

1 Wednesday, 28 April 2010

2 (10.00 am)

3 THE CHAIRMAN: Good morning, ladies and gentlemen.

4 MR ELIAS: Good morning, Sir. May I call Graham Le Fevre.

5 Colonel Le Fevre, please.

6 THE CHAIRMAN: Yes, Colonel, could you stand up for

7 a moment, please, and I will ask that you be sworn.

8 GRAHAM LE FEVRE (sworn)

9 THE CHAIRMAN: Do sit down. If I could ask you, as I do all

10 witnesses, to get as close as you can to that

11 microphone. It may be you have heard about that before.

12 Without it it is really quite difficult to hear

13 anything. Good, thank you.

14 Questions by MR ELIAS

15 MR ELIAS: Would you give the Inquiry your full name,

16 please.

17 A. Yes, it is Graham Robert Le Fevre.

18 Q. You are still in the army and I think you now have the

19 rank of full colonel, is that right?

20 A. Yes, it is.

21 Q. Thank you. Colonel Le Fevre, would you look to a folder

22 which I hope you will find to your right, and find

23 within it two statements which you have made to this

24 Inquiry. Please go to the last page of the first, which

25 we find at BMI06555. Do you see your signature there

1 above the date 6 January 2010?

2 A. Yes.

3 Q. Can we go to the second statement, please, and to the
4 last page, our page BMI07531, above the date 25 March of
5 this year, do we find your signature?

6 A. Yes.

7 Q. When you signed those statements, were you attesting
8 that the contents of them were true to the best of your
9 knowledge and belief?

10 A. Yes, I was.

11 Q. Thank you very much. If you put those aside then,
12 please, and if you are to be referred to documents, they
13 should come up on the screen and we will take it in that
14 way if we may.

15 I think you know, Colonel, that your statements
16 stand as evidence to this Inquiry, and they will have
17 been read. Accordingly, I don't propose to take you to
18 all aspects of it, but to concentrate on certain parts.

19 May I begin, please, by dealing very briefly with
20 your army career history. You joined the army in 1983.

21 A. Yes.

22 Q. You completed officer training at Sandhurst?

23 A. Yes.

24 Q. Then you went into the intelligence corps, is that
25 right?

1 A. Yes, that is.

2 Q. Through your career you tell us in your statement you
3 have been involved in a variety of intelligence roles?

4 A. Yes, I have.

5 Q. You have served in Northern Ireland and Sierra Leone and
6 in Iraq?

7 A. Yes.

8 Q. On none of those tours were you personally involved in
9 prisoner handling, is that right?

10 A. That is correct.

11 Q. Thank you. In Iraq, can you remember the dates of your
12 tour there?

13 A. Yes, the approximate dates were the beginning of
14 July 2003 until 30 December 2003.

15 Q. And your rank and role there?

16 A. My rank at the time was lieutenant colonel and I was the
17 SO1 J2 ISTAR in divisional HQ.

18 Q. I want to ask you a little, please, about your training
19 and instruction which you may have received before your
20 deployment to Iraq. That's to say throughout your army
21 career. I just want to ask you about certain aspects of
22 it to take you to those parts -- matters -- that the
23 Inquiry is particularly concerned with. You had
24 received training, had you, in the Law of Armed
25 Conflict?

1 A. Yes, I had.

2 Q. You had received training that prisoners were to be
3 treated humanely?

4 A. Yes, I had.

5 Q. Had you attended a tactical questioning and prisoner
6 handling course?

7 A. Yes.

8 Q. You tell us of training that you received in 1984, basic
9 training, which included prisoner handling and tactical
10 questioning?

11 A. Yes.

12 Q. Did you have training subsequent to that?

13 A. No.

14 Q. On that prisoner handling and tactical questioning
15 course -- and of course you tell us if you don't
16 remember, it being quite some time ago now -- do you
17 recall whether you were given any instruction as to
18 where responsibility lay for prisoner handling?

19 A. Yes, I do.

20 Q. What was that?

21 A. The responsibility lay with the guard force.

22 Q. So, as regards a tactical questioner who may be involved
23 in the process, did he have any responsibility; were you
24 instructed, for, if you like, the welfare of the
25 prisoner at other times than when he was actually

1 questioning?

2 A. No, he didn't.

3 Q. That was the instruction that you were given, was it?

4 A. Yes.

5 Q. You also tell us in your statement that it was made

6 clear that when a prisoner is captured, there should be

7 a medical examination of him.

8 A. Yes.

9 Q. Again, that was something you were told in 1984, was it?

10 A. Yes.

11 Q. You didn't receive subsequent training in that regard

12 either?

13 A. Not specifically in that regard, no.

14 Q. Were you taught what the purpose was of that medical

15 check?

16 A. The purpose both was to ensure that the prisoner was not

17 injured, or if he was injured was treated, and to

18 determine whether he was available for questioning.

19 Q. When you say "was available for questioning", do you

20 mean was fit for questioning?

21 A. Yes, fit for questioning.

22 Q. That's what you were taught?

23 A. Yes.

24 Q. Did you understand that that was the main purpose of the

25 medical examination?

1 A. Yes, I did.

2 Q. To ascertain that the prisoner was fit for questioning?

3 A. The purpose was, as I said, whether he was fit for
4 questioning or whether he needed medical treatment.
5 Clearly if he needed medical treatment, then that
6 treatment must be provided.

7 Q. But in other cases where he was not in need of medical
8 treatment, the purpose of the medical was to ascertain
9 whether he, the prisoner, was fit for questioning?

10 A. Yes, that is correct.

11 Q. That would have included TQ'ing or interrogation, would
12 it?

13 A. Yes, it would.

14 Q. Sight deprivation. Were you taught about that in 1984?

15 A. Yes, I was.

16 Q. Did you have any subsequent training in that regard
17 prior to deployment to Iraq?

18 A. No, I didn't.

19 Q. What do you remember about your training as to sight
20 deprivation in 1984?

21 A. Sight deprivation was for the purposes of security,
22 either of the subject or of the forces that were
23 detaining the subject, primarily in relation to the
24 ability for a subject to see matters that might be
25 considered sensitive such as force dispositions.

1 Q. So what we have been referring to as for security
2 reasons, essentially?

3 A. Yes.

4 Q. You were taught, were you, that sight deprivation for
5 that purpose was legitimate, if you like?

6 A. Yes.

7 Q. Were any constraints, do you recall -- and I don't
8 preface every question but it is a long time ago and if
9 you don't remember it, it is better that you say so --
10 do you remember, were any constraints put on the use of
11 hooding -- of sight deprivation, I should say -- for
12 security purposes such as a time limit?

13 A. Not that I remember.

14 Q. What was the method of sight deprivation, or methods of
15 sight deprivation, that you were taught?

16 A. There was nothing specific taught. As I remember,
17 hooding was mentioned.

18 Q. So hooding was mentioned, what, as a means of sight
19 deprivation?

20 A. Correct.

21 Q. You would have understood that, would you, then to be
22 a legitimate means of sight deprivation?

23 A. Yes, I would.

24 Q. Were you taught anything on the course about
25 conditioning?

1 A. I was told about conditioning.

2 Q. What were you told about it?

3 A. I was told that it was prohibited.

4 Q. What did you understand conditioning to be, or what were
5 you told it was?

6 A. As I remember, anything that put a prisoner under undue
7 stress, either physical or mental.

8 Q. Self-evidently therefore conditioning would have
9 included the use of stress positions?

10 A. Yes.

11 Q. They would have been banned?

12 A. Yes.

13 Q. Were you taught anything on this course about shock of
14 capture?

15 A. Yes.

16 Q. What were you taught about that?

17 A. That when someone is captured, they are normally
18 disorientated for a period and are more susceptible to
19 providing information that may be usable by our side,
20 our forces.

21 Q. Were you taught that shock of capture could be
22 exploited, maintained or prolonged, if you like?

23 A. Not that I remember.

24 Q. You say at paragraph 15 of your statement to this
25 Inquiry -- can we have it, BMI06542, first statement,

1 that is:

2 "I was taught on the PH&TQ course that the shock of
3 capture could be exploited by ensuring that questioning
4 takes place as soon after capture as possible."

5 Were you taught or told that it was permissible, for
6 example, to deprive the prisoner of sight in order to
7 maintain the shock of capture?

8 A. No, I don't remember.

9 Q. You don't remember being told either way whether it was
10 right or wrong?

11 A. Not specifically, no.

12 Q. You go on in paragraph 16 as we can see -- it is on the
13 screen -- to say that you were told on the course that
14 sight deprivation during questioning or interrogation
15 was prohibited?

16 A. Yes, that's correct.

17 Q. You give the reason:

18 "... questioning is carried out in a secure
19 environment which removes the security issue. In any
20 event, it is important for a questioner... to have sight
21 of a prisoner's eyes..." and so on.

22 A. Yes, that is correct.

23 Q. You were not led to understand, were you, that there had
24 been a time when questioning might have taken place with
25 the prisoner hooded?

1 A. I'm sorry, could you repeat that question?

2 Q. Yes. On this course, when this instruction was given to
3 you, you weren't told that there had been a time when
4 prisoners would have been questioned with hoods on?

5 A. Not that I remember.

6 Q. You tell us, and I can deal with it very briefly, other
7 so-called conditioning techniques like food deprivation,
8 water deprivation, deprivation of sleep, you tell us
9 were not permitted.

10 A. That's correct.

11 Q. You were taught that?

12 A. Yes.

13 Q. You have always been clear about that, have you?

14 A. Yes, I have.

15 Q. You tell us that deprivation of sight for security
16 reasons might have the incidental benefit of maintaining
17 the shock of capture?

18 A. Yes, that's true.

19 Q. Is that something that you were taught on the course?

20 A. I can't remember.

21 Q. Were you made aware on that course of what in this
22 Inquiry we have been referring to as the Heath ruling or
23 Heath statement to Parliament?

24 A. Yes, I was.

25 Q. Explicitly, as it were, by reference to Prime Minister

1 Heath's statement?

2 A. No, not specifically.

3 Q. Would you have a look, please, at a document at
4 CAB001020.

5 Do you recall, prior to preparation of your evidence
6 for this Inquiry, having seen that document before?

7 A. No, I don't.

8 Q. But you are now aware of it.

9 A. Yes, I am.

10 Q. May I take you please just very briefly to paragraph 7
11 under "Treatment":

12 "Searching and sustained interrogation should be
13 carried out in a disciplined atmosphere, and it may in
14 some circumstances be necessary for interrogation to be
15 carried out by night."

16 Then this:

17 "But no form of coercion is to be inflicted on
18 persons being interrogated. Persons who refuse to
19 answer questions are not to be threatened, insulted, or
20 exposed to other forms of ill-treatment."

21 Was the essence of that taught to you on the 1984
22 course?

23 A. Yes, it was.

24 Q. Then the techniques that are then set out which are said
25 to be prohibited, as you can see, (a) to (e), "any form

1 of blindfold or hood". Were you taught that on the
2 course?

3 A. The reference to blindfolding/hooding, as I said relates
4 back to the point about security. So what we were
5 taught was that it was permissible for security reasons.

6 Q. Were you taught -- may I put it this way -- explicitly
7 that it was not permissible for any other reason?

8 A. As I remember, yes.

9 Q. (b):

10 "the forcing of a subject to stand or to adopt any
11 position of stress..."

12 You told us the essence of that was taught to you.
13 Then I think (c), (d) and (e) fall within those matters
14 that you have already indicated in answer were the
15 subject of specific teaching.

16 A. Yes.

17 Q. Did you, before deployment to Iraq, receive
18 pre-deployment training for the purpose of that tour, as
19 it were?

20 A. Yes, I did.

21 Q. Did that involve any additional training in relation to
22 prisoner handling, tactical questioning or matters of
23 that kind?

24 A. No. But we did cover law of armed conflict.

25 Q. In covering the Law of Armed Conflict, that was

1 reiterating that training which you had received --

2 A. As I remember, yes.

3 Q. Can we look next, please, at your rank and role in just
4 a little more detail, and perhaps look at paragraph 32
5 of your statement to this Inquiry. You deployed to
6 Basra, you tell us, in July as a lieutenant colonel, SO1
7 J2 at 3 Division:

8 "... responsible for directing and coordinating all
9 Intelligence Surveillance Target Acquisition and
10 Reconnaissance..."

11 ISTAR as you told us.

12 "This included human, image and signal intelligence,
13 as well as counter intelligence collection..." and
14 so on."

15 You reported to Major General Lamb, is that right?

16 A. Yes, it is.

17 Q. Directly?

18 A. Yes.

19 Q. As you tell us in paragraph 34, in your role you worked
20 closely with the 3 Div legal team, which included
21 Barnett and Sian Ellis-Davies?

22 A. Yes.

23 Q. Did you go on to say you often discussed with them the
24 legal position of prisoners held for interrogation?

25 A. Yes, that's correct.

1 Q. Were you aware, or did you become aware on deployment to
2 Iraq, of FRAGO 29?

3 A. Not specifically at the time, no.

4 Q. Does that mean you were not aware of it at the time of
5 your deployment? It wasn't part of handover, for
6 example?

7 A. No, not that I remember.

8 Q. Did you become aware of it?

9 A. I became aware of it as part of this Inquiry. I can't
10 remember whether I became aware of it whilst actually in
11 theatre.

12 Q. You say at paragraph 31 of your statement to this
13 Inquiry, 6546, please, in relation to FRAGO 152:
14 "... or any other order which prohibited the hooding
15 of prisoners. I have no recollection of seeing
16 FRAGO 152 or any other order prohibiting the use of
17 hooding prisoners during my time in theatre."
18 Is that right?

19 A. Yes.

20 Q. You never became aware, did you, of any issue raised
21 about prisoners being hooded by British soldiers?

22 A. Yes, I did.

23 Q. When did you become aware of that?

24 A. I can't remember whether it was directly in relation to
25 the Baha Mousa incident or before that, but I became

1 aware during my time in theatre.

2 Q. So it may have been before the Baha Mousa incident that

3 you became aware of what, an issue or issues, arising

4 out of the use of hoods?

5 A. Yes, it may have been before Baha Mousa.

6 Q. From what source did you learn that there was some issue

7 about the hooding of prisoners?

8 A. I'm sorry, I can't remember.

9 Q. You have no recollection at all of with whom you will

10 have discussed the matter or how you gained the

11 knowledge?

12 A. How I gained the knowledge, no, but yes, I did know who

13 I discussed the matter with, which included my own team,

14 the legal team and others at various points.

15 Q. Well, having regard to the list of ciphers about which

16 you have been made aware, can you assist me a little

17 further: did the question of hooding or the issue of

18 hooding come up in some conversation then.

19 A. Yes, at various points during the tour, yes.

20 Q. What was the issue that was raised in respect of

21 hooding?

22 A. As I remember it, one issue was whether hooding should

23 be allowed at all. Then, as I remember it, the second

24 issue was again in relation to the point we have covered

25 before about whether hooding was permissible to continue

1 for security reasons.

2 Q. So, appreciating you don't remember when these
3 conversations may have taken place, with whom did they
4 take place? Can we deal, first of all, with the
5 conversation as to whether hooding -- or the issue being
6 raised -- as to whether hooding was allowed at all?

7 A. Certainly the issue was discussed with the legal team on
8 a number of occasions.

9 Q. By the legal team you mean?

10 A. The legal team in division HQ, including Colonel Barnett
11 and Captain Ellis-Davies.

12 Q. So those discussions would have been as to whether
13 hooding was permitted at all?

14 A. That would certainly have been one of the subjects, yes.

15 Q. Was there some outcome as to that discussion?

16 A. As I remember it, it provided input into the follow-on
17 direction that was given by division HQ to the handling
18 of internees/detainees.

19 Q. Which was?

20 A. I would need to refer back to the actual documentation
21 itself as to what was written down, but certainly our
22 discussions contributed to what was finally written in
23 those documents.

24 Q. Perhaps we will come to the documents in due course.
25 Was it the legal team with whom the other -- the second

1 issue as you put it -- was raised?

2 A. I am sure it was, yes.

3 Q. Should the Inquiry understand that these were issues
4 that were raised by them and not by you?

5 A. As I said, I don't remember how the discussion started,
6 but like most matters when you are trying to resolve
7 something, you have numbers of discussions at various
8 points, it comes up in meetings et cetera, until you
9 reach a conclusion for action to be taken forward.

10 Q. Now, presumably, Colonel these matters were being raised
11 not as a matter of theory but because hooding was being
12 used.

13 A. Yes, clearly hooding was used at various points.

14 Q. You were made aware of that, were you?

15 A. Yes, I was.

16 Q. By whom?

17 A. I'm sorry, I can't remember, but I was aware.

18 Q. Where was hooding being used?

19 A. I was certainly aware that the Americans were using
20 hooding, and I became aware that British forces were
21 using hooding as well, but as I said, I can't give you
22 the specifics of how that information on the second part
23 came about.

24 Q. Where were British forces using hooding, did you
25 understand?

1 A. Well, certainly as part of this Inquiry, it was in
2 relation to the detention of Baha Mousa and the others.

3 Q. Yes. Did you learn of British forces using hoods on
4 other occasions?

5 A. I became aware that hooding had been used beforehand on
6 occasions but I couldn't specify which particular
7 occasions.

8 Q. You can't help the Inquiry as to where that information
9 came from?

10 A. No, I'm sorry, I can't.

11 Q. Just to recap your position, then, when you were made
12 aware that prisoners were being hooded by British
13 soldiers, did you regard that as being wrong?

14 A. No, I didn't.

15 Q. Because of your training?

16 A. Because of my training.

17 Q. Did you ascertain whether the hooding was in fact for
18 security purposes?

19 A. No, I didn't do that, no.

20 Q. When you were told that prisoners were being hooded by
21 British soldiers, did you regard that as being a matter
22 of any great importance?

23 A. No, I didn't.

24 Q. Can we have a look, please, at the witness statement of
25 a soldier that we know as S017, who gave evidence

1 yesterday, Colonel, BMI06795. Can we go through in that
2 statement, please, to paragraph 48 which we find at
3 6809.

4 S017, in her statement to the Inquiry, as you can
5 see from paragraph 48, says this:

6 "On the occasions that detainees and internees
7 arrived at the TIF with hoods (always made from
8 sandbags...), I removed the hoods immediately and
9 informed the soldiers to tear the sandbag material into
10 strips and use them as blindfolds in future."

11 Just pausing there, were you aware at some point
12 that this was happening at the TIF, that prisoners were
13 turning up there hooded?

14 A. Yes, I was.

15 Q. "The issue of hooding was something that I raised orally
16 during my visits to Div HQ. I did not think it
17 appropriate to raise it at the Detainee and Internee
18 Review Committee board meetings... because the purpose
19 of all discussions there surrounded the release of
20 individuals from the JFIT. However, I did raise these
21 concerns on a semi-regular basis with
22 Captain Ellis-Davies..."

