that the
16 matter of doctrine was not one that you should have
17 taken up rather more directly than imagining or hoping
18 that a copy email would be dealt with in the way that
19 you might have wished.

20 A. That was not my responsibility. That letter, when
21 copied to those people in the MoD -- the MoD was my
22 superior headquarters and therefore -- and DCDS worked
23 with me very closely and we would have discussed this
24 letter and they would have undertaken to carry out that
25 work.

1 THE CHAIRMAN: "DCDSC" is ...?

2 A. "Deputy chief of defence staff commitments". He was my
3 counterpart in the MoD at the strategic level.

4 MR ELIAS: So when you now say that you would have discussed
5 the letter with him, what you are saying is you would
6 have taken, what, more action than simply relying on
7 a copy of this email going to the Department?

8 A. Correct, because I spoke to Andrew Ridgway because
9 clearly I apologised to him because I had left all of
10 the responsibility in his court with my letter and he
11 clearly corrected me on this.

12 Q. These were matters -- that is to say training and
13 doctrine -- putting it in shorthand which you had
14 flagged up as being areas where action was necessary.
15 Wasn't it for you, as it were, to follow them through to
16 ensure that something was done in these areas?

17 A. Not at all.

18 Q. So who, if anyone, should have ensured that action was
19 taken in these areas where you had concerns?

20 A. Those individuals who were copied that who had
21 responsibility.

22 Q. If, indeed, no adequate action were taken over a period
23 of years, perhaps before doctrine was corrected -- if it
24 ever were -- that would be a failing of the system,
25 would it, rather than of any individual?

1 A. Well, as I say, I had a directive into theatre by that
2 stage which was quite clear.

3 Q. You would have known nothing directly about the
4 Baha Mousa -- if I may call it the "Baha Mousa case"
5 itself -- it would have been a matter reported to you
6 quite urgently?

7 A. I was told there had been an incident, but again I was
8 not in the disciplinary chain of command so the details
9 would go into the army.

10 Q. Did you know Colonel Mendonca at that time?

11 A. I had met him once. I visited the unit, as I said
12 earlier.

13 Q. If you can't, therefore, answer this question, of course
14 you will indicate so to the chairman. Was it a surprise
15 to you that these apparent abuses of prisoners within
16 the custody of 1 QLR, under the command of
17 Colonel Mendonca, had occurred with that unit under that
18 commander?

19 A. I have to say I was surprised. They struck me, on my
20 visit, as a very competent unit and he struck me as an
21 able commanding officer.

22 Q. Finally, just to clarify something which you said at the
23 very early stage in your evidence, if I may. You
24 referred to your Northern Ireland experience of seeing
25 hooding, I had understood, but only by, as it were,

1 MR SINGH: General, I would like to start by asking for some
2 clarification, if I may --

3 A. Sorry, I am slightly deaf. Could you get closer to
4 a microphone?

5 Q. I will try to speak up myself and tell me if you still
6 can't hear. I am going to start by asking some
7 questions which I hope will clarify some evidence which
8 you gave to Mr Elias earlier today. You talked about
9 your own experiences in the 1970s, and mentioned that
10 you had done, in 1970, a resistance to interrogation
11 course, at which techniques such as hooding, white noise
12 and various other techniques were used. Is that right?

13 A. That is correct.

14 Q. You also told Mr Elias that you knew that that had
15 subsequently stopped. Is that right?

16 A. That is correct.

17 Q. And that was in the 1970s, was it?

18 A. During the 1970s, yes.

19 Q. Are you sure that that was in relation to resistance to
20 interrogation or sometimes later I think it has been
21 called "conduct after capture training"?

22 A. That I can't tell you. I can only tell you what I saw
23 and understood and I know it stopped for the conduct
24 after capture training.

25 Q. It did. I see.

1 It may have been my fault, General -- forgive me --
2 but I thought at times you referred to your having gone
3 on something that you called the "tactical questioning
4 course". Is that right?

5 A. No.

6 Q. No. You also, in relation to questions from Mr Elias,
7 mentioned that you would have expected, if sight
8 deprivation was to be used, that there should be
9 appropriate health checks to be carried out; is that
10 right?

11 A. Yes. Part of our guidance anyway is that if somebody is
12 in detention, they should be checked regularly.

13 Q. Yes. I hope I have got this right, but I just want to
14 clarify this: you said in evidence that you expected
15 that to be "the responsibility of those in authority".

16 A. Correct.

17 Q. I would just like to ask you, General, what sort of
18 person -- I don't mean individuals by name -- what sort
19 of officer or soldier did you have in mind when you gave
20 that answer, "responsibility of those in authority"?

21 A. Every NCO or officer up the chain of command has
22 a responsibility.

23 Q. Would that include the medical officer?

24 A. It would include the medical officer if he was seeing
25 something that was improper.

1 Q. And presumably those in charge of the guard force?
2 A. Again, if they saw something improper.
3 Q. And could it include the commanding officer of the
4 battlegroup concerned?
5 A. Again, if he personally saw it, yes.
6 Q. You answered some questions to Mr Elias about
7 paragraph 37 of your witness statement at BMI08257. In
8 the third line of that paragraph, General, you refer to
9 this, "In drafting this letter ...". Would I have the
10 right impression from reading that statement that you
11 yourself drafted the letter?
12 A. No, that is the wrong impression. I did not personally
13 draft it, but I reviewed the drafting of it.
14 Q. I see. Do you recall seeing more than one draft?
15 A. I saw what was a final draft, which I then asked for
16 some words to be changed before I signed it.
17 Q. I understand. As you said to Mr Elias, later on, on the
18 same page, you say that the reason why you decided to
19 order the cessation of all hooding was that it had
20 become particularly emotive and, in oral evidence today,
21 General, you used the phrase the "the adverse
22 publicity". Do I have that right?
23 A. Yes. I mean we have a reputation in our armed forces
24 and we are proud of it and I would not want it in any
25 way lowered.

