

SUMMARY OF PROCEEDINGS: MONDAY 15 MARCH 2010

SO14

- SO14 joined the army in 1980. In 2003, he was operations officer for JFIT in Iraq, holding the rank of captain. He believed that training he received in the 1990s taught him that depriving prisoners of sight was permissible only for security reasons. He believed that he was also taught that sight deprivation prior to interrogation was unlawful. He did not regard hooding as inhumane if there were security reasons requiring the use of hoods. Some prisoners asked to be hooded for their own protection. Before Iraq he had seen sandbags used for sight deprivation. SO14 accepted that, even when done for security reasons, hooding had the potential to maintain or prolong the shock of capture.
- At the time of deployment to Iraq his understanding was that the use of stress positions was illegal and they should not be used by British forces.
- In Iraq he was 2 i/c of JFIT and reported to SO40, who was the OC. Part of his role was to ensure that prisoners were treated in accordance with the Geneva Convention. The JFIT was a camp within a camp. The OC and SO14 were in charge of JFIT on the ground. When prisoners arrived, they would be normally be hooded with sandbags and plasticuffed. They would remain hooded and plasticuffed whilst they were being processed; it was possible that this could mean prisoners being hooded for many hours. Other methods of keeping prisoners isolated from each other were tried but failed due to lack of resources. SO14 did not regard leaving prisoners in the sun with sandbags on their heads as inhumane. In the early days they might have been left in the sunshine all day; the soldiers had to endure the same conditions.
- Stress positions were never used at JFIT nor was there any deprivation of sleep. SO14 did not recall receiving any complaints from prisoners. They were allowed to sit down. Prisoners awaiting their initial interrogation were not allowed to sleep; it was possible that this would be for a period of 24 hours or so. He believed that was lawful.
- Representatives of the ICRC visited JFIT on three occasions. They complained that prisoners were being kept out in the sun with no shade. Some of the prisoners were kneeling. The complaint was passed up the chain of command and JFIT eventually obtained more tentage.
- SO14 once saw a young soldier kick a prisoner in the behind to make him move. That was the only incidence of ill treatment that he could recall having witnessed.
- Col Vernon visited JFIT and saw about 30 Iraqi prisoners who were hooded and kneeling. This concerned him and he spoke to two captains at JFIT about

what he had seen. SO14 did speak to Col Vernon about the treatment of prisoners.

- At some stage SO14 became aware that there was an order banning the use of sandbags as hoods. His interpretation of the order was that hooding could still be used when prisoners were being transported between tents within a secure area but that would only be for one or two minutes. SO14 never considered that hooding with sandbags posed a risk of suffocation.

SO40

- SO40 joined the Royal Navy in 1971 and was commissioned in 1976. By 1998 he had risen to the rank of Lt Commander. In 2004 he transferred to the Retired List of the Royal Navy. In 2003 he was the OC of JFIT in Iraq.
- In 1998 he was CO of HMS Ferret, one of a number of reserve units. He attended an interrogation course; the majority of other attendees were reservists. The course explained what TQ was and how it was done. There was no guidance given on maintaining or prolonging the shock of capture, only an emphasis on the need for the guard force to handle prisoners in a dispassionate manner.
- The witness understood from the course that stress positions and conditioning were not allowed; also that while hooding was not allowed as a means of conditioning, it was allowed for reasons of security. The course gave no indication of the preferred means of depriving a prisoner's sight. His understanding was that conditioning was a way of making prisoners more compliant.
- The course included a Conduct after Capture exercise. The Harsh Technique was also covered. The witness did not observe or hear of any TQers attending the CAC exercise, only trained interrogators. There were no instances of the instructors using a higher level of intimidation on the students.
- The witness did not have any Interrogation or Tactical Questioning training as part of the pre-deployment training. There was no JFIT task-related pre-deployment training for a number of reasons. There was still no interrogation doctrine and thus no written guidance.
- There were some policy documents for interrogation and related activities from 1997. The witness first saw the documents in June or July in 2009 on the Inquiry's website. He had not had sight of any, including the 1972 Directive, when he had carried out a Review of Doctrine and Capability. He had identified areas where doctrine was lacking. He had sought and received legal advice on interrogation methods in any part of the world on any occasion of armed conflict other than when war had been declared. The witness produced a preliminary results paper in November 1999 and a final agreed document in April 2000. In reply, the CO recommended a working party to address the issues and underlined the urgency of formulating settled policy. The witness produced draft policy in September 2002 and highlighted shortcomings in capability. In March 2003 he again highlighted the lack of any written doctrine.