23 Approximately six times she says in the statement
24 but that was somewhat modified in her evidence. Reading
25 on:

1 "... on a couple of occasions with Major [S015] and
2 Lieutenant Colonel Barnett and on one occasion with
3 Colonel Le Fevre, also on an informal basis."

4 Do you recall S017 raising the matter with you as
5 she describes here?

6 A. Not specifically, but it is quite possible that she did.

7 Q. "Other than Captain Ellis-Davies informing me, on the
8 occasions that I raised it with her, that she would
9 speak to those units adopting the use of hoods to tell
10 them to stop, I am not sure about what, if any, action
11 was taken to resolve the issue. In response to
12 a question from the Inquiry, following the lapse of time
13 I cannot now remember in detail the reactions of [S015],
14 Lieutenant Colonel Barnett or Colonel Le Fevre when
15 I notified them of prisoners arriving hooded at the TIF
16 but I remember that I was left with the impression that
17 the issue was not regarded as being of particular
18 importance."

19 Was that your view, Colonel?

20 A. Yes, it was.

21 Q. It wasn't a matter of particular importance?

22 A. Correct.

23 Q. Because?

24 A. I assumed it was being done for security purposes.

25 Q. If that's right, did you wonder why, as it were, S017

1 was bringing the matter to you at all?

2 A. Not specifically as I remember. I don't remember that
3 particular occasion of her referring to British
4 detainees with hoods, but I have no reason to believe
5 her statement is incorrect.

6 Q. No, but if she did bring it to you, and your training as
7 you tell us taught you that hooding with sandbags was
8 appropriate for security purposes, it might have caused
9 you to inquire of her, mightn't it, "Why are you raising
10 this at all? It is perfectly permissible"?

11 A. It might have done, but as she says in her statement it
12 was raised on an informal basis. I would assume that if
13 she felt it was particularly a problem, it would have
14 been raised on a formal basis. As I said, I can't
15 remember the particular conversation.

16 Q. So it would have caused you, as it were, to raise no
17 eyebrow on being told this was happening?

18 A. No, it wouldn't.

19 Q. Did you give consideration at all to whether sandbagging
20 in these circumstances was humane?

21 A. I'm sorry, I cannot remember.

22 Q. Thinking about it now, perhaps of the heat and so on and
23 the other factors which you will be pretty much more
24 familiar with than we can be, was it in fact humane to
25 hood a prisoner with a sandbag?

1 A. You are asking for hindsight. I am not sure that that's
2 something that I can say now with everything else that
3 has gone on since that point. Clearly there is
4 a supposition that sandbagging is inhumane but
5 circumstances at the time, if someone needed to provide
6 security, you used whatever materials were available to
7 you. If a sandbag was appropriate then the judgment at
8 the time would have been correct.

9 Q. That, if I may say so, I think we understand. But my
10 question really is to ask you whether on consideration
11 you consider the use of a sandbag in those circumstances
12 humane?

13 A. You would have to define the circumstances more
14 appropriately. If someone is travelling in the back of
15 a vehicle in shade, even though the temperature is high,
16 a sandbag for a period of time I would not consider to
17 be inhumane. If someone was carrying -- was being kept
18 in a sandbag for a very extended period of time, then,
19 yes, I probably would consider that was inhumane.

20 Q. A very extended period of time would be of the order of
21 what?

22 A. I would imagine periods of hours. Certainly I wouldn't
23 expect that you would need to sandbag, or put a sandbag
24 over somebody's head, for an extended period of time for
25 a security reason.

1 Q. So, what, it would be permissible, would it, as you
2 understood it, it would have been in 2003, for
3 a prisoner to be hooded for, can I put it this way, as
4 long as the security issue pertained?

5 A. Yes, that's correct.

6 Q. You have on your cipher list, if you don't recall it,
7 the name against the cipher S015?

8 A. Yes.

9 Q. Do you remember S015 ever raising the issue of prisoners
10 arriving hooded with you?

11 A. I don't remember it specifically, but the discussions
12 that we had at various points undoubtedly would have
13 included that individual.

14 Q. So perhaps finally on this point, when these matters
15 were being raised with you, as you say they were on
16 a number of occasions by various soldiers and by the
17 lawyers, did it occur to you to question why these
18 issues were being raised in the light of the training
19 that you had received in 1984 and which you thought was
20 still, as it were, extant?

21 A. If I had felt that hooding was taking place for anything
22 other than security reasons, then yes, I would have
23 raised it as an issue.

24 Q. But that was never raised with you, that it was being
25 used for any other purpose?

1 A. No, not with me as I remember.

2 Q. Can I move on then, please, to ask you a little about
3 tactical questioning in theatre? What, if any,
4 responsibility did you have for tactical questioners?

5 A. For tactical questioners or for tactical questioning?

6 Q. For tactical questioners.

7 A. For tactical questioners. I didn't have direct
8 responsibility for individual tactical questioners.

9 Q. Who did?

10 A. The tactical questioners would have been the
11 responsibility for the chain of command that they were
12 actually within. So for instance tactical questioners
13 at the battlegroup would have been the responsibility of
14 the battlegroup chain of command; and if at brigade,
15 would have been the responsibility for the brigade chain
16 of command.

17 Q. Paragraph 39 of your statement to this Inquiry, we find
18 it at BMI06548, thank you. You say this:

19 "I expect [in the second line] although I do not
20 know, that TQers reported to the Battlegroup
21 Intelligence Officer in the first instance and reported
22 any concerns to him. During the period of TQing, the
23 question of who was the TQer's superior officer would
24 depend upon the command state of the TQer. If the TQer
25 was attached to a Battlegroup, that TQer would be under

1 the command of the Battlegroup. I do not, however, know
2 who held command responsibilities for a TQer if that
3 TQer was not attached to the battlegroup in which he was
4 TQing."

5 Would that have been your state of knowledge, as it
6 were, at the time?

7 A. Yes, it was.

8 Q. So to whom could TQers turn if there were issues that
9 troubled them in theatre?

10 A. The person who was giving them direction for the
11 activity they were undertaking.

12 Q. At brigade level, who would that have been?

13 A. Again, it depends who the TQer was working for. If it
14 was within the J2, then it would either have been
15 their section commander or one of the staff officers in
16 the J2 staff.

17 Q. You tell us in your statement to the Inquiry that you
18 were aware that there was a shortage of TQers.

19 A. Yes, that's correct.

20 Q. Were steps taken to your knowledge to rectify that?

21 A. At which point?

22 Q. At any point when you were in Iraq and aware of the
23 shortage?

24 A. Whilst in Iraq we made best use of those people who were
25 trained that we had available to us. And separately the

1 issue was staffed upwards to the permanent joint
2 headquarters to try and ensure that for the next force
3 elements coming out, additional TQers were provided.

4 Q. I think you tell us that in relation to Op Telic 3.
5 That was, as it were, what was being planned?

6 A. Correct.

7 Q. Were you aware that the shortage of TQers was causing
8 problems in relation to the process, if you like, of the
9 handling of prisoners?

10 A. Yes, I was aware that there was a shortage and therefore
11 that would have a direct impact on how many detainees
12 could be tactically questioned.

13 Q. Which might in itself affect, if you like, the
14 timescales over which prisoners were being processed?

15 A. That could have had an impact, yes.

16 Q. Do you recall being aware of that at the time?

17 A. Yes. I was aware that there was impact on the time.

18 Q. Do you recall what this Inquiry anyway has been
19 referring to as the 14-hour deadline?

20 A. Yes, I am aware.

21 Q. You tell us in your statement that you remember
22 discussing this with Charlie Barnett?

23 A. Yes, I did.

24 Q. Was that discussing with him problems about the
25 14 hours?

1 A. Yes.

2 Q. What were the problems in relation to the 14-hour
3 deadline as you understood it?

4 A. The major problem that I remember was the transportation
5 difficulties of getting detainees from the point of
6 detention -- the unit they were in -- and then down to
7 the tactical internment facility.

8 Q. So practical logistical difficulties in meeting the
9 timeline for those reasons?

10 A. Correct.

11 Q. Was anything done about, for example, extending the
12 timeline if it wasn't practical?

13 A. The procedure was that if the timeline needed to be
14 extended, application had to be made up the chain of
15 command and authority could be given for that timeline
16 to be extended.

17 Q. Were concerns raised directly with you about the
18 difficulties of meeting the 14-hour deadline?

19 A. I'm not sure they were specifically raised with me, but
20 it was a discussion item that I remember having input to
21 at various points during my time in theatre.

22 Q. Do you recall now with whom you had those discussions,
23 apart from Barnett?

24 A. I would have had the discussions with my own staff.
25 I expect that I had discussions with the J2 staff at

1 brigade level, but I can't remember specifically.

2 Q. Could we look, please, at paragraph 46 of your statement
3 to this Inquiry, where you there set out the doctrine or
4 guidance of which you were aware, as I understand it, in
5 2003. Is that right?

6 A. Yes.

7 Q. JWP 1-10 and the other materials that you there set out
8 at (b), (c) and (d). The Inquiry has heard now quite
9 a bit of evidence that there was not, at this time in
10 Iraq, policy in place that gave at least adequate or
11 sufficient guidance in relation to the TQ'ing process.
12 Would you agree with that proposition?

13 A. Looking back in hindsight, yes.

14 Q. If there ought to have been written policy guidance, did
15 you have any responsibility for that at the time?

16 A. For the tactical questioning piece, yes, that would have
17 been a J2 responsibility which I oversaw.

18 Q. Ought you not, therefore, Colonel, at the time have
19 sought to rectify that defect?

20 A. I would make the point that this was but one part of the
21 whole ISTAR effort that we were trying to run in MND(SE)
22 at the time and you had to prioritise what was needed to
23 be done. Inevitably there is an issue comes up, you
24 deal with it, but prisoner handling -- sorry, tactical
25 questioning -- was not an issue that was high on my

1 agenda until this case came.

2 Q. So would it be fair to say, from your perspective
3 anyway, that prisoner handling and tactical questioning
4 would have had a low priority in the scheme of things
5 operated by you in Iraq in 2003?

6 A. Prisoner handling I didn't have responsibility for.
7 That is not a J2 responsibility, as I think you are
8 aware. For the tactical questioning piece, yes, I had
9 responsibility for -- to the general for trying to give
10 him an understanding of intelligence across the whole of
11 southern Iraq, an area that is larger than the whole of
12 the island of Ireland with a very large population,
13 a small force available and a relatively small
14 intelligence capability to give him the intelligence he
15 needed. I had many priorities, many requirements and
16 insufficient resources to provide all of those to him.

17 Q. Tactical questioning is obviously an element of the
18 process of prisoner handling, isn't it?

19 A. No, tactical questioning is not part of prisoner
20 handling. Tactical questioning is tactical questioning;
21 prisoner handling is a separate issue.

22 Q. Forgive me. I am not talking in terms of responsibility
23 but tactical questioning forms part of the process, if
24 you like, of the movement of a prisoner from point of
25 capture through to final detention or release?

1 A. If you believe that that particular prisoner has
2 information of value; you may determine that you don't
3 think they have and therefore tactical questioning is
4 not required.

5 Q. Yes. If it does take place, it is part of that process
6 obviously?

7 A. It would take place during that process, yes.

8 Q. The Inquiry has heard evidence that, if you like, the
9 process involving prisoners from point of capture
10 through to detention or release was something of a low
11 priority in Iraq.

12 A. Yes.

13 Q. Is that how you would have viewed it too?

14 A. It will have depended at the particular point in time.
15 But as I said earlier in my statement here, that the
16 requirement to provide the intelligence picture across
17 the piece to the commander -- be it at division or
18 brigade level -- this was but one small part of that
19 total effort.

20 Q. Because it was one small part, as you put it, might it
21 be the case that it didn't actually get the attention
22 from you at the time -- I am talking about TQ'ing --
23 which it ought to have done?

24 A. As I think you will understand, when you are in an
25 environment where you have many demands against you,

1 there are any number of things that perhaps don't get
2 sufficient attention. You have to prioritise your
3 effort and you have to prioritise the resources, as
4 I have said before. I can look back in hindsight and
5 say clearly I would have liked to have done more, but
6 the circumstances at the time, where we were
7 extraordinarily busy, we had a situation that had
8 deteriorated since we had taken over command and become
9 Multinational Division South East. We had a number of
10 considered threats ranging from the Iranians through to
11 insurgent groups. We were trying to protect our own
12 forces as well as protect the population. We had an
13 infrastructure that was failing. All of that required
14 intelligence support to help the commander make
15 decisions on how to use his resources.

16 Q. You say with hindsight, Colonel, but may we look,
17 please, at another statement at BMI06579, the statement
18 of Mr Barnett. Can I take you through, please, to
19 paragraph 134. The Inquiry will be familiar with the
20 paragraph and perhaps you are too, but I take you to it.
21 The reference to FRAGO 005, BMI06633:

22 "I recall that in the drafting of this FRAGO [that
23 would be 005] I had originally wished to include some
24 guidance additional to that which we eventually issued.
25 I remember speaking to J2 Intelligence staff [including

1 you]... and Provost staff (including
2 Lieutenant Colonel Bill Warren) and advising them that
3 I was preparing a single comprehensive document on
4 detainee procedures. I wished to insert sections on
5 tactical questioning and arrest and custodial procedures
6 and I requested that they provide me with some suitable
7 paragraphs on these aspects. However, they were not
8 keen to do so. They explained that such areas had
9 already been trained to relevant specialist personnel
10 and that they were, in any event, too complex to
11 summarise in brief and would therefore render the
12 document either inaccurate if too short or too unwieldy
13 if too long. I accepted that advice."

14 A number of things arise there, Colonel, don't they?
15 Do you recall Colonel Barnett approaching you with these
16 issues?

17 A. Not specifically, but I have no reason to believe that
18 this statement is incorrect.

19 Q. Asking you to insert sections -- in your case it would
20 have been the sections on tactical questioning, wouldn't
21 it?

22 A. Yes.

23 Q. You say in your second statement to the Inquiry that you
24 think he may be right about this?

25 A. Yes, I have no reason to believe that his statement is

1 incorrect.

2 Q. No. He says here, as we can see, you were not keen to
3 do so, to provide suitable paragraphs to assist with the
4 tactical questioning section, as it were, and to set out
5 in writing and in a comprehensive document what might be
6 required?

7 A. That's what he says, yes.

8 Q. If that's right, why would you have been unwilling to
9 provide such material?

10 A. As I said, I can't remember specifics but I would refer
11 to the point that this relates to a fragmentary order,
12 and a fragmentary order is just that; it is meant to be
13 a short concise document covering specific points; and
14 I think the point there, when I said it was more complex
15 and required a longer document.

16 Q. It might be said that something might be better than
17 nothing, if in fact there was the, as it were,
18 deficiency in the written doctrine for tactical
19 questioners. Here was an invitation to add to the sum
20 of knowledge, to give guidance and instruction --

21 A. Yes, that could be said.

22 Q. And you apparently declined to do so?

23 A. It would appear, based on that statement, that that is
24 correct.

25 Q. Wasn't that, if you like, a missed opportunity?

1 A. As I said, I believe that the people who had been
2 trained on prisoner handling and tactical questioning
3 knew what they were meant to be doing. And without
4 remembering fully all of the discussions going on at the
5 time, all the other staff work that was underway,
6 I can't remember whether we were working on any separate
7 documentation relating to tactical questioning, this
8 refers only to a specific fragmentary order and, as
9 I said, a fragmentary order is meant to be fragmentary.
10 It is merely a small piece.

11 The point that he raises there is that it would not
12 be sufficient for what was a complex area.

13 Q. As I think you may know, the fragmentary order in effect
14 became SOI 390.

15 A. I couldn't refer to the particular number, but yes,
16 quite possibly.

17 Q. So was it really simply a question, as you put it, of
18 with hindsight you might have done more? Here you were
19 being asked to do more and it seems, if this account be
20 right, that you declined to do so?

21 A. If the account is right, then, yes, I did decline to do
22 so, but I would have weighed up the factors as to why
23 I made that decision. It would not have been an
24 arbitrary decision.

25 Q. If indeed, as you have agreed there was, there was

1 a deficiency in the existing doctrine -- a deficiency
2 the Inquiry has been told that may have pertained for
3 some years -- this was an opportunity lost, wasn't it?

4 A. Again, in hindsight, one could say that.

5 Q. If it were, might it be that it was because of the lack
6 of priority, if you like, that was given to this issue?

7 A. Indeed, it may relate to that. Again, the statement
8 here, I am not sure when that particular discussion took
9 place. Within the context of it, you know, there were
10 other factors that may have been important. I can't
11 remember, I am afraid.

12 Q. I move on then, please, to consider issues arising from
13 Baha Mousa's death and the detention of the
14 Operation Salerno detainees. When did you first learn
15 of the death of Baha Mousa, do you recall?

16 A. I don't specifically. I say in my statement that there
17 may have been a number of ways that may have happened.

18 Q. If we look at paragraph 57 of your statement, please,
19 BMI06552, you refer to an email from Major Richards -- I
20 don't think I need take you to it -- of 16 September
21 which may have been the first time which you were aware.
22 You do use the word "may"; you might have been aware
23 before that?

24 A. I may well have been. It could have been an issue
25 raised in headquarters at a update, it may have come out

1 at a particular meeting or it may have been this email.
2 I am afraid I can't remember how I became aware of the
3 issue.

4 Q. May I show you a statement of the witness West, who has
5 given evidence to this Inquiry. We find it in the
6 electronic copy, please, at BMI03821. Could we go
7 through to paragraph 61, please. Mr West refers at
8 paragraph 61 to personal notebook of a diary nature
9 which he kept. If we go over the page, he refers at the
10 top of the page, and indeed gave evidence about this, to
11 being present at a briefing and learning that detainees
12 were held at battlegroup level, at BG Main. In fact
13 detainees who were being held by 1 QLR, do you follow?

14 He said:

15 "This prompted me to query in my own mind why they
16 were still being held at battlegroup level and not
17 delivered to the TIF. This was not openly discussed
18 during the course of the update. I raised this on a
19 one-to-one basis at the end of the update with
20 Lieutenant Colonel Graham Le Fevre... I am not sure now
21 whether I understood at the time that these were the
22 same prisoners who had been mentioned in the briefing
23 the previous evening. I recall Lieutenant Colonel
24 Le Fevre explained to me words to the effect that 'they
25 think that they may be involved in the murder of your

1 guys,' which is a reference to the death of three RMP,
2 including Major Titchener... I was therefore reassured
3 that senior officers were aware that the prisoners were
4 still being held at 1 QLR Battlegroup Main
5 headquarters..."

6 If we just go back to the start of the paragraph
7 again, please, we can see that this is timed from the
8 personal notebook -- four or five lines down -- Monday,
9 15 September, second entry from the GOC's evening update
10 at 17.45. I think Mr West is referring to what he
11 suggests is the conversation with you at the end of the
12 meeting, at the end of that update as he calls it. Do
13 you recall such a conversation?