1 Q. So it was not, was it, for medical reasons because of
2 the inherent medical risks associated with hooding?

3 A. As I say, I had no idea at that stage what had actually
4 happened in detail in the incident.

5 Q. And it was not, I take it, for legal reasons either, was
6 it?

7 A. There would have been several of my staff, including
8 legal, who would have inputted into the drafting of
9 that.

10 Q. Can we look at one of the letters that you sent out at
11 that time? It is at MOD019648. We saw this a moment
12 ago. It is the letter to Major General Ridgway of
13 24 October. Can we just have blown up the first
14 paragraph, please? Thank you.

15 In the first paragraph, General, I think you are
16 referring, are you, to the earlier phase in about
17 April 2003 when hooding was stopped? Is that right?

18 A. The combat phase was Telic 1.

19 Q. And in the last sentence, when you say that the practice
20 should stop, is that a reference to the ban in around
21 April 2003?

22 A. The answer is I don't know. I have to put this in
23 perspective with other things going on at the time.

24 Q. I see. I am interested in the first half of that
25 sentence:

1 "Once this practice was exposed, legal advice at the
2 time was that the practice should stop."

3 Was that your understanding when you signed this
4 letter off?

5 A. Well I would not have signed it if I didn't understand
6 that, but I can't remember it now, but I was briefed by
7 my staff at the time.

8 Q. It may that be I have misunderstood the evidence,
9 General. Help me if you can. It is just that it would
10 appear, on the face of it, that if it was for reasons of
11 legal advice that the practice should stop, then there
12 really, in October, by the time of your ban -- there
13 really would not be any ifs or buts about it, would
14 there? You would be banning it for legal reasons.

15 A. But the legal advice may not have been to me. It could
16 have been somewhere further down the chain of command.

17 Q. Yes, I see.

18 A. If I had had legal advice on that basis, I would have
19 stopped it at the time I got the legal advice.

20 Q. Yes. There is a draft of that letter, I think, which we
21 can see at MOD053249. Can we perhaps just blow up the
22 first paragraph? Do you see that -- please read it to
23 yourself -- it is similar to the letter that we have
24 just been looking at, that passage, except that that
25 last sentence continues a little bit further:

1 "Legal advice at the time was that the practice
2 should stop and, save for particular individual cases,
3 the 'hooding' of detainees ceased."

4 Do you recall seeing this draft?

5 A. No, I have never seen it.

6 Q. Can I just ask you this, Colonel: the special forces in
7 Iraq, were they part of your chain of command
8 responsibility or were they responsible to somebody
9 else?

10 A. Sorry, which forces?

11 Q. The special forces in Iraq.

12 A. The special forces I had a link to, but they were
13 technically controlled by the Ministry of Defence
14 through the deputy chief of defence staff commitments.

15 Q. Were you aware at any time that the cessation order that
16 you had given in October 2003 was not, in fact,
17 something that was complied with by UK special forces
18 until May the next year, 2004?

19 A. I was not aware of that.

20 Q. Did you become aware of that at some stage?

21 A. No, I didn't.

22 MR SINGH: I see. Thank you very much, General. Those are
23 my questions.

24 THE CHAIRMAN: Thank you.

25 Ms Dobbin?

1 Questions by MS DOBBIN

2 MS DOBBIN: Thank you, Sir.

3 General, as part of the drawdown of troops in
4 Operation Telic 2, there was a substantial reduction in
5 RMP numbers. Was that something of which you were
6 specifically aware of in the planning for
7 Operation Telic 2?

8 A. No. What I would say is that the military police units
9 are attached to the various formations and, of course,
10 if a formation goes, those that are permanently attached
11 with it would go with them.

12 Q. That was not a matter to which you gave any particular
13 thought or consideration to --

14 A. Not at all, because we design our formations so that
15 they have, you know, the requisite balance of the types
16 of capabilities required.

17 MS DOBBIN: I understand. Thank you. Thank you, Sir.

18 THE CHAIRMAN: Ms Edington?

19 Questions by MS EDINGTON

20 MS EDINGTON: General, you say that the security reason
21 had --

22 A. Sorry, I can't hear.

23 Q. I'm sorry. It is a problem that the Chairman has with
24 me as well. I do apologise.

25 You said that the security reason had fallen away

1 for the use of hoods, but that you permitted blindfolds
2 to still continue. Is that right?

3 A. Blindfolds for security purposes, for the safety of the
4 individual being seen by others, but also for us if we
5 were taking them near anything sensitive.

6 Q. So really, as far as you are concerned, there are two
7 different sets of security parameters for hooding and
8 for blindfolding or are they one and the same?

9 A. No, they are one and the same.

10 MS EDINGTON: Thank you very much.

11 THE CHAIRMAN: Mr Garnham?

12 Questions by MR GARNHAM

13 MR GARNHAM: Thank you, Sir.

14 General, just three matters, please. You told
15 Mr Elias that, from your experience, the ICRC would go
16 to the in-theatre commander to discuss problems of which
17 they became aware. Your understanding was that it would
18 do so prior to -- or at least some time would do so
19 prior to making a complaint?

20 A. Yes. The ICRC normally form a relationship with us in
21 the field. They give advice and clearly, before there
22 is any formal complaint -- if the advice is taken and
23 things remedied, in a further inspection they will check
24 and, if it is fine, then there is no formal complaint.

25 Q. So the initial contact is with a view to solving the

1 problem in theatre?

2 A. Absolutely right.

3 Q. And if the problem is solved, complaint isn't made?

4 A. Correct.

5 Q. Thank you. You were shown by Mr Elias a document that

6 perhaps I could ask to have on the screen again at

7 MOD049314. You will recollect this. If we can go over

8 the page, please, to 4(c), if you recollect, you were

9 shown that as being part of the directive, the need to

10 avoid a prisoner seeing sensitive or critical activities

11 and so on.

12 A. Correct.

13 Q. You were also shown that part of the directive that

14 required a detailed directive to be issued by you or the

15 holder of your office.

16 A. Correct.

17 Q. I just wanted to ask you what the process for preparing

18 that directive -- your directive -- was. Presumably you

19 don't sit down and write the whole thing yourself.

20 A. My directives were always prepared by my relevant staff

21 branch, with a lead staffing with all of other branches

22 and with the MoD and with the receiving headquarters in

23 terms of practicalities before they came to me.

