

Baha Mousa Public Inquiry

Inquiry Chairman: The Right Honourable Sir William Gage

SUMMARY OF PROCEEDINGS: MONDAY 10 MAY 2010

Richard Clements

- This witness joined the army in 1979. In March 2001 he was posted to OPTAG/OPTAT (Operational Training Advisory Group/Team).
- He had received LOAC training but he did not recall any training about depriving prisoners of sight. He did recall a course at Warminster that covered the taking of an enemy prisoner; the advice was to place a sandbag over the head as a means of controlling them for a short time. It was purely a matter of handling the individual in difficult circumstances.
- He had not been aware of the Heath ruling until preparing for this Inquiry.
- His role in OPTAG was to design and deliver pre-deployment training for troops. The HQ Land Mounting order for OPTELIC 2 included a list of training requirements, both pre- and post-deployment. It was assumed that those receiving this training would have already received the general LOAC training that would include prisoner handling. PJHQ would advise on specific training requirements in theatre.
- There was a very short lead-up time for the training for Op T2, which meant that some stages of the training were truncated. One element of the OpT2 training package was a mandatory all-ranks briefing that included advice on legal matters. The witness did not recall the details of this element.
- The training covered the use of control positions on prisoners at the point of capture, if circumstances rendered their use necessary and only for a short time only. The 'for a short time' issue was not specifically detailed; the trainees would know from the LOAC training that all prisoners had to be treated humanely.
- In his statement the RSM of 1QLR (Briscoe) described hooding of prisoners being included in the training delivered by OPTAG. The witness believed he was mistaken. Capt Rogers also recalled OPTAG training that approved the hooding of prisoners but the witness said this was incorrect. He thought it was possible that they were getting confused with elements of the training in relation to conduct after capture.
- He did not accept that the training for troops deployed to Iraq at that time (i.e. when the war fighting was over) was deficient, in that it only covered prisoner handling at the point of capture.

- The OPTAG training package for Op T2 included a CD. The list of the contents for this CD did not include training re prisoner handling (which had been in the CD for Op T1). The witness believed that this was because it had not been requested in the HQ Land Mounting order, probably because the war fighting phase was over at the time of Op T2. He agreed that it seemed strange to be giving troops training on conduct after capture at this time.

Mike Conway

- This witness qualified as a barrister in 1982 and was commissioned into the Army Legal Corps in 1985.
- He had given training in military law including international and operational law. He had no involvement in the training for Op T2. In April 2003 he became Chief Operational lawyer at the Directorate of the Army Legal Service. Later that year he also became head of ALS Branch 2.
- He had both received and given training on LOAC. He had long been aware of the case of Ireland v UK and the Heath ruling. The issue of depriving prisoners of their sight was never raised with him. He did recall being consulted on the replacement video for LOAC training and agreed that the video that was being replaced was outdated and rather amateurish in appearance.
- He had little to do with providing advice on either Op T1 or Op T2. He recalled a telephone call from Col Mercer in theatre about questioning of prisoners suspected of crimes. Lt Col Barnett raised with him the issue of the detention of prisoners. In his evidence, Col Barnett said he was told that there had been a decision to ban hooding completely. The witness had no recollection of the conversation as described by Col Barnett. Had there been an issue about hooding, he would have told the person raising the issue to seek advice from the lawyers at PJHQ. They in turn would have access to lawyers at the MoD and the FO, and if necessary the Law Officers.
- As far as he could recall, he had not been aware of any issues about hooding before December 2003.

Colin Allkins

- This witness joined the MoD as a civil servant in April 1988. Moved to PJHQ in January 2002 until 2004.
- Dealt with policy matters as a Desk Officer in J9. Prepared briefing for component level video conferences but heard nothing about policy on 'hooding'.
- Deployed to Saudi Arabia responsible for identifying air targets at POLAD. No reference to policy on hooding at component conferences. Did not recall the issue of prisoner handling ever arising.
- In role of Desk Officer, the witness had responsibility for the drafting of PQs and Ministerial Correspondence. Examples of correspondence and specific

questions were discussed with the witness who explained the procedure for drafting replies to MPs and answers in the House of Commons. A number of specific briefing notes/draft answers were put forward to be discussed with the witness and the original trails of information gathering were explored.

- Briefing notes to the Cabinet about hooding and links to the death of Baha Mousa and some inaccuracies were raised with the witness and he clarified the position from his perspective at the time.
- The witness was the central point for the preparation for all PQs. Drafts prepared and information signed off by a Senior Civil Servant or equivalent. A specific reply to a PQ about hooding in Iraq drafted by the witness was discussed and he answered questions about detailed references that were omitted. There had been no reference to the death of Baha Mousa and instead a more general answer was given explaining that hooding had been stopped in 2003 because there was no longer any military justification.
- The witness gave evidence that he could not offer any satisfactory explanation for the omissions in the answer to the PQ save for human error and quite possibly his own mistake.

SUMMARY OF PROCEEDINGS: TUESDAY 11 MAY 2010

Nicholas Clapham

- Mr Clapham qualified as a solicitor in 1991 when he joined the Army Legal Services (ALS).
- From January 2003 to the end of 2004, he was the SO1 Legal Staff Officer – with the rank of Lieutenant Colonel - at the UK's Permanent Joint HQ (PJHQ) at Northwood. He served in theatre from March to April 2003 when the JFIT hooding concerns arose.
- He neither received nor delivered any training on hooding of prisoners up to March 2003. He had not received any training (or information) on the Heath ruling or the Ireland v UK ruling.
- He continues to be surprised that the varying positions held by commanders and legal advisers did not result in the controversy being “staffed-up” either to PJHQ or MoD or both.