14 A. Not specifically, no.

15 Q. Not specifically means?

16 A. No, I don't. I don't remember that conversation.

17 Q. Did you ever understand that the Operation Salerno
18 detainees were in fact, it was thought, involved in the
19 murder of the RMP soldiers?

20 A. If it says there, then quite possibly I did, but I am
21 afraid again I can't remember all that way back then.

22 Q. So that we understand your position, as it were: this is
23 a conversation, is it, which you say might have taken
24 place; you don't say it couldn't have done?

25 A. No. Again, it could quite possibly have taken place,

1 yes.

2 Q. You might have been in possession of that information on

3 Monday, the 15th?

4 A. Yes, I might have been.

5 Q. From whom would you have learnt that?

6 A. Sorry, could you say that again?

7 Q. Yes. From whom would you have learnt the suggestion

8 that these detainees might have some involvement in the

9 murder of the three RMP?

10 A. It would have been based either on intelligence that we

11 had at divisional level or maybe intelligence that had

12 been gathered at brigade level.

13 Q. Could we look then at one or two more documents, please.

14 Going first to paragraph 61 of your statement to this

15 Inquiry -- BMI06553 -- you were referred by the Inquiry

16 to an email dated 17 September. You say:

17 "I do not remember this email, but I can recall

18 having a number of discussions with [S01 Legal

19 Charlie Barnett] in relation to the J2 aspects involving

20 intelligence details."

21 If I can take you, please, to the email itself,

22 MOD016122. We can see at the top you were copied in.

23 Forgive me, you were sent this email as one of a number?

24 A. Yes.

25 Q. Under paragraph 6, this is of course following the

1 death, and indeed the heading at the top is "Subject:
2 Death in custody -- Follow up action".

3 Under paragraph 6, and in bold:

4 "My strong advice has been that all hooding be
5 immediately stopped..."

6 Do you remember reading that?

7 A. I don't remember this specific email, no.

8 Q. Do you remember at this time the issue of the stopping
9 or the banning of hooding, if you like, being raised?

10 A. Certainly I remember it during the period in theatre and
11 I have no reason to believe that it wasn't raised at
12 this particular point here.

13 Q. Do you recall having any conversation with
14 Colonel Barnett about it at the time of this email or
15 thereabouts, post death in other words?

16 A. I can't relate it specifically in relation to this
17 email, but I certainly remember having discussions with
18 him about it, yes.

19 Q. Was there any view that hooding should be permitted to
20 be continued being put forward by anybody?

21 A. I am afraid I can't remember.

22 Q. Can you remember whether you had any view at this time
23 as to whether hooding should be stopped?

24 A. I can't. But based on my interaction with
25 Colonel Barnett, I'm sure that if we had had

1 a discussion and I had said that I thought it should
2 continue for security reasons, he would have referenced
3 that in his email.

4 Q. Can we have a look, please, at MOD016127. We see here,
5 don't we -- from the arrow down -- an email from you of
6 18 September to Major Fenton, copied to others.

7 Subject:

8 "Detainee handling and tactical questioning".

9 "I know you are undertaking a lot of work in
10 relation to the subject matter. There have been
11 extensive discussions here about the picking up of
12 persons for whatever reason, the management process, the
13 tactical questioning that may then occur and what
14 happens up to the point an individual turns up at the
15 TIF. In order to resolve what is clearly a thorny issue
16 a [divisional] SOI is now being produced which will
17 cover the whole process."

18 Was it not surprising, Colonel, that there wasn't
19 already a divisional SOI covering this whole process in
20 place?

21 A. I'm not sure I would use the term "surprising". The
22 fact that there didn't appear to be one was a concern,
23 clearly.

24 Q. Sorry, was concerning?

25 A. Was a concern.

1 Q. Was a concern, thank you. You go on to say:

2 "J2 is starting the process, because someone has to,
3 and all of the other appropriate branches here will
4 provide the necessary input. Once it is completed it
5 will be issued by J3."

6 Then you set out what you refer to as a few J2
7 points. I just take you to the second bullet point and
8 to the middle of it:

9 "TQ should normally be a single session with
10 determination by the questioner at the end of the
11 session whether the individual is likely to have more
12 useful information."

13 Was that, as it were, a decision of yours or
14 a proposition or proposal of yours?

15 A. I will have made that statement based on training I have
16 had, the situation at the time and the potential output
17 and intelligence value from people who had been
18 detained.

19 Q. Was it something that was based on anything that had
20 happened in relation to Baha Mousa and those detained
21 with him?

22 A. I can't remember whether it was specifically, but
23 clearly it is -- the timing of this is around the time
24 of the unfortunate death and therefore it would no doubt
25 have had an impact on what I wrote.

1 Q. You go to say:

2 "If that is the conclusion that individual would be
3 sent to the TIF."

4 That is whether he is likely to have more useful
5 information, correct?

6 A. Correct.

7 Q. "Obviously that is not completely black and white as if
8 there is a feeling that a detainee may have time
9 critical force protection info further TQ may be
10 undertaken."

11 So it wasn't, as it were, the clear instruction,
12 "you may only TQ once".

13 A. Correct.

14 Q. If we go back a page, then, please, and we see the
15 responses, as it were, at the foot of the page working
16 backwards, 18 September, 11.01, from Major Fenton to
17 you, copied to others as we see:

18 "Many thanks, I appreciate the guidance."

19 Then the next paragraph, please, four or five lines
20 in:

21 "... while it does no harm to review/remind/sharpen
22 up, detention is on the whole handled with
23 professionalism. It is clearly the TQ process which
24 needs refined and explained to the BGs, such that it can
25 be correctly built in to the prisoner handling process."

1 Was that apparent to you at the time that it was the
2 TQ'ing process which needed to be, as he puts it,
3 "refined".

4 A. Certainly it was clear that more needs to be done and
5 that's why an SOI was being produced, of which TQ was
6 a part. But it wasn't clearly just the TQ process that
7 needed to be worked on.

8 Q. Then, at the top of the page, your response to that. As
9 we can see, the same day, now 11.44, where you say:

10 "Thanks. I will certainly look at the latter
11 point."

12 Under the third bullet point you say this:

13 "Many of the people do not talk -- our techniques
14 are governed by the Geneva Convention and clearly is
15 less 'pointed' than those used by the previous regime."

16 You are referring to the Saddam Hussein regime.

17 A. Correct.

18 Q. What did you mean by "somewhat less 'pointed'"?

19 A. Well, it was common knowledge and is common knowledge
20 now that Saddam Hussein's regime used any means that
21 they felt necessary to gather information, be it torture
22 or otherwise.

23 Q. Then you go on in the paragraph under the bullet points,
24 please, to say this:

25 "I can understand your frustration [you are

1 addressing this to Major Fenton] that more info doesn't
2 seem to come out of [interrogation], it is an issue that
3 I am working on. This part of UK military capability is
4 only held in the reserves and it has frankly languished
5 for many years."

6 What did you mean by that?

7 A. The interrogation capability at that time in the British
8 Army was delivered by reservists only. There was no
9 formed capability in the regular army to do
10 interrogation, and that had been the case for many
11 years.

12 Q. Can we move on, please, to another document. We find it
13 at MOD016128. It is an email of 18 September into which
14 you were copied, as we can see, from Colonel Barrons,
15 sent to Major Fenton. At the second bullet point if we
16 go down, it is about death in detention as we can see at
17 the head. If we go down to the second bullet point
18 under "Div policies and procedures break down as
19 follows":

20 "... TQ -- no policy visible and practice is based
21 on [training] on TQ course. SOP required and in hand
22 with J2 lead."

23 Was that a fair reflection, Colonel, about the
24 problem relating to TQ'ing, that there wasn't any
25 visible policy in theatre, there wasn't any guidance or

1 doctrine?

2 A. There was no policy in theatre. Doctrine was as was
3 trained on the course, and clearly the reference that we
4 have already talked about to the SOI coincides with the
5 time-frame of this email and that was what was being
6 worked on at the time.

7 Q. So we do come back, do we, really to the same issue,
8 perhaps time after time, forgive me for putting it that
9 way, that there was a deficiency that perhaps ought to
10 have been spotted and dealt with earlier?

11 A. I come back to my point: it was one factor of many that
12 we were trying to deal with. Clearly policy is put in
13 place as and when you can have the resources available
14 to do it. If there isn't a perceived issue, something
15 will not necessarily get a high priority to be dealt
16 with.

17 Q. May I just ask you, please, about two final and
18 unconnected matters. You were aware that, as you have
19 told us, the 14-hour deadline was being breached on
20 a regular basis?

21 A. I can't remember if it was on a regular basis, but, yes,
22 I was certainly aware it was breached.

23 Q. Did you regard that as having any potential to put
24 prisoners at risk?

25 A. What do you mean by "at risk"?

1 Q. Being left in the hands of soldiers, who may for
2 example -- as in the case of the Baha Mousa detainees --
3 have been the arresting soldiers, for guarding for
4 longer than otherwise would have been the case?

5 A. I had no reason to believe that if a detainee were held
6 by British soldiers, that they would be at any greater
7 risk than being held in the TIF.

8 Q. So it wasn't a matter that you gave any thought to, was
9 it?

10 A. Not specifically, no, as I remember.

11 Q. The fact that there were these breaches of the 14-hour
12 rule was not something that you felt important enough to
13 take up the chain, as it were, or to amend the rule if
14 it wasn't practicable?

15 A. I was working in the division HQ as one of the senior
16 staff in the division. We discussed it within
17 divisional HQ which was effectively the top of the
18 chain. The rules were there but as was clear they --
19 the 14-hour rule could be breached if appropriate
20 authority was going from higher up the chain of command
21 ie at divisional level. And with practical difficulties
22 of getting people to the TIF, providing that that
23 procedure was passed, then the necessary authority was
24 there for a detainee to be held for longer than 14 at
25 the battlegroup, and as I said, no reason to believe

1 that a detainee would be mishandled or mistreated;
2 therefore that aspect was not necessarily a concern, no.

3 Q. So what was the purpose of the rule, as you understood
4 it?

5 A. The rule was, as I remember, to try and ensure that we
6 got the person to the TIF at good time. There was the
7 problem that a battlegroup was undertaking a number of
8 operations. Holding detainees was an additional drain
9 on its own resources; it had many other things to do.

10 And the other thing is that tactical questioning is
11 only designed to get information of immediate value. If
12 you are seeking more information or intelligence from an
13 individual, then you want them to go through the more
14 in-depth interrogation process, which cannot be done at
15 battlegroup level.

16 Q. So the purpose of 14 hours, as opposed, for example, to
17 6 hours or 24 hours, was what?

18 A. I can't remember how that particular time-frame came
19 about, but I strongly suspect that a number of factors
20 I have just mentioned were involved, as well as the time
21 it takes to get people from one location to the TIF and
22 the ability of the TIF to process people once they
23 arrived.

24 MR ELIAS: Yes, thank you.

25 THE CHAIRMAN: Yes, well, there will be questions from other

1 counsel now for you, Colonel.

2 Mr Friedman?

3 Questions by MR FRIEDMAN

4 MR FRIEDMAN: Thank you Colonel. Can I start with the
5 course that you did back in 1984, please, and just ask
6 a question by reference to that directive that you were
7 shown. Can we have CAB001025. It is the top section of
8 paragraph 7 you were looking at before. The first full
9 sentence:

10 "Persons who refuse to answer questions are not to
11 be threatened, insulted, or exposed to other forms of
12 ill-treatment."

13 You confirmed to Mr Elias that that reflected in
14 essence what you were taught, is that correct?

15 A. That is correct.

16 Q. The Inquiry has seen documents and heard about evidence
17 relating to the harsh treatment of questioning. If
18 I use the phrase "harsh treatment", you know what
19 I mean, don't you?

20 A. No, could you please explain what you mean by "harsh".

21 Q. Yes, it was one of the styles that a questioner could
22 adopt in order to elicit information from an unwilling
23 suspect. It effectively amounted to aggressive
24 shouting, potentially quite close up to the physical
25 space of the suspect without touching them. Do you

1 recall being trained on that?

2 A. I don't recall whether that was trained on the PH&TQ

3 course.

4 Q. Yes.

5 A. I was aware it was a method that was considered on the

6 interrogation course.

7 Q. Did you, at that time or later, become aware that there

8 was no limit -- or very little limit -- on the insults

9 that could be shouted at the suspect when that harsh

10 technique was being used?

11 A. I'm sorry, I don't think I can answer that question.

12 I -- reference to insults, I don't remember at all,

13 particularly in relation to the course that I was on.

14 Q. Does it follow from that the TQ course that you did, and

15 your understanding of TQ'ing, that you would not have

16 expected TQers to use that type of technique in theatre

17 in Telic 1?

18 A. I couldn't comment on Telic 1 because I wasn't --

19 Q. I am so sorry, I mean Telic 2.

20 A. I could well understand a TQer shouting at a individual,

21 but your description of face-to-face stand-up shouting

22 and the use of insults, I am not sure I can comment on.

23 Q. [REDACTED]*****

24 *****

25 *****

1 A. [REDACTED]*****.

2 Q. Yes. I just want to ask you some questions about the
3 attitude of intelligence corps people in 2003. It may
4 be that you have learnt more through your current job to
5 answer the questions.

6 Was there a danger in the army in 2003 that the
7 intelligence corps, because of its subject matter
8 interest, could become isolated from the rest of the
9 forces?

10 A. I don't really believe that's the case, no. We were and
11 still are one of the arms in the services as part of the
12 army. We are not isolated and I don't believe we were
13 in 2003. Although I am not quite clear what you mean by
14 "isolated".

15 Q. Yes, well, perhaps to elaborate upon the question: that
16 the need-to-know aspect of the intelligence corps work
17 and high sensitivity of it potentially to save lives
18 meant that the intelligence corps could become
19 culturally isolated from the rest of the forces. Was
20 there a risk?

21 A. No. In fact if anything it was going the other way.
22 One of the moves in intelligence in general within the
23 armed forces over quite a few years now has become -- to
24 become more open and more inclusive. We used to refer
25 to the green baize door: that intelligence was something

1 that was done behind the green baize door; and we talked
2 about the idea that actually the door was open now; we
3 were more inclusive and more sharing of information and
4 intelligence. So, no, I don't -- I don't recognise your
5 assumption that we were isolated.

6 Q. The open door was a discussion you were having in 2003?

7 A. Generally across the army and defence and in theatre.

8 Q. Did you encounter intelligence subject matter experts
9 from time to time who resented interference in their
10 work from the wider army and potentially from lawyers
11 and the like?

12 A. I'm not sure what you mean by "resented". It was an
13 observation that, yes, we were specialists doing
14 a particular area of work for which we were trained and
15 that sometimes generalists did the jobs as well who were
16 not necessarily trained to the level that we were. And
17 yes, it is true that the impact of the law on operations
18 has changed over the time certainly that I have been in
19 service and is much more involved in what we do.

20 Q. Just on specialism and subject matter expertise, I just
21 want to understand what you understood that should
22 properly mean. Can we take it that a subject matter
23 expert, when we are talking about TQ'ing or
24 interrogation, is someone who has done the training
25 courses, the relevant training courses?

1 A. Ideally, yes, that's what you are talking about.

2 Q. Others have said that in order to do it, you must have
3 done the training courses?

4 A. To do TQ'ing, yes, you should have done the training.

5 Q. Did you at the time have a view that there was any time
6 period where if you had done it, you needed to renew
7 your training?

8 A. On PH&TQ, certainly there is a time expiry limit.
9 Whether I was specifically aware of exactly what that
10 time expiry limit was at the time, I can't remember.

11 THE CHAIRMAN: Was there such a limit at the time in 2003,
12 do you know or not know?

13 A. I believe there was, but I can't remember exactly.
14 Certainly there was on interrogation.

15 MR FRIEDMAN: Did anyone during that tour seek your
16 authorisation from brigade or battlegroup to conduct
17 TQ'ing, even though they were out of time on their tour,
18 as far as you know?

19 A. I am aware as part of the evidence that there is
20 reference made to that. I don't remember specifically.

21 Q. Just in terms of this subject matter expertise: would
22 you say someone was a subject matter expert simply
23 because they had done that short course or would one
24 need some other experience, practical experience, on the
25 subject.

1 A. I think you would need to define "subject matter
2 expert". If you were saying someone was a subject
3 matter expert on tactical questioning, that is the only
4 course that was available for tactical questioning. And
5 therefore your ideal subject matter expert is someone
6 who has both training and experience.

7 Q. Yes.

8 A. Interrogation, which takes questioning to a deeper
9 level, would be a different level of subject matter
10 expert, and therefore you would need interrogation
11 course. An expert is someone both with training and
12 experience.

13 Q. I understand that, but on the TQ'ing, presumably it is
14 wrong to think that someone is a subject matter expert
15 just because they have done a four-day course and
16 nothing else?

17 A. Yes, I think that's probably a fair statement.

18 Q. The last feature, on subject matter experts, is would
19 you expect that both the training and the doctrine had
20 been fully legally audited?

21 A. Yes, I would have done.

22 Q. Just on the answers that you have given about hooding,
23 I just want to take you to an email of 20 July from
24 Lieutenant Colonel Barnett. It is at MOD052218.

25 If we look halfway down, there's a date and

1 addressees. It says 20 July there, from Lieutenant
2 Colonel Barnett. And on the right-hand side you are one
3 of the recipients of the email.

4 A. Yes.

5 Q. Just its context at paragraph 1, it is referring to
6 a draft FRAGO that we see later is from the US forces,
7 "directing procedures for classification and processing
8 of EPWs, detainees and internees".

9 Lieutenant Colonel Barnett says:

10 "[it] raises national concerns (both legal and
11 political) for both the UK and also all the other
12 MND(SE) TCNs. As a result elements of it are unlawful
13 for our nations or politically unacceptable and we
14 cannot therefore apply these orders in their entirety."

15 He refers to drafting a holding reply and talks at
16 paragraph 2 about arrangements for transfer between the
17 UK and US forces being governed by a MOU.

18 At paragraph 4 he lists a couple of specific
19 concerns. (a) does not matter for these purposes, but
20 (b):

21 "There is a direction to handcuff, ankle shackle and
22 hood cat A and B immediately, during the interrogation
23 process and during transportation. It is also directed
24 that these measures be applied to all the other
25 categories during transportation. Whilst it may be

1 necessary to restrain by handcuffs et cetera the highest
2 categories and hooding may be necessary and lawful in
3 certain circumstances for good reasons (eg so they
4 cannot ID security force personal, for their own safety
5 et cetera) we must remember the Geneva Convention
6 obligations that make it clear that individuals must be
7 treated humanely, must be accorded respect and honour,
8 and must be protected from intimidation and acts of
9 curiosity et cetera. This is open to interpretation but
10 for presentational reasons the UK stopped hooding
11 towards the end of the conflict phase and so it is most
12 certainly politically unacceptable for all but the most
13 exceptional cases to be hooded now."