24 Q. Because you said you didn't recollect personally seeing

25 the 1997 directive requiring a detailed directive to be

1 prepared.

2 A. That is correct. I have never seen it.

3 Q. But you would not need that to be put before you, would
4 you, if the relevant work was done by your staff?

5 A. Correct. I would have expected that somebody on my
6 staff responsible or in the MoD would have drawn
7 attention to that.

8 Q. And they need not necessarily -- is this the position --
9 draw attention to that directive if they drew up for you
10 a draft that had the necessary material in it?

11 A. Correct.

12 THE CHAIRMAN: I am sorry to interrupt, Mr Garnham. While
13 we are on that, paragraph 7, page MOD049311, actually
14 has "Legal advice HUMINT operations" as subject to
15 specific legal advice.

16 A. I'm sorry, I have missed the point.

17 THE CHAIRMAN: MOD049311, you were asked earlier about the
18 legal input into it. It seems there, in paragraph 7,
19 that HUMINT operations are subject to specific legal
20 advice --

21 A. Yes.

22 THE CHAIRMAN: -- and that somebody at NCC is indoctrinated,
23 which, as I understand it, means he knows what goes on.

24 A. Yes.

25 THE CHAIRMAN: she and tells them whether it is legal or

1 not.

2 A. Correct.

3 THE CHAIRMAN: I assume the man who drafted this would have
4 had that in mind when he put it in for you to sign?

5 A. Absolutely. I mean all commanders have a legal
6 responsibility and all commanders, certainly formation
7 upwards, have a legal -- have one or more legal
8 advisers.

9 THE CHAIRMAN: Yes. All right.

10 MR GARNHAM: Thank you. Lastly. If I could have MOD030341.
11 If we could go over the page, please, you will recall
12 that this is the reply to you following your letter --
13 perhaps if we could have the first page, please. This
14 is a reply from Lieutenant General Ridgeway to you, to
15 your letter alerting him to the need to address matters
16 of doctrine. We can see from that letter on the
17 following page the particular classes of person who need
18 to deal with some of the outstanding matters.

19 A. Yes.

20 Q. To what extent was it your job to check that they did
21 that?

22 A. It wasn't my job at all.

23 Q. Is that because of the direction in which your job was
24 focused?

25 A. Well, I'm focused looking into the theatre of

1 operations. Obviously I was running operations all
2 round the world at the time. The bottom line here is
3 that having -- the responsible people having been
4 informed, it was then their responsibility to take it
5 forward.

6 Q. Because at the time you are still chief of joint
7 operations, you are still responsible for what is
8 happening in theatre; is that right?

9 A. Correct.

10 Q. Your responsibility does not lie in checking up to see
11 that this is all done?

12 A. And it would not be appropriate for me to do so because
13 they were all in my superior headquarters.

14 MR GARNHAM: Thank you very much. Thank you, Sir.

15 Further questions by MR ELIAS

16 MR ELIAS: So it was whose, if anyone's, responsibility to
17 ensure that, if these were defects in training or in
18 doctrine, they were being corrected?

19 A. The MoD.

20 MR ELIAS: Thank you.

21 Questions by THE CHAIRMAN

22 THE CHAIRMAN: Before you go, just one or two things I would
23 like to ask you about.

24 How much of your time did Iraq take up, roughly
25 speaking? There may be a division between the

1 war-fighting phase and the so-called peace phase, but
2 what sort of amount of time did it take up?
3 A. While we were in combat, about 80 per cent of my time --
4 THE CHAIRMAN: Yes.
5 A. -- then, afterwards, probably about 40 per cent.
6 THE CHAIRMAN: And almost everybody who has given evidence
7 has been asked how many hours they worked -- in theatre,
8 very long hours. Did the same apply for those of you
9 who were at PJHQ?
10 A. Indeed it did. In fact, it was of great sadness to me
11 that they could not be given an award as well as the
12 people in theatre because they worked probably longer
13 hours and they had been working at it for -- well, the
14 best part of ten months beforehand with very long hours
15 as well.
16 THE CHAIRMAN: I take it that applies to the CJO as well?
17 A. That definitely applies to the CJO.
18 THE CHAIRMAN: Help me about one other matter, please.
19 Basra itself, after the war-fighting phase had
20 finished -- what was the situation like in Basra after
21 that, after the war fighting? Can you give me
22 a hopefully thumbnail sketch?
23 A. We were surprised at how -- what a bad state it was in.
24 The Saddam regime had really not invested anything in
25 Basra because it was primarily Shia since the Gulf War

1 in 1991. Virtually no repairs had been done. Only the
2 Sunni population in Basra had power. None of the Shias
3 had power. He had drained the marshes to force the
4 marsh Arabs out and so the Sweetwater Canal, which
5 provided most of the fresh water for Basra, was now a
6 sort of putrid canal. So most of the Shia population
7 were living in squalor.

8 THE CHAIRMAN: Things like the electricity and that sort of
9 thing, were they working?

10 A. No, as I say, they did not have power to the Shia
11 population --

12 THE CHAIRMAN: No power at all of any sort?

13 A. No -- and a lot of them did not even have power
14 connection. We worked very hard over that first year to
15 try and put power into Basra and also to sort out the
16 water problems and so forth. We did actually undrain
17 the marshes and get the Sweetwater Canal cleared to get
18 fresh water in and we made a lot of progress in the
19 power, but actually it was in such a state that it was
20 beyond our capabilities and really needed a complete
21 replacement.

22 THE CHAIRMAN: What about civil administration. Did that,
23 such as it was, disappear completely?

24 A. It had disappeared completely. We made contact very
25 early on with the tribal chiefs and we encouraged them

1 to put in an interim administration, which they did, and
2 we worked very closely with them, giving them support
3 and direction, and we brought in experts to help them,
4 to help and to start developing the police, and, of
5 course, we were deeply involved in rebuilding and
6 training the new army.

7 THE CHAIRMAN: Yes. And I take it things like the courts
8 had just ceased to function?

9 A. They had. We had limited success with obviously
10 providing the judicial support to train people up, but
11 quite a lot of the judges did return. So it started to
12 come back together after about nine months.