Catherine Evans

- During 2004, she was a policy desk officer within the Directorate of Joint Commitments.
- Her primary focus was on providing secretariat and policy support to UK operations in Afghanistan. In the Summer of 2004, she was given (for the first time) responsibility for reviewing policy and practice on restricting the vision of detainees during arrest and transit.
- During the debate, “shock of capture” was described as the state of mind that would reduce the likelihood of escape or of violence to captors... not the state of mind that would encourage a helpful interrogation.

- The consensus of consulted opinions was that blacked-out goggles or blindfolds should be used, not hoods. However, it was accepted that hoods (and other methods) could be used in extremis, such as when a large number of prisoners are taken during a fire-fight.

Ian Gibson

- Mr Gibson joined the MoD in 1995. From Spring 2002 to January 2005, he was the Deputy Director –Strategy in the Service Personnel Policy Directorate but was briefly seconded to be the assistant director of personnel in the Iraq Secretariat between March 2003 and mid-May 2003.
- During his period at the Iraq Secretariat, he shared responsibility for briefing ministers on aspects of the war (including hoods and restraints), generally in order to answer correspondence or parliamentary questions.

SUMMARY OF PROCEEDINGS: WEDNESDAY 12 MAY 2010

Rachel Quick

- Ms Quick joined the government legal service in 1994.
- From January 2001 to February 2004, she was Head of the Legal Cell at the Permanent Joint Headquarters (PJHQ) at Northwood.
- She first became aware of the Heath ruling (of 1972) in May 2004.
- She could not recall being told of the decision to ban hooding during Op Telic 1; neither would she expect to have been necessarily informed of such a decision.
- There were several occasions in 2003-04 when Ms Quick might have been informed of hooding being used, but she could not recall any of these. Moreover, following up such allegations was the responsibility of others during a period when she was immensely busy dealing with other legal matters relating to the conflict.

Richard Johnson

- Mr Johnson joined the MoD as a civil servant in 1989, since then he has spent most of his time working on policy, operations and commitments.
- At the start of 2003, he joined J9 at PJHQ as Deputy Head of Policy Operations. In May 2003, he took over as Head of the Iraq unit in J9.
- His role during Op Telic included keeping ministers informed of significant events and providing policy advice . He had knowledge of, and correspondence about, unlawful treatment of prisoners and communicated his concerns to several colleagues.

Simon Cholerton

- Dr Cholerton joined the MoD as a scientist in 1993.
- From September 2001 to June 2003, he was an Assistant Director in the Overseas Secretariat as Head of the Middle East Section. He had no responsibility for prisoner handling (and neither did the staff who reported to him).
- Between June 2003 and December 2003, he was posted to be policy adviser to the senior British military adviser in Baghdad. Shortly after returning to the UK, he was asked to lead a small Iraqi Inquiries Team to deal with public queries about matters that included prisoner-handling. He concluded that there was no overall policy failure in the mistreatment of prisoners: rather there were a number of serious but isolated incidents that needed to be examined.

SUMMARY OF PROCEEDINGS: THURSDAY 13 MAY 2010

Stuart Kistruck

- Mr Kistruck joined the Civil Service in 2000. He worked under Dr Cholerton in the Iraq Secretariat (specifically, the Iraq Policy team) during 2003 until August 2003.
- From May 2004 to September 2004, he was deputy head of the Iraq Inquiries Team (IIT), again under Dr Cholerton.
- He was reliant on “experts” – military and legal – to provide him with the information needed to respond to inquiries about hooding.

Vivian Rose

- Ms Rose joined the MoD legal advice service (MoDLA) in 2002 as a temporary senior civil servant. She reported to Martin Hemming. She left the civil service in the summer of 2005.
- In mid 2004, she became the Director of Operations – International Humanitarian Law with a wide range of responsibilities, including the conflicts in Iraq, Afghanistan and the Balkans.
- Ms Rose was not aware of the “Heath ruling” until at least the summer of 2003, but she was always clear that the techniques identified in the ruling were forbidden because they were in breach of Article 17 of the 3rd Geneva Convention.
- She was closely involved with the provision of legal advice from May 2004 when litigation relating to the death of Baha Mousa began. She advised that an opinion from the Attorney General on the legitimacy of hooding should not be sought at that point.

S059

- S059 joined the Royal Navy in 1978 and was commissioned in 1990.
- In June 2000, he joined 4 Conduct after Capture Company (4 CAC Coy), part of the Joint Services Intelligence Organisation at Chicksands, and became the company commander in December 2001, leaving that post in September 2003.
- The purpose of CAC training is to prepare those personnel who are deemed to be at risk of capture by hostile forces who might not adhere to the Geneva Conventions.
- That said, all soldiers routinely receive level one (theoretical) CAC training on an annual basis. Levels 2 and 3 courses (for those at risk of capture) included resistance to interrogation training.
- S059 acknowledged that , in the training, there is no explicit health warning in the training materials that instructs delegates on which techniques cannot be used by British forces, (even though they might be the recipients/victims of such techniques from hostile forces).

Statement summaries of the following were read to the Inquiry:

Brigadier Curley

Group Captain Evans