14 First of all, we know it was sent to you but do you
15 recall the content of this email?

16 A. Having seen this, yes, I do remember the broad outline
17 and discussion about this order that came down from
18 Baghdad.

19 Q. Just relating it to your answers today, what did you
20 take from particularly that paragraph (b) in
21 paragraph 4, the content to communicate to you as to
22 whether there was a discretion for British forces to use
23 hoods or not?

24 A. Well, I think it's quite clear, that:

25 "... in certain circumstances for good reasons e.g

1 so they cannot ID security force personnel, for their
2 own safety..."

3 That is back to the security issue again.

4 Q. The additional sentence at the end about it being
5 stopped at the end of the conflict phase for
6 presentational reasons, did that not cause you at that
7 time or in discussions later to find out why it had been
8 stopped and what was the effect of it being stopped, in
9 terms of whether it was an order or not?

10 A. No, because as I said, my responsibility wasn't for
11 actual prisoner handling. It was for the tactical
12 questioning. But I would point out again it refers to
13 exceptional cases.

14 Q. Yes. Just briefly about the FRAGO 29, that you only
15 know about through this Inquiry but you have seen it in
16 preparing for your evidence, have you?

17 A. Correct.

18 Q. It speaks about G2 having overall responsibility.
19 I know it doesn't say J2, but it is clearly a divisional
20 document signed by divisional people. Your answers
21 about this have always been based, haven't they, on what
22 your orthodox understanding of responsibility for
23 prisoner handling would be, isn't it; that it is a J1
24 matter?

25 A. Correct.

1 Q. Does it follow that you would find it very unorthodox
2 for J2/G2 to be in overall responsibility for matters
3 such as this, as opposed to being advisers of others who
4 were?

5 A. Yes, I would.

6 Q. If you had been aware of that standing order and the
7 role that G2 were being described to play, do you think
8 you would have paid a lot closer attention to those
9 matters?

10 A. If I had been aware of FRAGO 29 and that apparent
11 responsibility -- although having looked at the
12 document, I would suggest that some of wording would
13 need to be clarified --

14 Q. Yes?

15 A. -- yes, I would have raised it as an issue.

16 Q. Very briefly, you have explained how
17 a Fiona Galbraith -- Captain Galbraith from the previous
18 G2 in 1 (UK) Division -- briefed you. It is just
19 a question about why you didn't speak to Major
20 George Waters who I know was in a slightly different
21 role but effectively headed up G2 in the previous tour;
22 why you didn't discuss matters with him at handover
23 stage?

24 A. Because he had already left theatre when I arrived.

25 Q. Just then to tactical questioning and taking your --

1 THE CHAIRMAN: Mr Friedman, half past we break, and you must
2 finish by then.

3 MR FRIEDMAN: It will be very difficult for me to finish by
4 then.

5 THE CHAIRMAN: You will have to try. You have had quite
6 a long time already.

7 MR FRIEDMAN: Just one moment, Sir, sorry.

8 THE CHAIRMAN: Yes.

9 MR FRIEDMAN: The discussions that you had with Lieutenant
10 Colonel Barnett about the logistical problems or
11 impracticalities of putting something into a FRAGO about
12 tactical questioning, just beyond those practical
13 problems of drafting, is it correct that you were also
14 saying to Lieutenant Colonel Barnett, "Look, these
15 people are subject matter experts: they have had the
16 training and you don't need to put it down for them in
17 simple language in a FRAGO or otherwise"?

18 A. I think if you refer back to documentation, I said it
19 was too complex to go in a FRAGO. And as we observed,
20 there was an standard operating instruction that was
21 being drafted for which J2 was given the initial lead to
22 provide the additional detail.

23 Q. So you never said, "Look, they are experts, you don't
24 need to worry"?

25 A. I can't remember whether I specifically made that point.

1 I have not seen -- I don't remember it and I have not
2 seen it written down that said I said it.

3 Q. Last question then. You said that you were trained at
4 the time in 1984 that conditioning was prohibited?

5 A. That's correct.

6 Q. When SOI 390 was drafted to fill that policy gap that
7 you have been asked questions about, I would like you to
8 go to annex G of it, MOD023123, and move to paragraph 7,
9 please, which has a reference to "guarding and holding
10 of [detainees]":

11 "... an important part of the conditioning process
12 which allows an internee to be susceptible to the
13 approaches of the TQ."

14 Presumably you would have looked closely at these
15 annexes, given what had happened.

16 A. I would expect to have done, yes.

17 Q. Given your evidence, do you object -- never mind what it
18 means -- to the word "conditioning" -- or never mind
19 what it is meant to mean -- being put into that FRAGO?

20 A. If you are talking about now, well, again, I talk about
21 hindsight. At the time, the fact the FRAGO is published
22 suggests that it had gone through the staffing process
23 and hadn't been picked up either by my staff or by
24 myself.

25 Q. Last document, MOD030864. This is a brigade document

1 that the TQers at brigade level drafted and they say
2 they sent it up to division. Can I ask you to look at
3 paragraph 5. It starts with the sentence:

4 "Once in the holding area blindfolds should be
5 removed..."

6 Last sentence:

7 "However, they must not be allowed to relax or lie
8 down to continue the shock of capture and conditioning
9 process."

10 First of all, did you at division recall seeing this
11 document written by brigade TQers?

12 A. I don't remember it, no.

13 Q. Then now, do you object to that line going in, whatever
14 it is meant to mean, in that form?

15 A. Looking back now with hindsight, I would certainly
16 suggest it needs to be clarified further.

17 MR FRIEDMAN: Thank you, Sir.

18 THE CHAIRMAN: Right, well, we will break off now and have
19 our usual ten-minute break in the morning. Don't talk
20 to anybody about your evidence during the course of the
21 break. Thank you.

22 (11.32 am)

23 (A short break)

24 (11.40 am)

25 THE CHAIRMAN: Yes, you are still under oath, Colonel,

1 please.

2 Ms Dobbin?

3 Questions by MS DOBBIN

4 MS DOBBIN: Colonel, you suggested at the outset of your
5 evidence that you had had discussions with lawyers about
6 hooding. Can I just confirm with you that those
7 discussions had taken place prior to the death of
8 Baha Mousa?

9 A. I can't remember specifically whether they took place
10 before the death of Baha Mousa, but could quite possibly
11 have done so.

12 Q. Thank you. As regards any orders banning hooding, is
13 your memory clear that there was no mention by any
14 lawyer to you prior to the death of Baha Mousa that
15 there was an order banning hooding?

16 A. I can't remember one being mentioned, no.

17 MS DOBBIN: Thank you, Sir.

18 THE CHAIRMAN: Mr Ashley.

19 Questions by MR ASHLEY

20 MR ASHLEY: Colonel, in relation to sleep deprivation, I
21 don't think there is any controversial in the idea that
22 it was not allowed, but after what period of time did
23 sleep deprivation become relevant?

24 A. I'm sorry, I am not quite sure what you are trying --

25 Q. Well, interrogation requires holding detainees for days,

1 possibly weeks. Clearly there is a period there where
2 somebody could not properly be deprived of sleep, as it
3 were, but in relation to TQ which was supposed to be
4 completed within 14 hours, if detainees are brought in
5 first thing in the morning, after what period of time
6 would the concept of sleep deprivation become relevant?

7 A. I am not sure that you could specify, because I think it
8 would be very much in relation to the individual
9 circumstances of an operation where someone was
10 detained.

11 Q. If they came in first thing in the morning, is the first
12 24 hours, anything of that order, in your training or
13 maybe within the 14 hours that it was anticipated that
14 TQ would take place?

15 A. Well, the principle is that you tactically question as
16 soon as you can, so I would expect that irrespective of
17 the time of day of a detainee being taken, that the
18 tactical questioning would take place as soon as was
19 practically possible after the detainee had been
20 medically checked.

21 Q. Dealing specifically with Staff Davies, he was, I think,
22 one of the military intelligence staff with the
23 supporting brigade, is that correct?

24 A. He was with the staff at the brigade, yes.

25 Q. I think it is right that you wrote confidential reports

1 in relation to him?

2 A. That's correct.

3 Q. So far as those reports are concerned, I think it is
4 right that you awarded him an AY in terms of the grading
5 you gave him. Could you just describe what that means,
6 an AY grading?

7 A. AY, an A meant he was performing very well and a Y was
8 a recommendation for promotion. So a staff sergeant
9 receiving AY would have been certainly competitive for
10 promotion on the next board when promotions were
11 considered.

12 Q. That grading no doubt was indicative of your view of
13 him?

14 A. My view of him in consultation with those within my
15 chain of command who had direct responsibility over him,
16 yes.

17 MR ASHLEY: Thank you very much.

18 THE CHAIRMAN: Mr Beer?

19 Questions by MR BEER

20 MR BEER: Thank you. Just a couple of questions. Was Major
21 George Waters the closest thing to your direct
22 predecessor?

23 A. As I remember, Major Waters left theatre early so he
24 wasn't there when I took over. I therefore took over
25 from the person who was the senior intelligence

1 individual in theatre at the time. But we were
2 transitioning from a UK divisional headquarters to
3 a multinational division headquarters, and that
4 multinational division had a different structure and
5 therefore the lieutenant colonel position that I went
6 into had no direct previous to take over from.

7 Q. If he hadn't left earlier, you would have received your
8 handover from him?

9 A. Yes, I would have expected to.

10 Q. If he had issued an order very shortly, a matter of days
11 before your arrival, saying that G2 would henceforth
12 assume overall control of the internment process, you
13 would expect to have seen that order?

14 A. I would have expected it probably to be part of the
15 handover process, yes.

16 MR BEER: Thank you very much.

17 THE CHAIRMAN: Yes. Mr Bourne?

18 MR BOURNE: No questions, thank you.

19 THE CHAIRMAN: Thank you. Mr Evans?

20 Questions by MR EVANS

21 MR EVANS: Thank you, Sir.

22 Colonel, before Baha Mousa's death, did you have any
23 reason to suspect that there was anything seriously
24 wrong with the TQ process or the way it was being
25 conducted?

1 A. No, I didn't.

2 Q. Similarly, before Baha Mousa's death, did you have any
3 reason to suspect that those conducting the TQ process
4 did not know what they were doing?

5 A. No, I didn't.

6 Q. Before Baha Mousa's death, therefore, did you have any
7 reason to feel it necessary to issue a document setting
8 out TQ procedures?

9 A. No, if I felt there was a problem, I would have done
10 something about it.

11 Q. Can I ask you something on FRAGO 29? May we have it on
12 screen. It is MOD020042. The phrase within this
13 document of a G2 led G3 responsibility, how do you
14 understand that phrase?

15 A. It's -- I would say -- not clear to people receiving it,
16 but it's a -- I think what it is trying to say is that
17 operations are intelligence led ie you plan operations
18 based on intelligence and therefore whilst it was still
19 a G3 ops responsibility, the likelihood is that you
20 would mount an operation to take a detainee based on
21 intelligence.

22 Q. Would you have interpreted that as meaning that G2
23 should take overall control of the process?

24 A. I would certainly say people could interpret it that
25 way, but if I had seen it, I would have taken steps to

1 rectify that and make it quite clear.

2 Q. While you were in post, did that in fact reflect the
3 practice in theatre that it was G2 led but a G3 ops
4 responsibility?

5 A. No. The handling of detainees was not a G2 lead whilst
6 I was in theatre.

7 Q. So the phrase "G2 led G3 ops responsibility" would have
8 meant to you, would it, that G2 would have provided the
9 target and G3 would have carried out the operation?

10 A. That's certainly how I would interpret it.

11 Q. Can I ask you something on SOI 390? It is MOD023123.
12 If we could go to the following page, 124, you were
13 asked by Mr Friedman about paragraph 7, involving the
14 reference to the conditioning process. Can I just
15 direct you to the context of paragraph 7? If you look
16 above to paragraph 6, and above that to (d), do you see
17 that?

18 A. Yes, I do.

19 Q. "The internee should be treated in accordance with the
20 Geneva Convention at all times and must not be subjected
21 to any physical punishment."

22 In that context, would you have expected the
23 conditioning process to have been Geneva Convention
24 compliant, whatever it was?

25 A. Absolutely.

1 Q. Finally this, on the focus of your work in Iraq in 2003.
2 You were asked a number of questions about your focus on
3 prisoner handling, and you explained that you had many
4 competing demands on your time. Can you just give us
5 some idea, please, on handover what the sort of burden
6 of work was for you and how that progressed as you went
7 through your tour in Iraq?

8 A. Yes. When we were preparing to deploy to theatre, we
9 were going out on the assumption that we were largely in
10 what was going to be a peace support operation. The
11 fighting will have been over, the invasion complete, the
12 regime effectively destroyed; and therefore we were
13 going to be there to support getting the Iraqi nation
14 back on its feet again and therefore very much in
15 a support role. And that is certainly the tenor of our
16 expectation, and therefore the intelligence that we were
17 looking at, prior to departing, was on that basis.

18 The handover suggested that was the way things were
19 going but it became clear very shortly after we arrived
20 that there were many other aspects that were going to
21 have an impact. August was a -- latter part of August
22 was a particularly difficult time where, in the heat of
23 summer, the infrastructure failed in particular and on
24 top of other things that we were concerned with, there
25 was the chance of civil insurrection in Basra; we had

1 the threat from Iran that grew over time; we had the
2 problems with insurgents; we had the overall problem
3 with criminal activity increasing. We also had the
4 issue of Muqtada al-Sadr which was just beginning to
5 become a character, a player that was Iraq-wide rather
6 than just a specific area that the Americans were
7 responsible for.

8 We had the initial bombings; we still had remnants
9 of the Baath Party around that we were having to try to
10 track down. Saddam Hussein was still at large and still
11 considered a focus for people who might, on the Sunni
12 side, still wish to get him back into power and
13 therefore create problems for us.

14 So the situation rapidly changed after we got there
15 and therefore the intelligence focus and effort was very
16 heavy. We were the people who were expected to be able
17 to provide the information for the force to do its job.

18 As I indicated earlier, the resources available to
19 us were very much more limited because the expectation
20 is that that was not the sort of operation that we would
21 have been undertaking.

22 Q. How did that translate into the number of hours that you
23 were putting into each day approximately?

24 A. The staff worked extremely hard. A typical day for me,
25 I suppose I was normally in work by about 7.00 and

1 normally got away somewhere between 11.00 and midnight
2 of an evening. Sundays were normally a little quieter.
3 I think we were allowed a slight lie-in, an 8.30
4 start --

5 Q. Did that continue throughout the tour?

6 A. Yes.

7 MR EVANS: Thank you, Sir.

8 Further questions by MR ELIAS

9 MR ELIAS: Just to complete the picture so far as SOI 390 is
10 concerned -- I can take you to your second statement if
11 you need to -- you say there you would have reviewed SOI
12 390 and approved any J2 input before it was published.

13 A. That's correct.

14 Q. That is what the position would have been, is it?

15 A. Yes, if it was J2 input, as the senior J2 man, on what
16 was by this point clearly an issue that had become of
17 importance, yes, I would have expected to review it and
18 have been content overall with what was in it.

19 Q. Thank you.

20 The second point, may we just have a look, please,
21 in relation to questions that are you asked in relation
22 to the 14-hour rule, perhaps, at what you said at the
23 court martial at Day 88, page 10. Just going to the
24 foot of that page, if we may. You are being questioned,
25 Colonel, by Lord Thomas. He is putting some emails to

1 gave then in the court martial, and what you are telling
2 me now, that you would have always regarded tactical
3 questioning as something which would be a very important
4 part, if not in the forefront, of your attempt to gain
5 the maximum amount of intelligence?

6 A. Out of an individual detainee, yes.

7 THE CHAIRMAN: Yes. I mean, you have been asked about this,
8 I know, and I want do ask you again about it, about the
9 practice for tactical questioners that eventually
10 resulted in the SOI. You said very frankly that you
11 thought with the benefit of hindsight that it was
12 something that ought to have been done much earlier. Is
13 that right?

14 A. Yes. That is correct.

15 THE CHAIRMAN: When you say "hindsight", do you really mean
16 not so much hindsight, but the fact that you were very,
17 very busy doing other things?

18 A. That's a part of it, but clearly if something is raised
19 as an issue, depending on the scale of the issue, you
20 will try and do something about it. Now, as has been
21 pointed out, before this case occurred, I cannot
22 remember there being a particular concern about tactical
23 questioning and how tactical questioning was being done.
24 Immediately after this, as you will see, there was an
25 flurry of activity to actually put procedures and

1 process in place, and policy in place, to make sure that
2 everyone was clear on what their responsibilities were
3 and who should do what.

4 But it is always the fact that it's your available
5 resource, what is most important at that particular
6 time, which are the driving factors as to whether you
7 can afford the effort to deal with things. One would
8 always like to deal with everything that you possibly
9 can, but the level of importance is -- and priority that
10 you have to provide to things -- is a fact.

11 THE CHAIRMAN: I can understand all of that about
12 priorities, but that's only really an excuse, isn't it,
13 if you -- and I am not suggesting it is necessarily
14 a matter of great criticism for you, I don't know,
15 I have to make my mind up -- priorities are fine if you
16 have actually worked them out, but was it that you
17 simply did not think about this at all, or was it
18 because you had so much to do that you decided that
19 could go, as it were, on the backburner, everything
20 seemed to be all right?

21 A. Going back to the position at the time, it is difficult
22 to remember whether it was the level of work --

23 THE CHAIRMAN: Yes.

24 A. -- that determined the priority or not. The work that
25 I undertook was based on what the commander required and

1 my interpretation of the other activities that were
2 going on within division, and of course the orders that
3 the division received from Combined Joint Task Force 7
4 in Baghdad.

5 As a senior manager of activity, then clearly one of
6 my responsibilities was to try and sit back, determine
7 from all that morass of requirement and activity what
8 was priority and where efforts should be put. As
9 I said, prior to this, since there wasn't perceived to
10 be a problem with tactical questioning, I can't see why
11 I would have afforded a higher priority to it than
12 clearly what was done.

13 THE CHAIRMAN: I will try one more time. You are still not
14 quite answering my question. Did you think about it and
15 think, "Well, something ought to be done but quite
16 frankly, I have neither the resources nor the time to do
17 it"? When I mention resources, it is not just you but
18 other people who are under your command. Which was it?

19 A. I think it goes back to the point: I did not see that
20 there was a problem beforehand; therefore I did not
21 accord it a priority.

22 THE CHAIRMAN: Thank you. I am very grateful to you for
23 coming to give your evidence. Those are all the
24 questions that the Inquiry have for you, thank you very
25 much.

1 A. Thank you, Sir.

2 THE CHAIRMAN: Probably the best thing is if I rise for
3 a moment?

4 MR ELIAS: If you would, sir, rise for a moment or so.

5 THE CHAIRMAN: All right, we will do that.

6 (11.58 pm)

7 (A short break)

8 (12.02 pm)

9 THE CHAIRMAN: Mr Moss, just to make it clear to everyone
10 who is here that the next witness is not before 2.00.

11 MR MOSS: Thank you.

12 THE CHAIRMAN: Sorry, by the next witness I meant of course
13 the one after this one.

14 MR MOSS: Yes, of course.

15 The next witness is S016. Just before I call him,
16 the customary warning if I may. This is another soldier
17 who is subject to a restriction order.