13 THE CHAIRMAN: I have heard some evidence that insurgency,
14 rather than diminishing, started to accelerate in the
15 so-called peace-time.

16 A. We had a honeymoon period for about six months after the
17 combat phase when, for instance, I could quite happily
18 walk through Basra, through the souk, and the population
19 were friendly. There was more and more influence from
20 across the border in Iran with the Shia and, of course,
21 Al Qaeda came in and were influencing the Sunni and it
22 took us nearly five years to persuade both sides that
23 they were actually being used by these organisations and
24 to come to a sensible compromise to work a coalition
25 government within Iraq.

1 THE CHAIRMAN: 1 Queen's Lancashire Regiment, though, were
2 not there. They came in in July, I think, and -- I have
3 forgotten the precise date. Would they have noticed the
4 increase in insurgency in their time?

5 A. Oh, they would, yes. They came in, I think, it must
6 have been Telic 3 --

7 THE CHAIRMAN: No, Op Telic 2, they were.

8 A. 2, was it? Yes.

9 THE CHAIRMAN: One or two other things, if you could cast
10 your mind back to early days, as a soldier, if you
11 wouldn't mind. Help me about this: the commanding
12 officer, ought he to know when there are indisciplined
13 acts going on in his battalion or battlegroup?

14 A. He should, but a commanding officer, shall we say, sets
15 the tone for his battalion. You know, the whole style
16 of a battalion changes with the commanding officer and
17 the whole reason he has a regimental sergeant major is
18 that the regimental sergeant major, through the NCOs, is
19 his finger on the pulse.

20 THE CHAIRMAN: And eyes and ears?

21 A. And eyes and ears, yes.

22 THE CHAIRMAN: And presumably the same applies to an officer
23 commanding a company, his eyes and ears as well as his
24 own are through his company sergeant major; is that
25 right?

1 A. Yes, although, as a company commander, he would know
2 well every single man in his company.

3 THE CHAIRMAN: Or ought to.

4 A. If he is worth anything at all, he would know them all.

5 THE CHAIRMAN: Yes, I follow. Because it does appear in
6 this case that a number of people -- not just a single
7 person -- were responsible for some of the acts of
8 violence. Who would you expect ought to know about
9 that, working up? Would the section or -- if that is
10 the right -- lance corporal or corporals, should they
11 know?

12 A. Yes, they should. As I mentioned earlier, I believe
13 that it is the responsibility of the whole chain of
14 command, from lance corporal right up, that if anybody
15 sees anything, they have to deal with it. They should
16 not have allowed anything like to continue.

17 THE CHAIRMAN: And presumably that would include the platoon
18 commander and, if he was the same person, the multiple
19 commander should know exactly what is going on?

20 A. Correct. The multiple commander could either be the
21 platoon commander or the platoon sergeant.

22 THE CHAIRMAN: What about the adjutant?

23 A. The adjutant is overall responsible for discipline
24 within the units.

25 THE CHAIRMAN: Is that just officers or is it for everybody?

1 A. It is for everybody, but he clearly works very closely
2 with the regimental sergeant major and, again, the
3 regimental sergeant major is his eyes and ears because,
4 of course, he is doing a lot of other administrative
5 stuff. It is really an office job.

6 THE CHAIRMAN: If it be that I were to find -- and
7 I obviously have to consider all the evidence very
8 carefully -- that there had been a number of very nasty
9 incidents during the course of the time the detainees
10 were in Battlegroup Main and the TDF, would that be
11 a failure of the discipline throughout the battalion or
12 not, would you think?

13 A. No, it could have been just within one platoon or one
14 company. I mean, if there was a hint of it, it would
15 be -- the adjutant should have been advising the
16 military police and getting in the SIB to investigate.

17 THE CHAIRMAN: Yes. All right.

18 One other matter I wanted to ask about and that is
19 this: General Brims gave an order, which you know about
20 obviously now, in late March/early April, as I am told,
21 an oral order banning hooding. Would that be usual, to
22 give an oral order for something of that nature?

23 A. Yes, I would have expected something on paper to follow.

24 THE CHAIRMAN: Yes.

25 A. But remember that he was commanding primarily during the

1 combat phase and for the short period afterwards --

2 THE CHAIRMAN: Yes.

3 A. -- and clearly, in a fast-moving situation, most things
4 were done orally. It is only later, when you get to
5 a steady state, that things start coming out as sort of
6 written policy direction in theatre.

7 THE CHAIRMAN: And the curious thing about it is that once
8 there was a handover to 3rd Division, the cascading down
9 and use of that order in 3rd Division seems to have
10 been, to say the least, patchy. Some knew about it and
11 some not. What is it about a handover that should
12 ensure that that sort of gap does not appear and that
13 all orders are passed on?

14 A. During the handover, the commanders actually probably
15 only spend a day together, one-to-one, but the staff,
16 the key staff, come in perhaps two weeks before and have
17 two weeks shadowing --

18 THE CHAIRMAN: I have heard, yes.

19 A. -- with the person they are taking over. I would have
20 expected it to have been passed on.

21 THE CHAIRMAN: Indeed it did in places. The odd thing is
22 that it went to some and not to -- some seem to be aware
23 of it. In 19 Brigade the legal officer was aware of it,
24 but not the ops officer.

25 A. Yes, I mean clearly I wasn't involved there in

1 theatre --

2 THE CHAIRMAN: No, I follow that.

3 A. No, no, but I can just -- I can only speculate. Of
4 course, it may be that, for instance -- because, of
5 course, you get a similar process with handover of
6 units, and it may be some units handed over the order
7 and others didn't.

8 THE CHAIRMAN: Yes. Does that happen often or is it rare
9 for there to be problems in a handover?

10 A. Normally, as I say, we would have consolidated behind an
11 oral order with something which was a policy decision
12 with something written.

13 THE CHAIRMAN: If that had happened, we haven't, I don't
14 think, seen any such order or policy decision.

15 All right. Well, does anybody want to ask any
16 questions arising out of that?

17 Thank you very much General. I am very grateful to
18 you for your time and for your evidence. That is all
19 the questions that we need to ask you. You are now free
20 to go.