- The witness had attended an open day at Colchester to discuss a reservist provost unit to assist in handling prisoners.
- The witness was OC of JFIT in Op Telic 1. In theatre he reported to SO2. Nearly all the interrogators, apart from about three, were reservists. THE JFIT was open to receive prisoners 24 hours a day. The Americans instituted opening and closing times.
- The witness was unaware of any detailed Directive governing the interrogation of prisoners. The policy in place at the time required such Directive.
- There were about 300 POWs when the witness arrived in theatre and the first days were spent in setting up the JFIT. Once the equipment arrived there was still a need for prisoners to be kept in the open without shade because there was insufficient tentage and the dozen or so blindfolds soon ran out. The witness had no responsibility for ordering equipment, nor any recourse for doing so.
- In the early days, the majority of prisoners arrived at the TIF hooded, both with hessian and man-made fibre sandbags. As standard practice for some time, prisoners who had not had their first assessment were hooded and they were hooded when moving between JFIT and TIF for operational security reasons. Some had more than one sandbag if the sandbag was of poor quality. Hooding was not used as a means of prolonging the shock of capture. They remained hooded within the JFIT compound except for the time they were being interrogated. Other reasons for hooding were to ensure both prisoner and interrogator safety and anonymity. Some prisoners could have been hooded for 12 – 16 hours. Cumulatively they could have been hooded for 24 hours or more, perhaps days.
- Prisoners in JFIT were not put in stress positions. They could assume any position they wished so long as they did not stand up.
- Prisoners were not allowed to go to sleep. They were only in the JFIT for 8 – 12 hours. They were not kept awake for 24 hours prior to interrogation. In any event this would not have been inhumane.
- Generators were used as a privacy screen between interrogation tents to prevent interrogations being overheard. They were not used to prolong the shock of capture.
- The ICRC raised concerns about hooding and prisoners being left outside. This led to the extra tentage being supplied. There was only one formal meeting with them. In their report, the ICRC raised the issue of kicking and stress positions being used in the JFIT. The witness recalled that there was only one instance of kicking, and the soldier involved was removed from the JFIT.
- The witness learned of the hooding prohibition from SO2. The witness was clear that it was a ban on hooding at JFIT, but less clear on whether it related to hoods generally. He did not witness any hooding at the JFIT after the order banning hooding and SO14 did not alert him to any use. Prisoners

continued to arrive at the JFIT hooded. The witness was certain he reported this to SO2.

- The witness had made it clear through the chain of command that he was concerned there was insufficient filtering of prisoners prior to their arrival at JFIT. The witness was receiving feedback that not enough information was being gained from prisoners.

Statement from Maj Jaggard-Hawkins was read.

SUMMARY OF PROCEEDINGS: TUESDAY 16 MARCH 2010

Nicholas Mercer

- He qualified as a solicitor in 1990 and joined the army in 1991. He is currently a Lt Colonel in the Army Legal Service. In 2003, he was a command legal adviser for the 1st Armoured Division. As such he gave legal advice on the laws of war. He received training on LOAC including the handling of prisoners of war. No training on the use of hooding or stress positions.
- He, along with others, provided LOAC training for combat troops prior to the start of the war in Iraq in 2003. This included the requirement to treat prisoners with humanity and dignity; this message was reiterated time after time. The training did not cover the interrogation of prisoners, simply the handling of prisoners. He had no recollection of any instructions about blindfolding. Plasticuffs could be used in extremis.
- Pre-deployment he had had concerns about the resources assigned to prisoners of war, in that there were insufficient troops to deal with prisoners. He made his concerns known up the chain of command but felt he was banging his head against a brick wall. This issue appeared to have low priority
- In 2003 he had not given the question of hooding any thought. He knew it was in contravention of the Geneva Convention, as was the use of stress positions. He was not aware that hooding was being used for any purpose. He would have objected to the use of hooding for any reason, including security purposes. He believed it would be illegal in any situation. This would apply even if the subject agreed to it or in any condition. He would never have agreed to sight deprivation, either by hooding or blindfolding, under any circumstances. Blindfolding was permitted in JSP383.
- It was clear from correspondence he had seen in preparing for the Inquiry that in 1999 the army had stated that the use of hooding and stress positions was banned.
- He had asked PJHQ for guidance as to whether the ECHR would apply but none was forthcoming. In 2003, just before the war started, he warned the GOC that there was a high risk that the lack of resources for prisoners would lead to a violation of international law.
- The witness made several visits to the TIF. During his time in Iraq he kept a diary as a private record. He went to a POW camp with the GOC and saw

over 3,000 POWs. The JFIT was situated at the entrance to the POW camp. As he walked past the JFIT, he saw two lines of prisoners kneeling in the sand, hands cuffed behind their backs and hooded with sandbags. There were about 30-40 in all. He went to speak to someone in the interrogation tent. He could not recall who, but it was a major or a captain. He told him of his concerns and said that he believed what he had seen was unlawful. The reply was that it was part of UK doctrine.