18 THE CHAIRMAN: Yes.

19 MR MOSS: Relating to his name, his address, his current
20 occupation, his image and any other information that may
21 tend to identify him. As will be apparent to anyone who
22 is following these proceedings outside the hearing, he
23 is screened from the public as well.

24 Sir, I call S016 please.

25 THE CHAIRMAN: Yes, just before he is sworn, can we just

1 make clear that the transcript is not being relayed
2 outside?

3 MR MOSS: I think the transcript being relayed is fine; it
4 is the image.

5 THE CHAIRMAN: Fine.

6 Please stand up and I will ask that you be sworn.

7 S016 (affirmed)

8 THE CHAIRMAN: Thank you. Please sit down. You may have
9 been told about this already. If you could speak as
10 closely as you can into the microphone, then we will all
11 hear you. The object of the exercise is to hear your
12 evidence.

13 Yes, thank you, Mr Moss.

14 Questions by MR MOSS

15 MR MOSS: Thank you, Sir. Your name of course is known to
16 the Inquiry but as you will appreciate, you are known to
17 us during our hearings as S016. Can I ask that you take
18 up the folder in front of you where you should find,
19 I hope, a copy of your statement to this Inquiry.

20 If we look at the final page of that, please, which
21 is BMI04539, we see, do we not, that that is a statement
22 you provided to this Inquiry on 1 October of last year?

23 A. Yes.

24 Q. When you were providing that statement to the Inquiry,
25 were you telling the Inquiry that the contents of the

1 statement were true to the best of your knowledge and
2 belief?

3 A. Yes.

4 Q. S016, everybody has had an opportunity to read
5 a statement. It stands as your evidence and I only need
6 to ask you about certain topics and aspects arising out
7 of it. By way of background may I start briefly please
8 with your career history. I think you tell us in your
9 statement, is this right, that you joined the army in
10 1997?

11 A. Yes, that's right.

12 Q. Upon passing out from Sandhurst you went straight to the
13 intelligence corps?

14 A. Yes.

15 Q. You had a period on secondment, I think, to an infantry
16 battalion, is that right?

17 A. Yes.

18 Q. You served for a time as an assistant intelligence
19 officer as well as a military intelligence section
20 commander later on with 16 Air Assault Brigade, is that
21 right?

22 A. Yes.

23 Q. By May of 2003, had you joined 10 Military Intelligence
24 Company?

25 A. Yes.

1 Q. I think it was in that context, is this right, that you
2 deployed to Iraq in June 2003 for Op Telic 2?

3 A. Yes, that's right.

4 Q. We will look in a little bit more detail in a few
5 moments about what your role involved, but in essence
6 were you the officer commanding one of the field HUMINT
7 teams in theatre?

8 A. Yes.

9 Q. What was your rank at that stage?

10 A. It was captain.

11 Q. You tell us in your statement that you have now left the
12 armed forces, is that right?

13 A. Yes.

14 Q. In 2005. On leaving the army, what was your rank at
15 that stage?

16 A. I was captain. I did a job as an acting major lastly,
17 but I was captain.

18 Q. Thank you. Some questions then if I may, please, about
19 your training, S016. You tell us in your statement
20 that, as with many of our other witnesses, you did have
21 law of armed conflict training at Sandhurst, and indeed
22 annual training in the Law of Armed Conflict as part of
23 your ITDs, is that right?

24 A. Yes.

25 Q. In relation to that LOAC training, what, if anything,

1 was the central message that you understood about how
2 prisoners should be treated?

3 A. We should treat them in accordance with the Geneva
4 Convention.

5 Q. In practical terms what did that mean as you understood
6 it from your training?

7 A. That was to be humane to them, give them food and water
8 and medical aid should they need it.

9 Q. Did any of the Law of Armed Conflict training that you
10 had, whether your annual training or your initial
11 training at Sandhurst, cover whether or not prisoners
12 might be deprived of their sight?

13 A. No, I don't remember it.

14 Q. Does that mean that if it was covered, you don't now
15 recall what the training was, or that you don't think
16 that it was covered at all?

17 A. I don't think it was covered because I don't remember it
18 happening.

19 Q. Thank you. If we look at paragraph 8 of your statement
20 to screen -- if you look at it with us please,
21 paragraph 8, BMI04529. You go on to say that you had
22 received what you describe as "procedural instructions
23 as part of my training for dealing with groups of
24 prisoners".

25 Just pausing there, in what context did you receive

1 procedural instructions for how to deal with groups of
2 prisoners? What sort of training was that?

3 A. It was more a verbal sense of training that once we had,
4 say -- as an infantry unit, once we had captured an area
5 or a position, we would then talk through the fact if
6 there were any prisoners, they would then be handed up
7 the logistical chain of command.

8 Q. I follow. Was this training on exercises that you were
9 doing during your infantry secondment or was it annual
10 training? How did this arise?

11 A. It was more a question of as I went through my training;
12 it was not any particular time but that's the general
13 drill for how we did things. I was instructed at
14 Sandhurst on other various staff courses that I went on
15 and also whilst on exercises, it would be discussed to
16 remind us of the procedure.

17 Q. The emphasis, as you go to describe in this paragraph,
18 was that very much on the logistics of ensuring that
19 prisoners were passed up the chain of command quickly?

20 A. Yes.

21 Q. Did that training, which you describe as largely
22 conceptual rather than practical, did that cover whether
23 or not prisoners could be deprived of their sight?

24 A. No.

25 Q. So, as it were, on the eve of your deployment for

1 Op Telic 2, please, S016, by that stage do you think you
2 had had any training during your army career on whether
3 or not it was legitimate or prohibited to deprive
4 prisoners of their sight?

5 A. No.

6 Q. You don't think you had had any training to that effect
7 at all?

8 A. That's right, I don't think I had any training.

9 Q. What about in relation to stress positions? Do you
10 understand what I mean by stress positions?

11 A. I understand what you mean.

12 Q. What is your understanding of a stress position?

13 A. A stress position is where somebody is put into
14 a position of discomfort and which they are forced to
15 maintain.

16 Q. Had you had any express training as to whether such
17 stress positions were permitted or prohibited or the
18 circumstances in which they could be used?

19 A. No, I hadn't received training.

20 Q. You tell us in your statement that you had, however,
21 understood from your training that prisoners who were
22 captured must be provided with food and water, is that
23 right?

24 A. Yes.

25 Q. And that they must not be abused?

1 A. Yes.

2 Q. I think you tell us, is this right, that you had not,
3 despite being an intelligence officer, attended any type
4 of tactical questioning prisoner handling course?

5 A. That's right, I hadn't attended them.

6 Q. Or an interrogation course?

7 A. That's right.

8 Q. Nor had you undertaken conduct after capture training?

9 A. That's right.

10 Q. At that stage, prior to your deployment to Iraq on
11 Op Telic 2, had you heard anything about the indication
12 or the ruling given by Prime Minister Heath in 1972
13 about the use of the five techniques?

14 A. Sorry, say that again?

15 Q. At that stage, 2003, had you heard anything, did you
16 know about Prime Minister Heath's ruling or direction in
17 1972 about the use or the prohibition on the five
18 techniques?

19 A. No.

20 Q. Or the directive that followed in 1972?

21 A. No.

22 Q. If it is the case, then, S016, as you tell us it was,
23 that you had not had any training one way or the other
24 in stress positions or in sight deprivation, can you
25 help us with what your understanding would have been on

1 the eve of your deployment for Op Telic 2: would you
2 have had an understanding as to whether or not it was
3 legitimate to deprive prisoners of their sight in any
4 circumstances.

5 A. Not really, in terms of an understanding. Sorry, can
6 you just clarify that?

7 Q. Yes. Would you have known, what would your
8 understanding have been, as to whether it was
9 permissible for prisoners to have their sight deprived
10 whether by blindfolds or by hoods; would you have known
11 one way or the other whether that was allowed?

12 A. I wouldn't have known whether it was allowed or not, but
13 at the time I assumed that it was something that could
14 be done.

15 Q. You say at the time you assumed that it was something
16 that could be done. Understanding you say that was
17 an assumption --

18 A. Yes.

19 Q. -- for what purposes would you have understood or
20 assumed that it could be done?

21 A. There's the concept of maintaining the shock of capture
22 and for that purpose.

23 Q. Had you had any specific training in the shock of
24 capture and maintaining it?

25 A. No, not specifically.

1 Q. So you correct me if I am wrong, but without having had
2 any training, if in early June 2003 somebody had asked
3 you, "Is it all right to deprive a prisoner of their
4 sight?", what would your answer have been? Would it
5 have been it is okay to maintain the shock of capture or
6 what?

7 A. Yes, I think I would have said something like that.

8 THE CHAIRMAN: You would have said it was all right?

9 A. Yes.

10 THE CHAIRMAN: All right.

11 MR MOSS: What about the use of stress positions? Can I ask
12 the same question: what would your understanding have
13 been had you been asked that question in early June
14 2003.

15 A. I think it would have been all right had it not been for
16 a protracted period of time. That would have been then
17 classed as a question of serious abuse.

18 Q. So some stress positions for a moderate period of time
19 might be all right. That would have been your
20 understanding, is that right?

21 A. Yes.

22 Q. What sort of stress positions, again, on the basis that
23 you had not been trained in this specifically, but what
24 sort of stress positions for a short period of time do
25 you think you would have seen as being all right?

1 A. I think I would have thought of the concept of being
2 okay, but in terms of the actual doing of it, that
3 wouldn't be something that I would be involved in, so
4 I didn't -- I don't -- in terms of actually describing
5 a stress position as such, it is probably not something
6 I would be able to do.

7 Q. If I may jump ahead just a little bit in the
8 chronology -- we may come back to it -- did you in fact
9 see hoods used at all on prisoners during the course of
10 Op Telic 2?

11 A. No.

12 Q. If you had seen hoods used on prisoners during
13 Op Telic 2, what would your reaction have been, do you
14 think?

15 A. I don't think I would have been particularly shocked or
16 surprised.

17 Q. What about stress positions, if they were only being
18 used for a short or a moderate period of time?

19 A. Again, the same answer. I wouldn't have been
20 particularly shocked.

21 Q. Thank you. Just this, then, on training aspects. Your
22 pre-deployment training, I think you tell us that you
23 had about one week's pre-deployment training with the
24 core element of the team that was going to make up your
25 field HUMINT team in theatre, is that right?

1 A. Yes.

2 Q. You tell us that the training that you were involved in
3 at the pre-deployment training stage with those officers
4 concentrated on the aspects of HUMINT work in which you
5 would have been working in theatre, is that right?
6 Sharpening those skills?

7 A. Yes.

8 Q. Does it follow that prisoner handling was not something
9 which you addressed or was raised during the course of
10 your pre-deployment training?

11 A. No, we didn't do that.

12 Q. Just this: as of the eve of your deployment, had you
13 understood or been told by whatever means that there had
14 been on Op Telic 1 any kind of order prohibiting the use
15 of hoods or the covering of prisoners' faces.

16 A. I wasn't aware of it.

17 Q. Thank you. I'm going to turn now, if I may, S016, to
18 your role in theatre and your chain of command.

19 In introducing your background, you mentioned that
20 of course you were the OC of a field HUMINT team. In
21 terms of the reporting line above you, I think you have
22 a cipher list in front of you.

23 A. Yes.

24 Q. Is it right that you reported to S015?

25 A. Yes.

1 Q. And that above him in the chain of command would have
2 been Colonel Le Fevre, our previous witness?

3 A. Yes.

4 Q. Is that right?

5 You deal with it in your statement, so I can take it
6 briefly. The field HUMINT team of which you were the
7 OC, is it right that they were correctly described as
8 being divisional troops?

9 A. Yes.

10 Q. Did that mean that neither you nor the other officers
11 who worked with you in the field HUMINT team were staff
12 officers within the division?

13 A. That's right, we weren't staff officers.

14 Q. But you were, as it were, a divisional asset?

15 A. Yes.

16 Q. In practice in theatre, though, I think it's right,
17 isn't it, that you were co-located with the headquarters
18 of 19 Mech Brigade in Basra Palace, is that right?

19 A. Yes.

20 Q. Just help us if it matters, for issues that we will come
21 on to later on, a bit about the layout. Co-located with
22 19 Mech Brigade, were you in fact in the same room --
23 your field HUMINT team -- as brigade intelligence
24 officers?

25 A. No.

1 Q. We don't perhaps need absolute chapter and verse, but
2 how far away were your two offices, brigade intelligence
3 and you as one of the divisional field HUMINT teams?
4 A. It was about a eight-minute, maybe seven-minute walk
5 from one end of the Palace to the other.
6 Q. Now you would have had, I think, a handover in theatre
7 from an officer who was the predecessor of the OC of
8 a previous field HUMINT team, is that right?
9 A. Yes.
10 Q. Don't use the name, but was it an officer of a similar
11 rank to you who had been doing a similar role?
12 A. Yes.
13 Q. Thank you. In relation to the handover that you had
14 from that officer, was prisoner handling anything that
15 was dealt with in the handover?
16 A. No.
17 Q. Again, perhaps without going into detail that's not
18 necessary in relation to the field HUMINT team, bearing
19 in mind what your work was in theatre, does it surprise
20 you now that prisoner handling wasn't dealt with in the
21 handover?
22 A. No.
23 Q. During the course of that handover, were you made aware
24 of FRAGO 152, which was the divisional order from
25 1 (UK) Div prohibiting the covering of faces, or made

1 aware by any other means of a prohibition on hooding or
2 covering prisoners' faces during the handover?

3 A. No, our duties didn't involve handling prisoners, so
4 I don't feel there was any need for us to have discussed
5 it in the handover.

6 Q. Again, perhaps it flows from your last answer, but
7 taking it briefly if I may: your day to day work in
8 theatre, did that involve human intelligence aspects
9 which were different from and divorced from prisoners,
10 interrogation and tactical questioning?

11 A. Yes.

12 Q. And was the effect of that that so far as your day to
13 day work was concerned you didn't normally come into
14 contact with prisoners?

15 A. That's correct.

16 Q. Now I think you tell us -- and may we look at it albeit
17 briefly, please, S016 -- that you did have that kind of
18 involvement with prisoners or with tactical questioning
19 on two occasions.

20 So far as the first one is concerned, was there an
21 occasion when you allowed one or two members of your
22 team who were qualified in tactical questioning to go
23 and assist a battlegroup with a tactical questioning
24 task?

25 A. Yes.

1 Q. You tell us in your statement -- could we just look at
2 paragraph 30, please -- that in relation to this matter
3 one of those that you recall from your team who was TQ
4 qualified was a soldier for whom we have given the
5 cipher S055. Can you just look at your cipher list and
6 confirm that that's the case?

7 A. Yes.

8 Q. Did that soldier -- and any other soldier who may have
9 gone with him to carry out TQ'ing on that occasion --
10 did they actually, so far as you know, carry out TQ'ing
11 on the ground?

12 A. Not that I remember.

13 Q. Now, it may be that we don't need to go again into
14 unnecessary details about this aspect because there may
15 be some sensitivities, so would you just answer the
16 following questions yes or no, if you would.

17 After that occasion -- the one or two tactical
18 questioning qualified members of your team going to help
19 a battlegroup -- did you on any subsequent occasion
20 permit tactically questioning qualified members of your
21 team to go off and carry out tactical questioning on
22 behalf of battlegroups?

23 A. No, I don't think I did.

24 Q. If that is right, that you didn't allow members of your
25 team to do TQ'ing after that, can you just help us with

1 this: was the reason why you didn't permit your team to
2 become involved in further TQ'ing anything to do with
3 the physical aspects of how prisoners were being treated
4 in theatre?

5 A. No.

6 Q. Or anything that had come to your attention about
7 prisoners being hooded or put in stress positions or
8 anything of that kind?

9 A. No.

10 Q. Again please just answer this question yes or no for the
11 moment if you would: did you have professional reasons
12 relating to your own area of work for considering that
13 it was not appropriate for TQers to be detached from
14 your team to go off and do TQ'ing duties?

15 A. Yes, that's right.

16 Q. Thank you.

17 Other than that occasion and the TQ'ing, I think you
18 tell us -- can we look at paragraph 31 of your
19 statement -- that the only other involvement with TQ'ing
20 or prisoner handling that you recall is an occasion when
21 your staff from the field HUMINT team were involved in
22 TQ'ing at Basra Palace itself; is that right?

23 A. Yes, that's right.

24 Q. Now the circumstances of this you detail in the
25 subsequent paragraphs in your statement. Again, can we

1 just get the context of it: I think you tell us that an
2 Iraqi who had suffered some injuries was dropped off at
3 the gate of Basra Palace by the Iraqi police; is that
4 right?

5 A. Yes, that's right.

6 Q. And that because he was there and present at the Palace,
7 and you had some members of your team who were TQ
8 qualified, on that occasion in those circumstances you
9 did allow members of your team to be involved in TQ'ing
10 that man who had been dropped off; is that right?

11 A. Yes.

12 Q. So far as the fact that the Iraqi civilian on that
13 occasion was injured is concerned, can you just tell us
14 what, if anything, was done bearing in mind the fact
15 that he appeared to be injured?

16 A. Yes, my team members said that before they would conduct
17 the questioning they wanted a medic to declare that the
18 individual was fit for questioning. So I went off and
19 arranged for a medic to see the prisoner prior to the
20 TQ'ing.

21 Q. When your team members said that they wanted to ensure
22 that the gentleman in question was fit for questioning,
23 did that seem unusual or inappropriate in any way to you
24 at the time, given the training that you had had?

25 A. No, it didn't seem inappropriate at all.

1 Q. Was that in fact done so that there was a medical
2 examination for this man prior to questioning being
3 carried out?

4 A. Yes, it was.

5 Q. On that occasion, then, just this: do you know whether
6 the TQ qualified members of your team hooded that man or
7 blindfolded him at all?

8 A. I don't know for sure, but I was there when I handed the
9 prisoner over to them. I saw them sit down -- well,
10 I saw the prisoner sit down in the room across a desk
11 from the two TQers and then I left them to it. And they
12 hadn't hooded him and they didn't appear to have any
13 hoods on them or on their person, so I can assume that
14 they didn't.

15 Q. Thank you. If it matters, can I ask you this: do you
16 know what sort of approach, in terms of a neutral
17 logical approach or a harsh approach, those TQers took
18 on that occasion in the questioning of that man?

19 A. My understanding was that it was a logical approach.

20 Q. Did you have any concerns at all about how that man was
21 treated by the members of your team?

22 A. No, none at all.

23 Q. Did the members of your team speak to you about it
24 afterwards?

25 A. I think we did discuss it. I can't remember the results

1 of the discussion but it was something along the lines
2 that they didn't get any information out of him.