21 A. Thank you very much.

22 THE CHAIRMAN: Thank you very much.

23 MR HALLIDAY: Sir, the next witness is Neil MacKinnon. He
24 should be giving evidence by a videolink, although there
25 has been a little doubt over whether he could in fact do

1 so today.

2 NEIL MACKINNON (called)

3 (Evidence via videolink)

4 THE CHAIRMAN: Well, let's see.

5 Yes, Mr Halliday, perhaps we could see if

6 Mr MacKinnon -- can you hear us?

7 A. Yes, I can.

8 THE CHAIRMAN: Good. Thank you. You are to be our next
9 witness. What I am going to ask now is that you are
10 sworn. Do you have, if you need it, a bible there or
11 you could affirm. Which would you prefer?

12 A. I would like to affirm, please.

13 THE CHAIRMAN: Yes, by all means. Could you stand up, then,
14 please, and I will now ask that you affirm.

15 NEIL MACKINNON (affirmed)

16 THE CHAIRMAN: Thank you very much. Do sit down.

17 A. Thank you.

18 THE CHAIRMAN: If you either can't hear any question that
19 you are asked or you don't understand it, I am sure you
20 will say so. Thank you.

21 A. Yes.

22 Questions by MR HALLIDAY

23 MR HALLIDAY: Can you see and hear me, Mr MacKinnon?

24 A. Yes, I can.

25 Q. Could you state your full name, please?

1 A. Neil MacKinnon.

2 Q. Do you have your witness statement to this Inquiry with
3 you?

4 A. I do.

5 Q. Could you turn to the final page, please?

6 A. Okay.

7 Q. Does your signature appear there?

8 A. Yes, it does.

9 Q. When you signed this statement, were you attesting that
10 it was true to the best of your knowledge and belief?

11 A. Yes, I was.

12 Q. The Inquiry is very grateful for the statement,
13 Mr MacKinnon, and for your time today. I am only going
14 to ask you questions about some of the matters covered
15 in your statement. Is it right that you joined the
16 British Army in March in 1987?

17 A. Yes.

18 Q. And did you then join the intelligence corps?

19 A. Yes.

20 Q. Have you now left the army?

21 A. Yes.

22 Q. Did you originally leave the army in 1993?

23 A. Yes.

24 Q. But were you then recalled as a reservist in January
25 2001?

1 A. That is correct.

2 Q. When you were called up in 2001, what role were you
3 given?

4 A. I was supposed to go to Sierra Leone [redacted] but that
5 was cancelled, so I stayed as an instructor to -- at
6 F Branch, JSIO.

7 Q. For how long did you remain at F Branch?

8 A. Just over three years.

9 Q. Did you leave F Branch in 2004?

10 A. Yes.

11 Q. During your time at F Branch, did you teach on the
12 tactical questioning course and on the interrogation
13 course?

14 A. Yes, that's one of the courses I taught.

15 Q. I would ask you, if I could, to restrict your answer to
16 those particular courses and to avoid other subject
17 matters which are outside the Inquiry's area of
18 interest.

19 What was your role during those particular courses?

20 A. I was just one of the instructors. We taught various
21 aspects of the course. There was no set parts of the
22 courts we taught. It was just as and when we were
23 available.

24 Q. So your role varied from one course to the next, did it?

25 A. Yes.

1 Q. Did you teach any of the classroom lessons on those
2 courses?

3 A. Yes.

4 Q. The Inquiry has seen timetables for the interrogation
5 course. I can show you those if it helps. It may be
6 easier if I just ask you the question. Did you ever
7 teach the classroom sessions on the Geneva Conventions
8 and STANAGs?

9 A. No.

10 Q. There was a lesson on prisoner handling and
11 interrogation according to the timetable. Did you ever
12 teach that lesson?

13 A. I believe so yes.

14 Q. And there was another lesson on the pressures to which
15 prisoners could find themselves subject. Did you ever
16 teach that lesson?

17 A. When I was available, yes, I would probably teach that.

18 Q. Additionally there were practical role-play sessions,
19 were there not?

20 A. Yes.

21 Q. Did you have any role during those sessions?

22 A. Yes, I would be heavily involved in monitoring the
23 sessions.

24 Q. Presumably, at the end of the session, you would give
25 feedback to the students, would you?

1 A. Yes, we would debrief them on what they had done well,
2 what they needed to improve on and what they had done
3 wrong.

4 Q. When you were at F Branch, was there informal discussion
5 amongst students and instructors between particular
6 lessons?

7 A. There was always the opportunity for students to ask
8 questions.

9 Q. And would that sometimes take the character of an
10 informal chat as opposed to more formal teaching?

11 A. There would be definitely informal questions.

12 Q. So far as you were aware, was there any significant
13 difference of approach between different instructors?

14 A. No. We all sat in on each other's lessons so that we
15 could learn and improve and, on the whole, we were -- we
16 taught in very similar methods.

17 Q. Did anyone monitor the instructors on these courses?

18 A. The branch OC would; the sergeant major would often sit
19 in.

20 Q. Without giving the name of either of those two people,
21 how would they monitor the instructors?

22 A. They would come in and sit at the back of the lesson and
23 critique, if necessary.

24 Q. How did you know what you were supposed to teach on
25 those courses? Were you given a syllabus to follow?

1 A. Yes.

2 Q. Are you familiar with the phrase "the shock of capture"?

3 A. Yes.

4 Q. What does that phrase mean to you?

5 A. It means the effects mentally and physically on
6 a detainee after they had been captured or arrested.

7 Q. How did you become aware of that phrase?

8 A. I can't recall exactly when I became aware of it, but
9 it's certainly part of the training.

10 Q. Part of the tactical questioning and interrogation
11 training?

12 A. Yes.

13 Q. What was said about the shock of capture during the
14 training?

15 A. It is difficult for me to recall exactly, but we --
16 there'd be awareness taught on the effects of being
17 captured on a prisoner so that the arresting officer,
18 detaining officer, would know what to look for from
19 a health and safety perspective.

20 Q. Apart from health and safety, was there any other reason
21 for mentioning the shock of capture?

22 A. There would be obvious pressures on the detainee that
23 may later encourage him to speak during a tactical
24 questioning or interrogation phase.