- He assumed that the use of hooding and stress positions at the JFIT was part of the interrogation process and TQ, i.e. the prisoners were being intimidated by various means so that they would 'roll over' when they were interrogated.
- He subsequently sent a memo to the GOC setting out what he had seen at the JFIT and informing him that the use of hooding and stress positions was contrary to the Geneva Convention and should not be used under any circumstances. His complaint was not very popular and his advice was not accepted. However, he was sure his advice was correct.
- Subsequently Col Marriott issued an oral order banning the hooding of prisoners (this order was recorded in his diary on 3 April 2003). After that, during many visits to the TIF the witness never saw hoods being used.
- The witness attended meetings with the ICRC at the POW camp. They raised concerns about the treatment of POWs, including the use of hooding which they said violated the Geneva Convention. There were attempts to justify hooding on security grounds by SO2 and others. The witness did not believe that that was the real reason why hooding was being used, at least not when he saw it. However, SO34 instructed him not to say anything at the meeting with the ICRC. At one point he walked out of the meeting; he was very cross when he heard some of the excuses put forward for the use of hooding.
- He believed that the issue of hooding would go all the way up to ministers, given the intervention of the ICRC.
- FRAGO 79, dated 3 April 2003, was issued by this witness. Para. 10 dealt with the detention of prisoners; they should be handed over to the RMP "as soon as practicable, preferably within one hour and in any event within six hours". On 8 May the Provost Marshall noted that current procedures relating to the detention of prisoners did not meet the requirements of the Geneva Convention/ECHR. The concerns related to such things as the conditions in the POW camp, e.g. sanitation.
- The witness began to have concerns that the requirements set out in FRAGO 79 were not being complied with and some detainees were being held by battlegroups. On 14 May 2003 FRAGO 143 was issued; it asked inter alia for details of every location where detainees were being held.
- He was informed that some detainees being held by a battlegroup had died. As a result he issued FRAGO 152 on 20 May, the day on which he had heard the news. It reiterated the need to treat detainees with humanity and dignity and the time limits for detention prior to handing them over to the RMP. It also stated that under no circumstances should prisoners' faces be covered as that might impair breathing. He knew hooding had been banned but given the news of the deaths he was trying to cover other possible eventualities. At the time he had no idea what had caused the deaths.

- FRAGO 163 was issued on 30 May. The witness thought it was highly likely that he had had some input into this document. This repeated the timeframe for the detention of civilians.
- In issuing these FRAGOs and guidance, the witness hoped to 'design out the potential for prisoner abuse'. He had become aware that some prisoners had been delivered to the TIF with bruising. He ensured that there were lawyers in the TIF and with the brigades.
- FRAGO 29 was issued independently of the witness. It made it very clear that interrogation was a G2/G3 function; the police and lawyers had trespassed onto BGIRO's patch, as it were. SOO2 was involved in formulating the order. This FRAGO introduced a maximum time limit of 14 hours for detainees to be held prior to being sent to the TIF. The witness did raise this with someone but was told that it was given; the TIF was closed between 1800 and 0600 and was under American control. The FRAGO recognised that there might have been the need for some questioning to determine the status of the prisoner. It was not intended to allow interrogation.

Christopher Medhurst-Cocksworth

- He joined the army in 1995 and is now a Major. He was a Captain in Op telic 1. He was the adviser to the Brigade Commander on all intelligence matters. The focus of his work was to identify Iraqi subjects with whom they could work. He received information from battle groups, and intelligence product from Division. He was unaware whether tactical questioning was carried out by battle groups. He cannot recall whether he ever asked from where or how information was received. It was not his role to organise tactical questioning.
- The witness's contact at IBW did not mention that 1BW was tactically questioning prisoners at battle group, or that they were hooding detainees.
- He was unaware of the ban on hooding, and did not recall any mention of sight deprivation during conference calls. FRAGO 63 was distributed to the witness and/or his team. The witness did not recall seeing it, although he thought he would have read it. He thought that the restriction on covering faces related to hooding. G2 was a small team and was not responsible for prisoner handling. The requirement to obtain examples of, and analyse, graffiti would have been the main focus for G2
- Div FRAGO 163/Bde FRAGO 70 was distributed to G2 but the witness did not recall reading the document. It was received about the time he left theatre and he was in the handover period. He did not recall receiving the instruction that any interrogation was to take place at the TIF. It was everyone's responsibility to ensure that this instruction was complied with. It was not within the G2 remit specifically and therefore he and his team did not take any action.
- The witness did not see guidance from the Commander Legal on internees and would not have expected to. He does not recall the instruction that questioning was only to take place at TIF. He was not responsible for dealing with prisoners in any way. Questioning was done by Divisional assets and he received the information. He would be unaware of the source.