3 Q. Did they mention the use of hoods or stress positions --

4 A. No.

5 Q. -- conversationally with you afterwards?

6 A. No, they didn't.

7 Q. Thank you. Now, can I just deal with arrangements at
8 the brigade headquarters where you were co-located in
9 just a little bit of detail if I may.

10 In terms of meetings that you would have gone to,
11 would you have attended the intelligence briefings that
12 took place at brigade level?

13 A. At the brigade commander level?

14 Q. Yes.

15 A. Yes.

16 THE CHAIRMAN: Sorry, did you say yes?

17 A. Yes, I did.

18 MR MOSS: There is, as the Inquiry knows, at brigade level
19 at that stage the senior staff officer involved in
20 intelligence matters was Major Robinson. Is that a name
21 that's familiar to you?

22 A. Yes.

23 Q. Would he have been involved in those briefings?

24 A. Yes.

25 Q. Would he in fact have chaired them?

1 A. Yes.

2 Q. I don't want to go into aspects of your work that we
3 don't need to, but in general terms would Major Robinson
4 have been someone with whom you dealt closely?

5 A. Yes.

6 Q. In the course of your work?

7 A. Yes.

8 Q. Again, perhaps you can answer this yes or no: would you
9 have had to, in the course of your work, liaise quite
10 closely with him as the senior staff officer on the G2
11 side at brigade?

12 A. Yes.

13 Q. During the course of those briefings, or in other
14 discussions with Major Robinson or with any of the
15 brigade intelligence staff, did you ever come to hear of
16 a process of conditioning being talked about?
17 Conditioning of prisoners?

18 A. Not that I remember.

19 Q. If that had been talked about, a process of
20 conditioning, would you have known what it meant,
21 "conditioning"?

22 A. I wouldn't be able to give you a definition, but
23 I assume that it was something along the lines of
24 maintaining the shock of capture.

25 Sorry, can I go back to about two questions

1 previously?

2 Q. Yes.

3 A. Just in terms of me, my liaison with Major Robinson, it
4 was something that would have happened because we were
5 co-located. My direct reporting chain and chain of
6 command was with division.

7 Q. Yes.

8 A. So the formal sort of direction was from division and
9 I took it upon myself to liaise closely with
10 Major Robinson.

11 Q. Thank you.

12 Just so that we have the picture, I think you tell
13 us in your statement, is this right, that there was in
14 fact another field HUMINT team in theatre?

15 A. That's right.

16 Q. Were they in fact located to the north and outside of
17 Basra?

18 A. That's right.

19 Q. Yes, thank you.

20 May I turn then to Operation Salerno which, as you
21 may know, is the operation which led to the arrest of
22 Baha Mousa and those who were detained with him.

23 Did you or your team have anything to do with that
24 operation and the arrest of Baha Mousa and those
25 detained with him?

1 A. No.

2 Q. Can you remember now how you first came to know or learn
3 about Baha Mousa's death?

4 A. It was the following morning and it was outside the
5 field security team's house, I believe, and they
6 mentioned that somebody had died whilst being
7 questioned. That was how I first of all heard about it.

8 Q. To use his rank from the time, Staff Sergeant Davies
9 would have been someone who was also known to you on the
10 brigade intelligence side, wasn't he?

11 A. Yes.

12 Q. Were you aware at the time that he had been involved in
13 TQ'ing these detainees, the Op Salerno detainees?

14 A. I don't know. I can't remember whether I put that in
15 the statement or not. I don't think I was aware that it
16 was him that was involved.

17 Q. Did you ever discuss with Staff Sergeant Davies what had
18 happened on the 14 and 15 September in relation to
19 Baha Mousa?

20 A. No.

21 Q. Or otherwise come to know anything about the
22 circumstances in which he came to be injured and to have
23 lost his life?

24 A. No.

25 Q. May we turn then next to evidence that this Inquiry has

1 received from Major Royce, who I think you may know was
2 the ISTAR officer for 1 QLR. Could we look at his
3 statement at BMI03173, please, and paragraph 108 of his
4 statement.

5 Now, I am going to take us through this in some
6 detail if I may, so if you will bear with me and we will
7 look at the two paragraphs from his statement.
8 Major Royce started off in his statement to the Inquiry
9 saying that he had looked at this matter in great detail
10 and considered it. He has now pieced together the chain
11 of events, he says, and believes that it was probably
12 the morning that the first lift operation was being
13 carried out under the BGIRO system.

14 All right? So just pausing there, Major Royce is
15 talking about the first lift operation that was being
16 done and discussed at brigade following the BGIRO system
17 coming into place. He says:

18 "At the morning Red Brick conference I was directed
19 to plan a lift operation. As would be normal there was
20 no detail given in the Red Brick itself (details did not
21 need to be known by everyone [because of operational
22 security])..."

23 Pausing there, do you understand the reference by
24 Major Royce to a "Red Brick" conference?

25 A. It wasn't something that I came across really in my

1 doings. I am assuming that's the morning brigade
2 briefing.

3 Q. If it's the morning brigade briefing, is that a briefing
4 that you would have attended?

5 A. No.

6 Q. Thank you. He then says, though, that following the
7 meeting, he went to the brigade intelligence cell to
8 discuss the operation in detail. He says that he met
9 with Major Robinson, the SO2 G2 obviously:

10 "... we went through the maps, target packs
11 et cetera and talked and walked the op through with the
12 person from the field HUMINT team (whose name, rank and
13 post I no longer recall) who would be dealing with the
14 operation on the ground. My recollection is that there
15 was going to be a meeting of targets and the operation
16 was for the HUMINT team to be on the ground and follow
17 the suspects whilst we were going to put a cordon in
18 place."

19 Now, I would like to pause there and just ask you
20 some questions relating to that, please. You see the
21 description that Major Royce was giving of this, that
22 the operation involved HUMINT team members being on the
23 ground following a number of suspects while others put
24 a cordon in place, and then once information was
25 received that all the targets were at the meeting, the

1 lift operation would be put into effect. Do you see
2 that's the thrust of what Major Royce was talking about?

3 A. Yes.

4 Q. Now, in relation to that, were you ever aware of an
5 operation to that effect involving your HUMINT team?

6 A. I can't remember the specifics, but we were involved in
7 operations like that.

8 Q. So in general terms, that is a description of what the
9 HUMINT team might do on an operation in liaison with
10 brigade intelligence and others. That makes sense and
11 seems right as the sort of thing you might have been
12 doing in your team?

13 A. Yes.

14 Q. If that is right, that sort of an operation and the
15 support from the HUMINT team that is being referred to
16 there, were you ever involved in leading for the field
17 HUMINT team on that sort of an operation on the ground?

18 A. No. That wasn't my job.

19 Q. So if there was an officer or a warrant officer or
20 a senior NCO, whatever the rank, of somebody from the
21 field HUMINT team present who was talking about the
22 details of that operation and what the field HUMINT team
23 would do, are you saying that that wouldn't have been
24 you?

25 A. Yes, that's right.

1 Q. He goes to say that:

2 "The target pack identified individuals who needed
3 to be TQ'd. As we talked through what was going to
4 happen, I was made aware by Major Robinson that a TQer
5 was not going to be immediately available or attached to
6 me, which is what I had assumed would happen."

7 Just pausing there, does that ring any bells back to
8 you? Do you remember you yourself being present when
9 Major Royce was expecting a TQer was going to be
10 available and Major Robinson making clear that there
11 wasn't going to be one immediately available? Does any
12 of that ring bells for you?

13 A. No, no, it doesn't.

14 Q. "I then asked if the TQer was not going to be there,
15 under what conditions should we hold the internees and
16 I was told we needed to maintain the shock of capture.
17 I sought clarification of how we were supposed to do
18 that and he said by conditioning using hooding and
19 stress positions."

20 Now, was there ever a meeting involving Major Royce
21 and Major Robinson at which hooding and stress positions
22 were discussed while you were present?

23 A. No.

24 Q. How confident of that are you?

25 A. I'm confident. Because (a) I don't remember it and (b)

1 I wouldn't have been present in the int cell conducting
2 that level of detail of planning with Major Robinson and
3 whoever it is from brigade that was planning the
4 operation.

5 Q. He goes on to say, thank you:

6 "The conversation arose in the process of 'hot
7 planning' the operation, which is why nothing was
8 written down.

9 "Major Robinson was responsible for fusing
10 intelligence... He worked in a very large office ..."

11 He goes to say, a little down in 109:

12 "... we definitely went through the operation and
13 discussed conditioning prior to TQ and he confirmed that
14 this was to involve hooding and stress positions."

15 Again, does that mean anything to you now or bring
16 back any recollection of that sort of a discussion
17 happening with you present?

18 A. No.

19 Q. "At some point a TQer may have joined the conversation,
20 which may have been Staff Sergeant Davies... There was
21 definitely a three way discussion between myself,
22 Major Robinson and the field HUMINT going through the
23 operation and I was told they wanted to maintain the
24 shock of capture and that hooding the internees and
25 keeping them in stress positions was the preferred

1 methodology."

2 Is it your evidence that if a member of the field
3 HUMINT team was present and involved in that way, that
4 it wasn't you?

5 A. Yes.

6 Q. Now, for the moment, please, obviously be careful about
7 the use of names. But if it wasn't you, are you able to
8 help without giving names for the moment as to who it is
9 likely to have been if Major Royce's evidence about this
10 is accurate and true?

11 A. I can't remember the specific operation and I can't
12 remember who was the individual involved from my team,
13 unfortunately.

14 Q. Without perhaps telling us the total number of members
15 of your team, which is perhaps an area that we shouldn't
16 go into, can I ask you for your help on this. Would
17 there be a limited number of people within your team who
18 might have been involved in this sort of a discussion
19 who would have been of the rank and seniority and
20 experience to be leading on this sort of an operation
21 and involved in this sort of discussion with majors
22 Robinson and Royce?

23 A. From the description of what was actually going to
24 happen on the ground, it's likely it would have been one
25 of my more senior members of the team. But I did have

1 some of my most junior members of the team also assist
2 in planning brigade level operations on occasion as
3 well.

4 Q. I mean, when you look at it for example, are you able to
5 say -- again not using names for the moment -- are you
6 able to go so far as to say: well, the chances are that
7 that was either person X or person Y, because those are
8 the two or three people who would have dealt with those
9 sort of issues?

10 A. There's probably a handful of people it could be.

11 Q. Again, I don't want you to give the name and certainly
12 don't say it out loud, but you say a handful of people
13 that it could have been. Would you be in a position to
14 name those people and tell us who they were?

15 A. I have tried to go through in my mind for names of the
16 people in my team and unfortunately I can't remember
17 everybody in my team. I can remember them by nickname.

18 Q. Would you be able to give the Inquiry some of the names,
19 even if you can't remember them all?

20 A. I can give you what I can remember, for sure.

21 Q. Thank you. Well, I am not going to ask that you write
22 them down now, but if the Inquiry were to ask you to
23 help with that before you leave the building, would you
24 be happy to give us the names that you can remember of
25 who might have been involved with this?

1 A. Yes, of course.

2 Q. Thank you.

3 I've taken you to Major Royce's statement. When
4 Major Royce gave evidence to the Inquiry in person, he
5 initially referred to this member of the field HUMINT
6 team as being the officer in charge.

7 It stands to reason, doesn't it, if he was literally
8 right about that, that would have been a reference to
9 you --

10 A. Yes.

11 Q. -- as the OC of the field HUMINT team. He went on to
12 say that in fact he thought it was the officer in charge
13 because it was the person who was speaking --
14 I paraphrase -- but with authority about the operation.
15 So it was the officer who was in charge of the
16 operation, but he thought it must have been an officer
17 or a warrant officer.

18 Given the list of names that the Inquiry was aware
19 of, he indicated to the Inquiry that it was one of three
20 names on the list or it could have been, but he did not
21 actually recognise the name, but that you were one of
22 the three names on his cipher list that he said it could
23 have been.

24 If it was you who was present during this meeting
25 where hooding and stress positions were mentioned and

1 were approved of, would you tell the Inquiry the truth
2 about it?

3 A. Yes, of course.

4 Q. You are sure, are you, that it was not you?

5 A. Yes.

6 Q. Just two other matters, I think, please. May we look
7 just briefly, please, at a statement that you provided
8 closer to the time. The reference -- can we have it on
9 the screen, please -- is MOD000288. This is a statement
10 of 26 May 2005. Taking it briefly, in the course of
11 this statement, were you being asked by the SIB about an
12 occasion where there was a difference of view or where
13 Staff Sergeant Davies had had to have been spoken to
14 about a professional matter about certain operational
15 aspects?

16 A. Yes.

17 Q. Just this, without going into any detail -- we have all
18 read the statement -- would it be fair that that in no
19 way involved the abuse or inappropriate treatment
20 towards prisoners or civilians?

21 A. Yes, that's right.

22 Q. But was more to do with protocols and correct
23 operational security aspects?

24 A. Yes.

25 Q. Would that be fair?

1 A. That's right.

2 Q. Thank you. Again, just this point then: I wonder if you
3 would look at your cipher list -- and again please don't
4 use the name -- do you see S055 on your cipher list?

5 A. Yes.

6 Q. You may not be aware, S055 is one of the very, very few
7 military witnesses that this Inquiry is not currently
8 able to trace. Please don't tell me anything about
9 where he may be or his location or anything, but are you
10 still in contact with S055?

11 A. No.

12 Q. Again, please don't say it if you do know, but do you
13 know where he currently is?

14 A. No.

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

16 THE CHAIRMAN: Yes, there will be one or two other
17 questions.

18 Mr Friedman?

19 Questions by MR FRIEDMAN

20 MR FRIEDMAN: Thank you, S016. Can I start with this
21 discussion that has been described by Major Royce? Do
22 you remember Major Royce?

23 A. No.

24 Q. No. Do you remember someone who was handling the
25 internee issue at 1 QLR BG Main?

1 A. No.

2 Q. Just in terms of the type of conversations that might
3 have gone on at brigade level, which you were co-located
4 at, were there conversations generally about the JFIT up
5 at Umm Qasr not being fit for purpose in the sense that
6 good intelligence was not coming down as a result of
7 their interrogations?

8 A. Sorry, in which meetings are you referring to?

9 Q. Take it out of any specific meetings, but meetings with
10 brigade people, did that kind of thing come up?

11 A. I can't really remember. It's very hazy, but I remember
12 there being maybe some discontent with something about
13 the intelligence coming out of JFIT, or there was
14 something about whether or not it was coming quickly
15 enough or whether -- I can't quite remember, I am
16 afraid, but your suggestion rings a bell.

17 Q. Yes. Aside from whether it was coming quickly enough,
18 was there also, frankly, some bitching about its
19 quality?

20 A. I can't remember, I'm sorry.

21 Q. Then the other side of the coin of that, was there
22 discussions about the need, shortages given, to use
23 tactical questioners to try to develop a better
24 intelligence coverage closer to the ground when people
25 were captured?

1 A. I don't know.

2 Q. Flowing from the answers that you gave to Mr Moss over
3 there about if you had heard about hooding, and if you
4 had heard about stress positions for moderate periods of
5 time to maintain shock of capture, that would not have
6 alarmed you, does it also follow that if you had heard
7 in discussions that conditioning was going to be used,
8 that reference to conditioning would also not have
9 alarmed you?

10 A. No. If it was in the context of trying to maintain the
11 shock of capture, then I would assume that that would be
12 what would happen.

13 Q. Yes. In your assumptions about all that, did you have
14 a sense: well, the people who are going to be doing it
15 are going to be subject matter experts and therefore
16 they will know how to do it.

17 A. Yes.

18 Q. Is that a common way in which people would approach
19 matters like that within the army in your experience?

20 A. Yes.

21 Q. Briefly, then, on the brigade G2 cell that you
22 co-located with. You were careful to distinguish that
23 your close relationship with Major Robinson was in
24 effect to help you to do your job better, not a chain of
25 command issue. Did you get sufficient assistance and

1 communication from your divisional chain of command
2 during that tour?

3 A. No. Not completely. I didn't feel as though I was
4 getting enough from them for me to maximise my
5 effectiveness.

6 Q. Yes.

7 A. Which is why I branched out to brigade. It wasn't
8 completely on the sly --

9 Q. No --

10 A. He knew that it was going on. He actually wanted me to
11 do less of it, because he felt as though it impinged on
12 my management responsibilities of my team.

13 Q. Who is "he"? Is it S015 or --

14 A. Sorry, yes.

15 Q. So S015 wanted you to do less of it?

16 A. Yes.

17 Q. But you did it anyway, and we have heard from lots of
18 witnesses, including the last one, that there were lots
19 of pressures on you to develop your intelligence
20 capability. Just in terms of that brigade team and your
21 dealings with Major Robinson, did you get the sense that
22 he was pretty inexperienced and in over his head in the
23 role he was being asked to carry out?

24 A. I thought that he was actually a fairly capable
25 individual.

1 Q. Yes.

2 A. He was an infantry officer doing an intelligence job and
3 I -- I thought he was doing it quite well.

4 Q. Right.

5 A. But I didn't have intimate dealings with him. I had
6 experience with him in brigade commanders' briefings,
7 and I thought that he didn't appear incompetent.

8 Q. So he was making a good job of it, didn't appear
9 incompetent. Were you able to gauge that he actually
10 had very little training and experience nevertheless?

11 A. I knew that he didn't have a lot of training in the job,
12 and as in a lot of jobs in the army, you are expected to
13 do the best you can as an officer in maybe a lot of jobs
14 where you don't have a great deal of experience.

15 Q. Right. Did you come to know that the available TQers to
16 do the work were few in number?

17 THE CHAIRMAN: Mr Friedman, unless there is some specific
18 point you want to make with him, we have heard an awful
19 lot of evidence that that is the case.

20 MR FRIEDMAN: I understand that. Take it that we have had
21 a lot of evidence about shortage of TQers and what they
22 were doing.

23 Did you have any discussions with any of the TQers
24 about what it was they were doing in terms of the
25 methodology they were using?

1 A. No. No, it was -- it was not something that I bothered
2 myself with.

3 Q. No. Lastly this, and taking care as Mr Moss did, we saw
4 in that statement to the SIB that a matter had to be
5 raised with Major Davies about protocol. You had
6 regular contact with Major Davies during this tour,
7 didn't you?

8 A. I had contact with him, yes.

9 Q. He was very keen and very enthusiastic about what he was
10 doing, wasn't he?

11 A. He wanted to do a good job.

12 Q. Did you know that he had only been recently trained in
13 TQ'ing?

14 A. No.

15 Q. You may not be able to answer it, but just in terms of
16 the matter that he had to be spoken to about, without
17 going into detail, was there a sense in which out of his
18 keenness he had gone beyond protocol? Was that the gist
19 of it?