25 Q. Was it taught that the shock of capture was something

1 which soldiers should try to maintain?

2 A. There is very little legal ways in which you could

3 maintain the shock of capture, but there were certain

4 aspects that a handling officer or a handling soldier

5 could do.

6 Q. What were those?

7 A. Just not speak to the detainee, treat them firmly but

8 fairly.

9 Q. Nothing else apart from that?

10 A. Nothing that comes to mind.

11 Q. What about the term "conditioning"? Are you familiar

12 with that term?

13 A. I am aware of it, yes.

14 Q. Is that a term that was used on the courses?

15 A. No, it's not something that we taught.

16 Q. The Inquiry has seen that term used in some course

17 materials from the time. Could it be that you have

18 simply forgotten that that term was used?

19 A. There's a good chance. I mean, I was aware of the term,

20 but conditioning is not something that I can recall us

21 actually teaching.

22 Q. In the courses you helped to teach, was anything taught

23 about depriving prisoners of their sight?

24 A. Sorry, can you say that again, please?

25 Q. Was anything taught about depriving prisoners of their

1 sight?

2 A. Only the blindfolding when prisoners were being moved
3 from place to place.

4 Q. And what was the purpose of the blindfolding?

5 A. Excuse me. It was for the force protection, for the
6 safety of the soldiers, for the safety of other
7 prisoners, so that the detainee couldn't identify where
8 he was or who else was there -- was with him.

9 Q. I am particularly interested in what you say about the
10 safety of the soldiers and other prisoners. Was the
11 blindfolding designed to protect the anonymity of other
12 soldiers and other prisoners?

13 A. Yes. Soldiers, their equipment, the location and also
14 the prisoners -- there may be some prisoners who could
15 be construed as being more helpful than others, for
16 instance.

17 Q. Does that mean that it was taught that prisoners should
18 remain blindfolded for as long as they were around
19 soldiers or other prisoners?

20 A. No. They would normally -- or they should normally be
21 in segregated areas and, once they are moving from that
22 area or to that area, they would be blindfolded.

23 Q. Was anything said about what should occur if a prisoner
24 was not in a segregated area, for example if it was
25 necessary to put prisoners in shared accommodation? In

1 those circumstances should they remain blindfolded?

2 A. I cannot recall what the -- in that situation, but

3 I don't believe we taught that they were blindfolded all

4 the time as a matter of course.

5 Q. Was any purpose of blindfolding maintenance of the shock

6 of capture or disorientation?

7 A. There would obviously be an element of disorientation,

8 but I don't believe we taught it as a conditioning

9 process.

10 Q. Was disorientation through sight deprivation discussed

11 at all on the courses?

12 A. There was obviously a lot of awareness from the very

13 basic principle of moving the trainees from room to room

14 carefully without banging them into walls, for instance,

15 so everyone was aware of disorientation even at the

16 course level.

17 Q. So people were aware that prisoners were physically

18 disorientated and, therefore, needed guidance in order

19 not to bump into things?

20 A. Yes, and that was part of the course.

21 Q. Did it go any further than that? Was there awareness or

22 discussion that sight deprivation might maintain the

23 shock of capture?

24 A. I can't recall. Possibly, but I can't recall.

25 Q. Could we go to paragraph 12 of Mr MacKinnon's statement?

1 Do you have paragraph 12 there, Mr MacKinnon?

2 A. I do, yes.

3 Q. In the second half of the paragraph you say:

4 "I have been asked whether the use of blindfolds for
5 security purposes might, however, have the incidental
6 effect of keeping a prisoner disorientated and thereby
7 making the prisoner more compliant to questioning.

8 I can see that this might be a secondary effect of
9 deprivation of sight for security reasons if the
10 prisoner is susceptible for some reason but it would not
11 be the primary reason for the blindfold."

12 When you said "it would not be the primary reason
13 for the blindfold", were you in any way implying that it
14 might be a secondary reason for the blindfold?

15 A. No, I was just saying that the reason for putting
16 a blindfold on someone would be to move them from place
17 to place and for force protection.

18 Q. On the courses, what was used in order to blindfold
19 prisoners or those playing prisoners?

20 A. We had a selection of army issue blindfolds.

21 Q. Were sandbags ever used to blindfold people?

22 A. No -- no.

23 Q. Was anything ever said about whether alternative means
24 could be used to blindfold people when standard issue
25 blindfolds were unavailable?

1 A. Again it was possibly discussed.

2 Hello?

3 Q. Can you still hear me, Mr MacKinnon?

4 A. Yes, I can hear you now.

5 Q. It may that be you can't see me. I certainly can't see

6 you. But we will press on if the chairman is happy with

7 that.

8 THE CHAIRMAN: Yes. Do you mind if we go on? We can't

9 actually see you. Can you see, Mr Halliday?

10 A. I can, Sir, yes.

11 THE CHAIRMAN: That is fortunate.

12 MR HALLIDAY: Some might say; some might disagree.

13 Do you recall whether anyone was told on those

14 courses that sandbags were not to be used to blindfold

15 prisoners?

16 A. Again, it is hard for me to recall, but if anyone would

17 have asked me, I would have said that sandbags cannot be

18 used.

19 Q. But you don't recall that being taught on the courses?

20 A. I don't recall it, no.

21 Q. Why would you say that sandbags should not be used?

22 A. Well, I am well aware of the dangers of positional

23 asphyxia, for instance, and sandbags could increase the

24 risk of that.

25 Q. How are you aware of that?

1 A. Well I used to teach officer safety techniques in the
2 police.

3 Q. When did you teach officer safety for the police?

4 A. Between 1993 and 2001.

5 Q. Was positional asphyxia something that was taught about
6 on the TQ and interrogation courses?

7 A. Again, I can't recall it being specifically discussed.
8 However, if someone had asked about putting a sandbag
9 over someone's head, I would have mentioned it.

10 Q. Was anything said in the courses about who was
11 responsible for the welfare of prisoners?

12 A. I believe there was a lesson on that. I can't recall it
13 fully.

14 Q. Who was responsible for the welfare of prisoners?

15 A. To the best of my recollection, initially it would be
16 the detaining soldier and then they would be passed down
17 the chain to -- well, it depends where the prisoner or
18 the detainee would end up.