- Handover took place over the course of a week and the witness was shadowed by Major Robinson. The two FRAGOs would have been handed over if they had been supplied to the G2 team. The Ops team would have been responsible for doing so.

SUMMARY OF PROCEEDINGS: WEDNESDAY 17 MARCH 2010

Christopher Hilary Vernon

- Colonel Vernon joined in 1978. 4 Operational tours in Northern Ireland. Served in media capacity in Bosnia. Hussar's CO and then media role during Op TELIC 1.
- Media spokesman in Iraq for Op TELIC 1 across all UK Land Forces on operation. Visited PoW Camp at Um Qasr at the request of S009 because of his concerns. At JFIT saw Iraqi prisoners some kneeling, some sitting in the open hooded with sandbags over their heads. Concerns twofold – Needed to be sure that these measures were absolutely justified given that they were exceptional and negative strategic impact would not outweigh the benefit of any intelligence gained. Discussions with Captains did not resolve the problems on the ground and these matters were reported up the chain of command. Col Mercer said he would take these matters further.

David Peter Frend

- Lt Col Friend joined in 1997 as a qualified barrister. Joined Army Prosecuting Authority in 2001. In Iraq acted as legal adviser to HQ in Iraq providing legal advice. Directly reported to Lt Col Mercer.
- Received LOAC training but no training specifically in prisoner handling. Asked to offer advice on the continued temporary detention of prisoners. Also, gave LOAC training in Iraq. The core of the message was that prisoners were at all times to be treated humanely.
- Received a complaint from the Red Cross about prisoner handling – prisoners sitting for too long periods in the full sun. There followed a meeting about the necessity for hooding for security purposes. The use of hooding had been suspended pending the Red Cross meeting which took place on 6th April, 2003.

David George Christie

- Mr Christie joined the army in February 1999 as a qualified solicitor.
- He was, from March to the end of May 2003, the 1 UK Division legal adviser to the prisoner-of-war handling organisation (PWHO) with the rank of major. He left the army in October 2003.

- He understood from his regular LOAC training that all prisoners should be treated humanely. One of his tasks in Op Telic was to deliver LOAC training to PWHO staff. He does not recall receiving any training at all in prisoner handling and cannot recall being told that some restraint techniques were not permissible.
- He was never aware that hoods were being used at Um Qasr for interrogation purposes as opposed to legitimate security purposes.
- He could not recall receiving training on the European Court Of Human Rights case of Ireland Vs the UK in relation to prisoner handling. The legal source of his advice to operational officers was the Geneva convention (and its various amendments).

SUMMARY OF PROCEEDINGS: WEDNESDAY 18 MARCH 2010

Andrew Cowling

- Mr Cowling joined the army in 1976 and left in January 2009 with the rank of brigadier.
- Between January 2003 and July 2003, he was Deputy Chief of Staff (DCOS) of 1 (UK) Armoured Division in Iraq with the rank of colonel. He was responsible for logistics, medical and personnel training and support.
- He received no training or guidance on the use of hoods, stress positions and other conditioning techniques. He therefore assumed that such techniques were not permissible, although the use of hoods for security purposes could have been permissible.
- He was not at any time aware of Gen Brim's order banning hooding or of FRAGO 29 (which established the role of the BGIRO). His responsibilities at the time for ensuring that the fighting units were properly resourced were all-consuming. He was (and is) entirely satisfied that such orders would have gone to the appropriate officers and then been correctly implemented.
- During his tour of Iraq, both during the war-fighting and the peace-keeping phases, Mr Cowling described the tempo of work for all as relentless and exhausting with between 4 and 6 hours' sleep each night.

Nicholas Ayling

- Mr Ayling is a career civil servant who joined the Ministry of Defence in 1993. He had experience as a policy adviser (POLAD) during operations in Kosovo.
- During 2003 he was the POLAD to Maj-Gen Brim (and then Maj-Gen Wall) in 1 (UK) Armoured Division in Iraq.
- He has never received training in the law of armed conflict, prisoner-handling or other military matters.
- He was regarded during the tour as equivalent in rank to a full colonel and reported direct to the GOC.
- He did not have responsibility for policy in relation to prisoner-handling but had an interest in whether prisoners were, in fact, being properly handled.

- Col Mercer was very concerned, on the basis of what he saw at the TIF, that illegal techniques, including hooding, were being used. Mr Ayling discussed this issue with Col Mercer and others. He was not convinced that hooding was illegal in all circumstances but recognised that there were considerable risks of reputational damage to the coalition.

Legal Professional Privilege

- The Chairman heard and considered arguments from the various legal teams, particularly in relation to the Attorney General's advice, on the definition of legal professional privilege and the consequent obligation to disclose or not disclose evidence to this inquiry.