20 A. I don't think it was out of keenness, I think it was
21 just something he did that upset us, and we just felt
22 somehow he needed to be --

23 THE CHAIRMAN: Are we talking about Sergeant Davies, not
24 Major Davies?

25 MR FRIEDMAN: I am sorry, yes, Staff Sergeant Davies.

1 THE CHAIRMAN: You had me worried for a bit that there was
2 somebody I had failed to get on my radar.

3 MR FRIEDMAN: Without going into the detail, there was
4 a matter of protocol, he should have known about it, he
5 went beyond it.

6 A. Yes, I think that's fair to say.

7 MR FRIEDMAN: Thank you.

8 THE CHAIRMAN: Ms Cross.

9 Questions by MS CROSS

10 MS CROSS: Just a few questions if I may, S016.

11 First of all, did you wear a rank slide?

12 A. Yes, I did.

13 Q. Did other members of your team wear rank slides?

14 A. No, not all the time.

15 Q. We have heard evidence that you did not do a TQ'ing or
16 an interrogation course. If you had been asked to
17 advise on prisoner handling matters, what would your
18 response have been?

19 A. "It's not an area of my expertise. I suggest you speak
20 to somebody with that expertise."

21 Q. Finally, you were asked earlier by Mr Moss whether it
22 would be all right to deprive someone of their sight to
23 maintain shock of capture and you agreed with that.
24 Would there be other circumstances in which it would be
25 legitimate to deprive someone of their sight?

1 A. Yes. In order to maintain the security of the base or
2 wherever it is you may be transporting those prisoners
3 to.

4 MS CROSS: Thank you, Sir. No further questions.

5 THE CHAIRMAN: Mr Moss.

6 MR MOSS: Sir, I don't have any additional questions, thank
7 you.

8 THE CHAIRMAN: Thank you very much for coming, S016. Those
9 are all the questions you are going to be asked by the
10 Inquiry, I am very grateful to you for coming to the
11 Inquiry and you are now free to go. I think the
12 logistics of your going is would you please go now with
13 your team and we will wait until you have got out of
14 this room. All right.

15 A. Thank you.

16 THE CHAIRMAN: He is going to go first.
17 2 o'clock.

18 MR MOSS: Thank you, Sir.

19 THE CHAIRMAN: Neatly timed, if I may say so.
20 (1.00 pm)
21 (The short adjournment)
22 (2.00 pm)

23 THE CHAIRMAN: Mr Elias.

24 MR ELIAS: Sir, may I call Sian Ellis-Davies, please,
25 Major Ellis-Davies, please.

1 THE CHAIRMAN: Yes. I ask, please, that you be sworn.

2 SIAN ELLIS-DAVIES (affirmed)

3 THE CHAIRMAN: Thank you. Would you be kind enough to sit
4 down please, and also may I ask you to speak clearly
5 into the microphone then we will all be able to hear
6 what you have to say.

7 Mr Elias.

8 Questions by MR ELIAS

9 MR ELIAS: Could you give the Inquiry your full name.

10 A. I am now Major Sian Nooney. At the time I was Sian
11 Ellis-Davies, but I have recently changed my name. But
12 at the time and for the purposes of my statements, they
13 are in the name of Sian Ellis-Davies, which is my maiden
14 name.

15 Q. I should refer to you as Major Nooney?

16 A. It would probably be easier all around if it is
17 Ellis-Davies, I think.

18 Q. I will stick to that if I may.

19 From what you tell us, you are still in the army and
20 that is your rank, major?

21 A. Yes.

22 Q. If you look, please, at a folder which I hope is to your
23 right hand and find inside it a copy of two statements
24 that you have made to this Inquiry?

25 A. Yes.

1 Q. If you go to the last page, please, of the first,
2 BMI05108, could you confirm that you signed that
3 statement on 10 October of last year?

4 A. Yes.

5 Q. As to the second statement to this Inquiry, we find the
6 last page at BMI07869. Have you signed that?

7 A. Yes.

8 Q. Is it dated?

9 A. It is dated 6 April.

10 Q. 6 April of this year. When you signed those statements,
11 Major Ellis-Davies, were you attesting to the Inquiry
12 that the contents of them were true to the best of your
13 knowledge and belief?

14 A. Yes.

15 Q. We have read those statements and I don't propose by any
16 means to take you to all matters that you cover in them.
17 You understand that your statements are part of the
18 evidence that you put before this Inquiry?

19 A. Yes.

20 Q. I am going to take you therefore to certain aspects your
21 evidence where you may be able to help us further?

22 First, may I begin by just encapsulating your army
23 career history. You tell us in your statement you are
24 a lawyer by training.

25 A. Yes.

1 Q. Qualified?

2 A. I qualified in September 1999.

3 Q. As?

4 A. As a solicitor.

5 Q. You were commissioned in September 2001. You completed
6 the professionally qualified officer course at Sandhurst
7 in October 2001?

8 A. Yes.

9 Q. You then undertook six weeks of army law training, you
10 tell us, followed by three months' detachment with
11 infantry in Northern Ireland?

12 A. Yes.

13 Q. Following which, you were posted to HQ 3 (UK) Div in
14 January 2003 and deployed to Iraq later that year?

15 A. Yes, there was a short posting in between, but yes,
16 I was posted to 3 Div in the January of 2003.

17 Q. But you were deployed to Iraq, you tell us, in July 2003
18 until the end of November, beginning of December of that
19 year?

20 A. Yes.

21 Q. Do you recall the date in July when you were deployed?

22 A. I have in mind it was 7 or 8 July.

23 Q. What was your rank and your role, if you can encapsulate
24 it for us, briefly, in Iraq?

25 A. I was a captain. I was the SO3 op law, one of two

1 captains, but my primary role was the operational law
2 aspects, giving advice to the chain of command under
3 direction of my Commander Legal Colonel Charlie Barnett.

4 Q. So it was to him that you were, as it were, answerable?

5 A. He was my functional chain of command, yes.

6 Q. You tell us also that you had a close working
7 relationship with Major Clifton at brigade?

8 A. Yes, I did. He was my SO2, so my one up. When I was
9 working at 3 Div in Bulford, in 3 Div in Bulford we
10 didn't have a commander legal in that office so it was
11 to Russell Clifton to whom I reported.

12 Q. Now, you tell us that your role -- I just want to look
13 at this briefly, as it were, on a day-to-day basis at
14 least initially; you spell it out, beginning of
15 paragraph 9 of your statement to the Inquiry, BMI05076,
16 please.

17 Paragraph 9, you say this:

18 "When I arrived in Iraq in July 2003 it became clear
19 that we needed to look at the issue of detention and
20 internment, and this was something we expected from
21 backbriefs [reports]... we had received from theatre
22 during our pre-deployment preparations."

23 You then go to talk about the transition from the
24 war-fighting phase. A large number of combatants had
25 been captured. But that, as you say later in the

1 paragraph, things were now moving out of the
2 war-fighting phase:

3 "... prisoners of war become less of an issue ..."

4 It was more a case of detainees and internees.

5 A. Yes, that's right.

6 Q. Upon arrival, you say in paragraph 10:

7 "... we were looking to see how to take things
8 forward. Lieutenant Colonel Barnett instructed me to
9 find out what had been happening in relation to
10 internees and detainees in practice. Therefore I spent
11 the first ten days or so of my tour in Iraq contacting
12 people who were involved in arresting and detaining
13 prisoners to establish who they were, what their role
14 was and to build up a picture of what was going on."

15 In that ten-day period or so, do you recall any
16 particular problems in relation to prisoner handling
17 being brought to your attention?

18 A. No problems, per se, but as the picture built up as to
19 how it was working in practice, yes, there were -- there
20 were issues, there were issues which came to my
21 attention as to how we would be able to make this peace
22 work. But no -- nothing I would describe as problems,
23 more issues that needed to be worked out as we evolved
24 the process.

25 Q. I am going to come back to how you worked that out and

1 what the issues might have been in a moment or two. But
2 before doing that, may I ask you, please, prior to
3 deployment on Op Telic 2 to Iraq, let me ask you
4 a little about what training or understanding you had in
5 relation to certain techniques that the Inquiry has been
6 concerned with over these weeks and months that we have
7 been hearing evidence.

8 Had you received any training in the use of hoods or
9 prisoners?

10 A. No.

11 Q. So no training as to whether it was right or wrong?

12 A. I knew we weren't doing it. But I hadn't had any
13 training in using hoods, but I knew it was a no, if
14 I can put it that way.

15 Q. Can I just break down that answer a little: you knew "we
16 weren't doing it".

17 A. I knew that hooding was a no, is how I recall it.

18 Q. Does that mean you knew that hooding was not permitted
19 to be used?

20 A. Yes, yes.

21 Q. How did you know that hooding was not permitted to be
22 used?

23 A. I don't recall now how or when I became aware of that.
24 I was aware of that before deploying to Iraq. My
25 recollection is that I was aware of that during my time

1 at 3 Div while we were doing pre-deployment.

2 Q. So that would be some time in the first half of 2003?

3 A. That would have been 2003 to -- yes, January onwards in
4 2003 is my recollection.

5 Q. And you can't remember at all, can you, how you came to
6 know, as you put it, that hooding was a no?

7 A. No.

8 Q. It wasn't something you were specifically taught or
9 trained?

10 A. Not that I can recall, no.

11 Q. Was the same true of deprivation of sight of a prisoner?

12 A. Again, I knew that was a no. I knew that it was not
13 something that would be lawful. But I cannot recall
14 having, for example, a lecture or a presentation in
15 which somebody spelt out to me, "You can't deprive
16 somebody of their sight", or whatever it might be. But
17 I was very clear in my mind, again, it was a no.

18 Q. You do understand that I am drawing the distinction --
19 and it may be an important distinction, it is for others
20 to say -- between deprivation of sight by some other
21 method and hooding. You say the two were treated in the
22 same way, do you?

23 A. Um, as I say I don't recall a presentation, a lecture
24 during my training period at which I was taught about
25 sight deprivation as a topic.

1 Q. But you did say a moment or two ago, I think, that you
2 regarded sight deprivation as being against the law?

3 A. Yes, yes. If you are putting a bag over somebody's head
4 in that way, yes.

5 Q. What about, for example, wearing blacked-out goggles?

6 A. That was something that I was aware prior to going to
7 Iraq, that that was an alternative means if you -- if
8 you had an operational reason for stopping somebody
9 seeing their surroundings, then you would need to have
10 a means to do that and blacked-out goggles was one of
11 the means that I was told was a -- was an acceptable way
12 of doing that, achieving that operational aim, if there
13 was security reason, to prevent that.

14 Q. So who taught you that?

15 A. I don't know that I was necessarily taught it in
16 a formal sense, but I was certainly aware of that during
17 that pre-deployment period when I was in 3 Div.

18 Q. So that we are clear about it then, do I understand it
19 correctly: hoods under no circumstances; alternative
20 methods to blind sight for security reasons might be
21 permitted?

22 A. Yes.

23 Q. The use of stress positions, were you taught anything
24 about that before your deployment to Iraq?

25 A. No, again, I have no recollection of any presentations

1 or teaching per se on it. Stress positions as a lawyer
2 I would have said were not lawful because they are by
3 definition putting somebody in a physically
4 uncomfortable position. You are putting a stress, by
5 definition, on their body. So I would have said as
6 a lawyer, no.

7 Q. Would that also apply to what are sometimes called the
8 other conditioning techniques, things like deprivation
9 of food or water or deprivation of sleep?

10 A. Absolutely. It is basic in the Geneva Conventions if
11 nothing else.

12 Q. You would have known in 2003 what was meant by the shock
13 of capture, would you?

14 A. Yes.

15 Q. What did you understand it to mean?

16 A. I understood it to mean a way of maintaining a perhaps
17 heightened emotional state that somebody would naturally
18 be in if they were captured.

19 Q. Was it right or wrong, were you taught, to maintain or
20 prolong the shock of capture?

21 A. As I say, I don't recall ever being taught about the
22 shock of capture. I have no recollection of
23 a presentation of teaching in that regard.

24 Q. Did you have any understanding?

25 A. I -- I'm aware of the phrase. I'm not sure I'm aware of

1 the phrase from army teaching. I put my knowledge of
2 that phrase to be almost a general knowledge, partly
3 from the army, partly from my general awareness.

4 Q. Would you --

5 A. As opposed to a technique that I would have been taught
6 formally.

7 Q. Would you have known in 2003 whether it was or was not
8 permissible to prolong or maintain the shock of capture
9 by, for example, depriving of sight by the use of
10 goggles?

11 A. I would have had an issue not with using goggles, in
12 terms of I would have been comfortable with using
13 goggles for the operational circumstances, but if it is
14 being used for other purposes in order to maintain that
15 sort of heightened state, then, yes, absolutely I would
16 have been uncomfortable with that. I wouldn't have
17 agreed with that.

18 Q. Did you regard hooding in 2003 as being inhumane?

19 A. Yes.

20 Q. Either through your law training within the army or
21 through any other means, did you become aware of what we
22 have been describing in this Inquiry as the Heath ruling
23 or the Heath statement in 1972?

24 A. I have no specific recollection of being taught about
25 the Heath ruling. I can firmly say I certainly didn't

1 own a copy of it. I don't think I was aware of it in
2 those terms, no, as a Heath direction. It's not
3 a phrase that I would have been familiar with back then,
4 no.

5 Q. The terms or a directive from 1972 were not brought
6 specifically to your attention?

7 A. Not that I can recall in my training, no.

8 Q. May I ask you now, please, about training that you gave.
9 You refer to this in some detail in your statement,
10 don't you? I just want to ask you about one or two
11 aspects of that. To whom were you giving training in
12 the first place?

13 A. We gave training to the troops that came under the
14 command of 3 (UK) Div. I was involved with Colonel
15 Charlie Barnett who gave the OPTAG, the sort of
16 pre-deployment training package, to 19 Brigade troops up
17 in Catterick. There was also a requirement to do
18 training amongst divisional staff themselves, units
19 local to myself in Bulford. I think my statement refers
20 also to a presentation I recall doing in Larkhill.
21 There was a programme of training --

22 Q. Can I stop you. It is, as you say, set out in your
23 statement and I didn't want to go through that.

24 A. Sorry.

25 Q. I didn't want to go through it line by line with you but

1 ask you just certain aspects of the training that you
2 gave. Did any of the training that you gave cover the
3 use of hoods, or the legality, lawfulness or otherwise
4 of doing so?

5 A. Not that I can recall, no. It may have done but I can't
6 recall it.

7 Q. It would have emphasised, would it, that which you
8 learnt in your LOAC training, that is that prisoners
9 must be treated humanely?

10 A. Yes.

11 Q. That would be, if you like, the baseline, would it, of
12 any instruction, training, given in this area of
13 prisoner handling?

14 A. Yes, you would train that there are minimum standards of
15 treatment of anybody, regardless of whether you classify
16 them as a PW or a detainee, that there are minimum
17 standards of treatment and that they are to be treated
18 humanely at all times.

19 Q. You don't recall saying anything, however, about
20 hooding. Did you know -- can we deal with this now --
21 did you know when you went to Iraq that there was any
22 ban, any order banning the use of hoods in force?

23 A. I was aware that hooding was not permitted. I can't say
24 that I would have called it a ban because I don't think
25 I was aware that it had been -- ban suggests to me that

1 it was an accepted practice, that there had been
2 a change and it was therefore banned and therefore
3 a change in policy. That wasn't my understanding,
4 because my understanding, as I recollect it, was that
5 hooding was not permitted. And I didn't question that
6 further in my mind.

7 Q. That was, as it were, your general position before you
8 went to Iraq?

9 A. Yes.

10 Q. Hooding was not permitted --

11 A. Yes.

12 Q. -- therefore that is how you would have assumed things
13 were?

14 A. Yes.

15 Q. If that's correct?

16 A. Yes.

17 Q. But as a matter of fact, you tell us, do you, you did
18 not become aware of the fact that any order had been
19 issued banning the use of hoods?

20 A. I think I must have become aware of it at some point,
21 but again, as my recollection is that hooding was not
22 permitted, that was good enough for me.

23 Q. Why do you say you must have become aware of the ban or
24 a ban at some point?

25 A. Because I am aware from the documents that have since

1 been seen that there was an issue when Colonel Mercer
2 was in theatre as to the guidance that he gave to his
3 GOC. I am obviously now fully aware of that. But --
4 Q. But an issue, as it were, that predated your time there?
5 A. Yes.
6 Q. Did you become aware of that issue when you were in
7 Iraq?
8 A. I don't know at what stage I became aware of it, if
9 I can put it that way.
10 Q. Was it a matter that was, as it were, still being
11 debated as an issue, the rights and wrongs of the use of
12 hoods for security purposes?
13 A. No. It was discussed but it was never debated in terms
14 of, within my tenure, anybody saying, "Yes, we can", and
15 somebody else debating, "No, we can't". It was a flat
16 no when I was there --
17 Q. So everyone was of the same mind then --
18 A. Yes. There was no debate.
19 Q. -- when you were there?
20 A. Yes, there was discussion but no debate.
21 Q. So why was the matter raised at all in that event, in
22 what context, if you like.
23 A. Because I think I was aware of Colonel Mercer's
24 standpoint on it, but it simply was not an issue that
25 needed to concern me as the SO3. Hooding was a no and

1 I accepted that.

2 Q. Forgive me, it doesn't, I think, quite answer my
3 question. Why was hooding being discussed at all, if,
4 as it were, there was an unanimous view that hoods were
5 not to be used?

6 A. It was one of a range of topics that we discussed on
7 a regular basis. We discussed all manner of topics.
8 That was one. The alternative to hooding, that being
9 the issued goggles with black tape or black nasty, as we
10 would call it, was discussed frequently.

11 Q. So one of the issues that was being raised in your time
12 was again whether hoods should be used?

13 A. Not whether they should be used, but I certainly
14 remember discussion about using goggles with black tape
15 over them.

16 Q. Goggles, one thing. You told us a little while ago now
17 that discussions about hoods were still going on in your
18 time. I just want to know what the context of that
19 was --

20 A. As I said, there were discussions about hooding being
21 a no. It was not a debate about whether it was a no or
22 a yes. In my tenure it was -- I had never understood
23 any differently that it was a no, so it was discussion,
24 not debate about the rights and wrongs of it.

25 Q. My question to you really is why was it still being

1 brought up if everyone was saying it was a no?

2 A. Because it's one of those issues that you would -- we
3 discussed everything. I can't explain why it was
4 discussed. It was -- it was a topic of relevance. We
5 were capturing individuals. Treatment of any
6 individuals you have control over is important. That's
7 the line we had.

8 THE CHAIRMAN: Can I just ask you this on that: were there
9 those who were saying it should not be a no.

10 A. No.

11 THE CHAIRMAN: Nobody was saying that?

12 A. No. As far as I was concerned, the legal team I worked
13 with were on the same hymn sheet of there is no hooding
14 in theatre.