19 Q. Did the courses cover this situation, where a prisoner
20 is being held in a detention facility awaiting
21 questioning?

22 A. Yes, I believe so.

23 Q. Who was responsible for the prisoner during such periods
24 of time as that?

25 A. I am recalling back a few years, but my recollection

1 would be the provost sergeant and then possibly,
2 ultimately, the RSM.

3 Q. Whilst the prisoner was in a detention facility awaiting
4 questioning, did the TQer or interrogator have any
5 responsibility for the prisoner's welfare?

6 A. No, not directly.

7 Q. Was the TQer or interrogator taught to brief the guard
8 force or the provost sergeant or the RSM about how to
9 handle prisoners?

10 A. Not that I recall, but we would be available as subject
11 matter experts if they sought our advice.

12 Q. Do you remember something called the "harsh technique"
13 being taught on the courses?

14 A. Yes.

15 Q. What did that consist of?

16 A. Usually a fair bit of shouting.

17 Q. Did it include insults?

18 A. I would assume so, yes.

19 Q. What about threats?

20 A. Threats? Not so much, no.

21 Q. Not so much or not at all?

22 A. Well, not so much. If you alluded to a threat, then it
23 had to be something that you could carry out. It
24 couldn't be an empty threat, for instance.

25 Q. A phrase used by some other witnesses is that the

1 threats had to be credible. Does that accord with your
2 recollection of what was taught on the course?

3 A. Yes. That's probably a more succinct way of putting it.

4 Q. What, if anything, else were students taught about the
5 limits of the harsh technique?

6 A. Well, the main aim of all the interrogations was that
7 they were not allowed to lay hands on the detainee, for
8 instance.

9 Q. One final topic I would like to ask you about,
10 Mr MacKinnon. I think you are aware that S011 says that
11 he, Sergeant Thomas and you attended Catterick to give
12 a one-day introduction to tactical questioning and
13 prisoner handling in June 2003. Do you recall being in
14 involved in that introduction?

15 A. I recall being at Catterick. I don't recall actually
16 the training that we carried out.

17 Q. Why were you at Catterick?

18 A. Well, I am assuming I was there for that training, but
19 I can't recall it.

20 Q. Do you recall being involved in delivering any training
21 at Catterick?

22 A. I don't recall it, no.

23 Q. Do you recall any occasions on which you were involved
24 in giving introductions to tactical questioning and
25 prisoner handling?

1 A. I don't recall it, no. We had such a tempo of courses
2 over that time that they all sort of blurred into one.

3 Q. S011 says that on that particular briefing soldiers were
4 told that they should engage in firm but fair handling
5 to maintain the shock of capture. Is that the sort of
6 topic you would expect to be covered on that kind of
7 briefing?

8 A. It would seem, yes, a reasonable topic to mention for an
9 introductory brief.

10 Q. Would that kind of introductory brief have discussed
11 sight deprivation?

12 A. I would assume so, yes.

13 Q. And what would have been said in that kind of briefing
14 about sight deprivation?

15 A. Basically, as I said earlier, that a detainee or
16 a prisoner should be blindfolded when they were being
17 moved from place to place.

18 Q. Would such a briefing have covered sleep deprivation?

19 A. No, I don't believe so.

20 Q. On the full tactical questioning and interrogation
21 courses, was anything said about sleep deprivation?

22 A. No.

23 Q. Does that mean that, so far as you recall, sleep
24 deprivation of prisoners was neither recommended nor
25 prohibited?

1 A. It wasn't taught. I believe it was prohibited and
2 that's probably one of the reasons why it wasn't taught.
3 Q. You said it wasn't discussed. Does that not mean that
4 it was not expressly prohibited?
5 A. It's -- to my mind it wasn't discussed as a matter of --
6 Q. Simply not covered at all. Sorry.
7 A. Sorry?
8 Q. Was it simply not --
9 A. You first.
10 Q. Is it the case that sleep deprivation was simply not
11 covered at all?
12 A. Yes, that's correct.
13 Q. Finally, stress positions, was anything taught about
14 stress positions on the tactical questioning and
15 interrogation courses?
16 A. No. That's another subject that wasn't taught.
17 Q. Do you recall positions called "control positions"?
18 A. I have heard the term, yes.
19 Q. Was the term used on the tactical questioning and
20 interrogation courses?
21 A. I can't recall that particular term being used, but it
22 may have been in relation to when a detainee has first
23 entered into a room.
24 Q. What is a control position?
25 A. Well, what I believe, it's the first few minutes

1 a prisoner is escorted into a room and the TQ or the
2 interrogator has the opportunity to look around the
3 prisoner, to check to see if he is injured and to check
4 to see if he may be carrying weapons.

5 Q. Can you give us an example of a particular control
6 position?

7 A. Just standing straight, looking forwards, with his hands
8 by the sides.

9 Q. Would there be any other control positions that were
10 taught?

11 A. Not that I'm aware of, no.

12 MR HALLIDAY: Thank you.

13 THE CHAIRMAN: If you just hang on a moment, please,
14 Mr MacKinnon, you will be asked questions by other
15 counsel.

16 A. Yes, Sir.

17 THE CHAIRMAN: Ms Hetherington. You will not be able to see
18 him, I don't think.

19 Questions by MS HETHERINGTON

20 MS HETHERINGTON: Can you see and hear me now, Mr MacKinnon?

21 A. Yes, I can.

22 Q. Thank you. In paragraph 15 of your witness statement,
23 which is a passage that we have looked at already, you
24 said that it was mentioned on the courses that when
25 a prisoner is experiencing the shock of capture, he is

1 at his most vulnerable and needs careful monitoring.

2 You have explained today that that was firstly in
3 relation to health and safety issues, but also because
4 the pressures he might be experiencing might later be
5 exploited in questioning. Is that right?

6 A. Yes.

7 Q. Who would do the careful monitoring of the prisoner in
8 a situation where you were deployed on operations?

9 A. It depends on the phase that the prisoner/the detainee
10 was down the chain, but initially the soldier who
11 arrested him or took him prisoner.

12 Q. In a situation where that prisoner was going to be
13 tactically questioned, if it was that the pressures on
14 the prisoner were to be used in determining the
15 questioning approach, the person who was monitoring the
16 prisoner would have to report back to the tactical
17 questioner; is that right?

18 A. Yes, that would be correct.

19 Q. So it was important for the tactical questioner to know
20 what the situation of the prisoners were and how they
21 were reacting to their detention; is that right?

22 A. That would be the best-case scenario. That didn't
23 always work out.

24 Q. In terms of the limits that you taught on the courses,
25 you say in paragraph 19 of your statement that you

1 remember that instructors articulated the limits of
2 behaviour for approved approaches.

3 You have mentioned a limit on physical force or the
4 laying of hands. I appreciate that you didn't teach the
5 Geneva Conventions lesson, but were you aware of a limit
6 to applying any moral or non-physical coercion to
7 a prisoner to get him to answer questions?

8 A. Yes. I was aware that there were limits to the types of
9 insults we could use, for instance.

10 Q. And what limits were those?

11 A. Well, they were extremely capped(?) in that we couldn't
12 be -- we couldn't insult the prisoner on his physical
13 condition, for instance, or about his -- or demean him
14 basically.

15 Q. So what kind of insults could you make?

16 A. His uniform, for instance. If he was a soldier that was
17 captured, he may have pride in his uniform, so we could
18 insult the uniform.

19 Q. I thought you just said you could not insult someone's
20 physical condition.

21 A. Physically, yes.

22 Q. Were you aware of any bar on subjecting a prisoner to
23 any disadvantageous treatment if they didn't answer your
24 questions?

25 A. Yes, I was.

1 Q. How does the making of a credible threat to a prisoner
2 fit with a prohibition on subjecting them to
3 disadvantageous treatment?

4 A. Sorry, can you rephrase that?

5 Q. Yes. If you understood that you couldn't subject
6 a prisoner to disadvantageous treatment for refusing to
7 answer their questions, how was it that you also taught
8 that you could make threats to the prisoner as long as
9 they were ones that you could carry out?

10 A. We had no control over the feeding of prisoners, for
11 instance, that was all done outwith our control, so we
12 couldn't use -- or we would not even consider using that
13 as a threat. Credible threats could be that, you know,
14 if he doesn't speak to us now, then he would come back
15 to us to speak in another couple of hours, for instance.
16 So something we had a bit of control over.

17 Q. But there could constitute a disadvantage?

18 A. He would still be detained in two hours, so it wouldn't
19 be a disadvantage really having to speak to me
20 additionally, I wouldn't have thought.

21 Q. As part of your teaching on the course, did you ever
22 discuss the principles of conduct after capture, whether
23 by means of formal training or as anecdotes that were
24 discussed?

25 A. No, not as a matter of course, no.

1 Q. When you say "not as a matter of course", might that
2 come up?

3 A. There may be questions. There was always a lot of "what
4 if" questions.

5 Q. And would you aim to deal with those questions?

6 A. If they were questions regarding the conduct after
7 capture course, then I would probably put them in the --
8 send them in the direction of the Conduct after Capture
9 Company after they had completed the course.

10 Q. Would there be any discussion, perhaps particularly in
11 the courses in early 2003 or in the visits to Catterick
12 that you made, of the fact that the people you were
13 training were imminently to go to Iraq and of the
14 techniques that Iraqis might use on captured prisoners?

15 A. I don't believe so. That wasn't usually our remit.

16 Q. Was there any discussion about the techniques that the
17 people that were captured by British forces might be
18 hardened to from their previous experiences under the
19 former regime?

20 A. Again, I wouldn't have thought that was part of the
21 course material, but it may come up as a question.

22 MS HETHERINGTON: Thank you, Sir.

23 THE CHAIRMAN: Thank you very much. Who is next?

24 Ms Cross, do you have any questions for him?

25 MS CROSS: No, Sir.

1 THE CHAIRMAN: Thank you very much.

2 Mr Halliday?

3 MR HALLIDAY: May I just deal with one point?

4 THE CHAIRMAN: Do.

5 Further questions by MR HALLIDAY

6 MR HALLIDAY: Did you ever act as an interrogator on the

7 conduct after capture exercises which were run by

8 4 Conduct after Capture Company?

9 A. Yes, occasionally.

10 Q. Do you recall that during those conduct after capture

11 exercises those playing the role of prisoners were held

12 in stress positions and hooded?

13 A. I don't recall the stress positions, no.

14 Q. Do you recall the hooding?

15 A. The hooding? Again, no, not specifically.

16 Q. Did you see those students who were engaged on conduct

17 after capture exercises at all?

18 A. Yes, but we would normally be in a room awaiting for

19 their arrival, so we wouldn't see what had happened

20 previously as a matter of course.

21 Q. You may not have seen what happened to them previously,

22 but were you aware that they had been hooded and held in

23 stress positions?

24 A. I don't recall it, no.

25 Q. Do you recall being given any briefing, when you were

1 involved in those conduct after capture exercises, that
2 British soldiers were not to treat prisoners in the way
3 student were treated on those courses?

4 A. We -- right at the beginning of the exercises we were
5 given very detailed briefings on the events. I can't
6 recall exactly what the details were though.

7 Q. Returning to the specific question, can you recall
8 whether those briefings made the point that British
9 soldiers should not treat prisoners in the way students
10 were treated on those exercises?

11 A. No, I can't really recall the content of the briefings.

12 MR HALLIDAY: Thank you.

13 THE CHAIRMAN: Well, thank you very much, Mr MacKinnon.

14 That's all the questions that you are going to be asked
15 by the Inquiry. You are now free to go, with my thanks,
16 and we will ask or at least I will ask that the
17 videolink is turned off.

18 A. Thank you, Sir.

19 THE CHAIRMAN: Thank you very much. Yes. Very well.

20 MR HALLIDAY: That is all is for today, Sir. Tomorrow we
21 will be calling Graley, Corcoran, Lillywhite and Binns.

22 THE CHAIRMAN: Good. Very well. 10 o'clock tomorrow then,
23 please.

24 (4.12 pm)

25 (The Inquiry adjourned until 10.00 am, Tuesday, 18 May 2010)

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