15 MR ELIAS: The chairman's question and mine a little earlier
16 was not necessarily confined to the legal team alone.

17 A. Okay.

18 Q. Were there voices, soldiers' voices if you like, who
19 were saying it's difficult to operate these regimes --

20 A. No.

21 Q. -- unless we are permitted to hood, for example?

22 A. No, no.

23 THE CHAIRMAN: You never heard anything like that?

24 A. No, it wasn't, to my knowledge, being challenged by
25 those in my headquarters, for example. It wasn't that

1 we were having to argue a point, you know, the lawyers
2 having to argue a point to other people; no, I don't
3 recall that at all.

4 MR ELIAS: As we are going to see a little later on, there
5 is no doubt, is there -- and I think you will know
6 this -- that hoods were in fact still being used in
7 mid-September of 2003.

8 A. Yes, yes.

9 Q. We know that, the Inquiry knows it?

10 A. Yes.

11 Q. Did you know it at the time?

12 A. No.

13 Q. Did you know that hoods were being used at all in Iraq
14 during your time up until certainly the death of
15 Baha Mousa?

16 A. No, absolutely not.

17 Q. Nothing ever brought to your attention about that?

18 A. No.

19 Q. I will just come back to that if I may a little later.
20 But you are clear about that, are you?

21 A. Absolutely.

22 Q. It wasn't in the context -- these discussions -- in the
23 context of the fact that it was being reported that from
24 time to time prisoners were still being hooded?

25 A. No.

1 Q. All right. Did you give training in conditioning and
2 the use of stress positions?
3 A. No.
4 Q. In this training that you gave?
5 A. No.
6 Q. Did you give training that these techniques, if I may
7 call them that, were not to be used?
8 A. No, I didn't, no.
9 Q. That didn't form part of any pre-deployment training?
10 A. No. It didn't. I didn't see a need at the time to tell
11 people to do something that would be to treat somebody
12 inhumanely, no.
13 Q. No need, as it were, to give the negative message or, if
14 you like, the positive message that it was a no?
15 A. At that stage, no, I didn't.
16 Q. So there was no specific training from you or
17 Colonel Barnett on hooding or the use of hoods, on
18 stress positions or other conditioning techniques?
19 A. No.
20 Q. Were questions raised in the course of training that you
21 gave as to the use of these techniques by any of the
22 soldiers on the ground?
23 A. I remember one incident during a training given in Iraq
24 which is outlined in my statement.
25 Q. Yes?

1 A. Which is the only occasion I can recall of giving my
2 piece about goggles, black tape, and it being questioned
3 about wanting to hood. And that's the only time it was
4 raised by somebody else to me in a presentation that
5 I can recall.

6 Q. So some soldier said along the way --

7 A. Yes.

8 Q. -- in the course of training, "Why can't we hood
9 prisoners?"

10 A. Yes.

11 Q. Your response to that was what?

12 A. Was no. My response was in practical terms of: it's
13 hot, you don't know that individual, you don't know his
14 medical history, if you put a bag on his head in those
15 kind of temperatures, you are asking for trouble. Those
16 are the terms that I would have answered any question
17 along those lines, in terms that soldiers can readily
18 and practically understand.

19 Q. I follow. That was the only occasion the issue was
20 raised in that way, was it, with you?

21 A. That's the only time I can recall a soldier in
22 a presentation training context taking me up on it, if
23 that's the right phrase.

24 Q. Did you ever see prisoners in fact deprived of their
25 sight?

1 A. No.

2 Q. Not even with goggles?

3 A. No. I had little or no contact with any detainees.

4 There's only one occasion where I might have done, which

5 was when I was involved in the handover of some criminal

6 detainees to the court in Az Zubyr. That's the only

7 situation in which I would have had any contact with

8 any --

9 THE CHAIRMAN: Just pause a moment. I wonder if it would be

10 easier for us all if you concentrated on the question,

11 not answered two different ones.

12 A. Sorry, Sir.

13 THE CHAIRMAN: You answered the first part. No need to go

14 on to the second. Thank you.

15 MR ELIAS: You tell us in your statement that you did make

16 a visit to the TIF.

17 A. Yes.

18 Q. You had forgotten that when you made a statement some

19 years ago, is that right?

20 A. Yes he.

21 Q. Did you see prisoners on that occasion?

22 A. Yes.

23 Q. Any hooded?

24 A. No.

25 Q. Or in any other way deprived of their sight?

1 A. No.

2 Q. What did you know when you were in Iraq of TQ'ing?

3 A. I knew that it was a process of immediate questioning
4 for tactical purposes, as the name suggests.

5 Q. Never been trained in it?

6 A. No.

7 Q. Never been involved in TQ'ing or --

8 A. No.

9 Q. -- assisting in carrying it out?

10 A. No.

11 Q. You have never given any training in relation to it --

12 A. No.

13 Q. -- would that be right?

14 Were you aware in Iraq of what's sometimes called
15 the 14-hour rule?

16 A. Yes.

17 Q. What did it mean to you?

18 A. It was a period of time in which we wanted captured
19 personnel to be transferred to the theatre internment
20 facility.

21 Q. 14 hours from arrest to delivery?

22 A. Yes.

23 Q. What was the purpose of the time limit? I mean, why was
24 14 hours set, did you understand, as opposed to 6 or 24?

25 A. It was taken, as I recall, from the practice from our

1 predecessors 1 Div. It seemed to me as a reasonable
2 timeframe. I saw no reason to change that.

3 Q. Did you ever become aware of any difficulties with units
4 meeting the 14-hour deadline?

5 A. Yes.

6 Q. Can you give us some idea of how often this would
7 happen?

8 A. Not often to a degree that I would become concerned.
9 But occasionally, yes.

10 Q. So it was something that happened from time to time but
11 not all that frequently?

12 A. Yes.

13 Q. If it happened, did you enquire as to why?

14 A. Yes. It would -- the times that I can recall any
15 discussion or conversation about it, it was being
16 explained to me why there had been a difficulty with it,
17 and that was invariably transport problems, being able
18 to move around theatre, particularly as the security
19 situation worsened throughout August, of being able to
20 conduct moves to get people within the 14-hour.

21 Q. So transport logistical difficulties if you like --

22 A. Yes.

23 Q. -- were the sort of things that were being put forward?

24 A. Yes, yes.

25 Q. By how much might the 14 hours be exceeded on occasions?

1 A. I don't recall extreme examples --

2 Q. Forgive me, we don't know what you mean by "extreme"?

3 A. Well, I -- I don't know. It would depend on what

4 circumstances, it would depend on which unit, because --

5 Q. I am rather asking you, if you can remember and please

6 tell me if you can't, but if you can remember, what is

7 the worst case that you can remember? How long over the

8 14 hours?

9 A. I can't recall a specific time period. I can't recall

10 a 19 or a 21-hour incident, no, I can't.

11 Q. Might these things have run into a second day on

12 occasions?

13 A. I would be surprised.

14 Q. You don't remember any?

15 A. No.

16 Q. Did you ever give consideration as to whether the

17 14 hours was a practical requirement?

18 A. At the outset, as I explained, yes, I did. I thought it

19 was a reasonable period of time when I looked at this

20 when I arrived in theatre.

21 Q. In the statement that you made in July 2005 -- can we

22 have a look at a part of that statement, please, at

23 MOD000584, and the middle paragraph within FRAGO 29.

24 Forgive me for discussing this, but you did make two

25 other statements, I think, back in 2005. You were

1 endeavouring then, were you, to be accurate and to tell
2 the truth in giving your accounts?

3 A. Yes.

4 Q. Here you say:

5 "Within FRAGO 29 and subsequently FRAGO 005, there
6 was a requirement for units to deliver persons
7 categorised as warranting internment to the TIF within
8 14 hours. Whilst I did not initially create this time
9 period ..."

10 And that we know to be obviously right:

11 "... I did review it and considered it an
12 appropriate time frame. I felt this time frame catered
13 for situations where persons were arrested in night time
14 operations or at locations some distance from the TIF,
15 allowing the battlegroup sufficient time to arrange and
16 consider transportation issues, force protection issues,
17 lock downs... incidents along their route to Um Qasr...
18 That is not to say a unit could not deliver a person
19 within this period or shortly thereafter."

20 A. Yes.

21 Q. So taking account of all those incidents, you thought
22 that 14 hours was a practical result, as it were?

23 A. Yes, I saw no reason to change it.

24 Q. Thank you.

25 Paragraph 94 of your statement to this Inquiry, we

1 find it at BMI05104. I just want to go to the second
2 part of the paragraph on that page at this stage,
3 please. Two lines from the bottom:

4 "I do not think that we ever talked about the TIF
5 opening hours, but I think that by the time
6 Major Peebles took over as BGIRO, the opening hours of
7 the TIF, which had been an issue earlier on in the tour,
8 was not an issue."

9 That's your recollection, is it?

10 A. Yes.

11 Q. "... I think by then it was widely known that the UK MPS
12 could accept internees/detainees at any hour of the
13 day/night, and units were being told to contact them
14 directly."

15 A. Yes.

16 Q. As you recall it, Major Ellis-Davies, was the TIF open
17 all hours throughout the period you were in Iraq?

18 A. Yes. I initially understood that it had opening and
19 closing hours and there came a point that I was told by
20 the MPS staff that they could accept internees or
21 detainees at any time.

22 Q. I want to ask you, please, about conversations that you
23 describe in your statement to this Inquiry.

24 Major Royce, you tell us in your statement you had quite
25 a lot of dealings with him?

1 A. Yes.

2 Q. In what context?

3 A. He was the BGIRO for 1 QLR during the first part of my
4 tour.

5 Q. To be replaced by Major Peebles, as we know?

6 A. Yes.

7 Q. Did you have then similar contact with Major Peebles in
8 due course?

9 A. I think I had less contact with Major Peebles. I knew
10 him to speak to less well than Tony Royce.

11 Q. So was the contact with Major Royce because, as it were,
12 he contacted you?

13 A. Yes.

14 Q. Is that how it would come about?

15 A. Yes. I would assume so.

16 Q. You say in your statement to this Inquiry, you spoke to
17 him so often you would recognise his voice as soon as he
18 called?

19 A. Yes.

20 Q. So he was obviously a very frequent caller?

21 A. Yes. All the BGIROs were.

22 Q. In relation to prisoner handling and his role as BGIRO,
23 as we have been calling him --

24 A. Yes.

25 Q. -- what were the nature of the queries that he raised?

1 A. I would get calls about individuals that they had
2 detained. He would be asking for my view on whether
3 they should hand them over to the Iraqi criminal justice
4 system --

5 Q. So assisting him in making his decision, effectively?

6 A. Yes.

7 Q. I follow.

8 A. Yes.

9 Q. Any other issues that he raised with you that you
10 recall?

11 A. No, it was always along those lines. That was the
12 general theme, I would say, for the BGIROs, of them
13 wanting a legal view on what they should do with the
14 people that they had.

15 Q. You would give that view, would you?

16 A. Yes.

17 Q. You tell us in your statement that Major Royce would
18 often speak about the 14-hour deadline.

19 A. I think he and others would have asked me about it, yes,
20 because it's from them I would have been aware of
21 potential problems with transport and force protection
22 issues for getting to the TIF.

23 Q. Was it a regular issue that he raised -- I am not
24 concerned with others for the moment, but Major Royce?

25 A. I wouldn't be able to say specifically him, no.

1 Q. Can we look then, please, at paragraph 93 of your
2 statement to this Inquiry, BMI05104. Paragraph 93, in
3 which you say you had a lot of dealings with
4 Major Royce. You go on to say:

5 "I recall that we often spoke about the 14 hour
6 deadline and, in particular, about the 'urban myth' that
7 the TIF was shut after certain hours."

8 A. Yes.

9 Q. Do you mean by that that Major Royce was raising the
10 issue that the TIF was shut?

11 A. I coined the phrase "urban myth" for it because there
12 was a perception that it was -- it had opening and
13 closing hours and, yes, he would absolutely have been
14 one of the people that I would have been talking to,
15 saying, "No, you can take them at any time, let the MPS
16 know".

17 Q. So it follows, does it, that Major Royce, in speaking to
18 you on these occasions and raising this urban myth, as
19 it were, was either using it as an excuse for late
20 delivery or believed it to be true?

21 A. Yes. I have no recollection of thinking it was somehow
22 being used as an excuse. I had no suspicions per se,
23 no.

24 Q. Presumably once you had told him that it was simply an
25 urban myth, the TIF was always open, you didn't have to

1 tell him that again, did you?

2 A. I wouldn't expect to be telling him repeatedly, no.

3 Q. But from this sentence it would seem that you are

4 suggesting he came back on a number of occasions

5 suggesting the urban myth.

6 A. Yes. It was something that was talked about to me on

7 more than one occasion, yes. But I wouldn't expect to

8 have been telling him about it every time I spoke to

9 him, but yes. It was -- it was one of those live

10 issues, if I can put it that way.

11 Q. Was the question of conditioning of prisoners ever

12 raised with you --

13 A. No.

14 Q. -- by Major Royce?

15 A. No.

16 Q. Or any issues of the use of stress positions?

17 A. No.

18 Q. Or hooding?

19 A. No.

20 Q. He never said anything to you that you recall that would

21 have given you the impression that he, Major Royce,

22 believed that hooding could be used?

23 A. No.

24 Q. You simply never had any discussion about those

25 topics --

1 A. No.

2 Q. -- at all with him, is that it?

3 A. No, absolutely not.

4 Q. A similar question in relation to Major Peebles: did he
5 ever raise issues --

6 A. No.

7 Q. -- about hooding or the use of stress positions --

8 A. No.

9 Q. -- on prisoners?

10 A. No.

11 Q. Neither of them ever sought clarification from you,
12 anyway, as to the lawfulness or otherwise of the use of
13 these techniques?

14 A. No.

15 Q. Now, may I ask you, please, about a conversation to
16 which you refer with a soldier that we know as S018.
17 You have your cipher list there?

18 A. Yes.

19 Q. You know who I mean by that?

20 A. Yes.

21 Q. Did you have contact on a regular basis with S018?

22 A. Yes.

23 Q. S018 worked at the JFIT?

24 A. Yes.

25 Q. You tell us in your statement that you first received

1 a telephone call from S018 in the early part of the
2 evening of 16 September.

3 A. That's how I recall it, yes.

4 Q. He wasn't someone that you normally had contact with at
5 the JFIT, was he, S018?

6 A. I had previous fairly regular contact with him, but my
7 main point of contact was S017, the OC.

8 Q. Thank you. At the JFIT?

9 A. At the JFIT, sorry, yes.

10 Q. So this conversation with S018 on the evening of
11 16 September, what was said?

12 A. He told me that they had a number of detainees brought
13 in to him at the TIF and that the -- the words he used
14 was that bruising was appearing before his eyes.

15 Q. Did you then know, or did you later gather, that he was
16 referring to the detainees who had been arrested as
17 a result of Operation Salerno?

18 A. Yes.

19 Q. Did you know that at the time or did you gather that
20 later?

21 A. He told me that.

22 Q. So he told you bruising to these detainees was appearing
23 before his eyes, as he put it?

24 A. Yes.

25 Q. In what state, may I ask, did he seem to be on the

1 telephone?

2 A. He was quite obviously shaken, upset, and angry in equal
3 measure.

4 Q. You say in paragraph 97 of your statement -- may we just
5 have that on the screen at 05106, because I think it
6 helps us to understand what you are recalling of the
7 conversation, three lines in to paragraph 97:

8 "I remember the conversation because he was always
9 so measured and this was in contrast to the way in which
10 he was speaking to me over the phone at this point."

11 A. Yes.

12 Q. "Also, I was not usually informed when detainees arrived
13 at the TIF."

14 A. Yes.

15 Q. "I think that I had at least two conversations with
16 [him]. I recall him saying that bruising was appearing
17 before his eyes. I do not know exactly what he meant by
18 this. I do not think that when we were talking I was
19 aware that anyone had died..."

20 Is that right?

21 A. That's my recollection, is that I knew there were --
22 there were problems, but whether -- I don't think I knew
23 there had been a death at that stage.

24 Q. Did you gather what the purpose of S018 phoning you was?

25 A. It made absolute sense for him to ring legal branch.

1 I was one of his points of contact. I was probably one
2 of his main points of contact in the divisional
3 headquarters.

4 Q. What, if anything, did he want you to do?

5 A. I can't recall him asking me to do anything. He was
6 informing me.

7 Q. Of the state of the prisoners?

8 A. Of the state of the prisoners, yes.

9 Q. At paragraph 99, if we could just move on to that,
10 please, you say here that you asked S018 to keep you
11 informed:

12 "... what injuries he could see and whether the
13 detainees had been seen by a doctor."

14 A. Yes.

15 Q. You would have asked him that, would you?

16 A. Yes.

17 Q. "I recall that one of the detainees had renal problems
18 and was classed as 'very seriously injured'."

19 A. Yes.

20 Q. "I was asked to advise what our obligations were to
21 him..."

22 To that prisoner, in other words.

23 A. Yes.

24 Q. "... in relation to providing medical treatment and
25 whether this included sending him to the UK for

1 treatment."

2 A. Yes.

3 Q. Did you mean by that that that is what S018 was asking
4 you?

5 A. No, no. That is what my chain of command were asking
6 me.

7 Q. I follow. So after the conversation you were then asked
8 to advise by your chain of command?

9 A. Yes.

10 Q. You told Lieutenant Colonel Barnett of that conversation
11 straightaway, did you?

12 A. Yes, he would be the first person I would tell.

13 Q. You go on in your statement to say that you also
14 remember speaking to Major Clifton about it?

15 A. Yes.

16 Q. You understood, did you, from Major Clifton that he had
17 given advice to 1 QLR about delivery of detainees?

18 A. Yes.

19 Q. What, to the TIF as quickly as possible?

20 A. Yes. He -- I think by the time I had spoken to
21 Major Clifton, more of the detail in terms of which unit
22 was involved was known and he told me that he had given
23 advice to them.

24 Q. In your statement back in 2005 -- may we look again at
25 that, please, at this part, MOD000587, middle of the

1 page:

2 "My first knowledge of the circumstances surrounding
3 the treatment of detainees in the care of 1 QLR was when
4 on the evening... I received a number of telephone calls
5 from S018... He called me repeatedly to update me on a
6 number of persons who had been interned all of whom had
7 varying degrees of injuries about their bodies.

8 I recall that he had concerns that the internees had
9 been held for too long by the battlegroup..."

10 Do you remember being told that?

11 A. I don't recall that now, no.

12 Q. "... whilst I do not recall now I know I would have
13 inquired and he would have informed me of the
14 battlegroup which had delivered the detainees in order
15 that I could brief Lieutenant Colonel Barnett and the
16 chief of staff."

17 THE CHAIRMAN: My copy of that is not signed in any way.

18 I assume that there is a signed copy?

19 You did sign that?

20 A. I must have done, yes.

21 THE CHAIRMAN: I assumed you did. It is not important other
22 than that I should like to know that it was signed.

23 MR ELIAS: Are you referring, Sir, to the first page of the
24 statement you are referring to at 582?

25 THE CHAIRMAN: Mine is undated as well.

1 MR ELIAS: Yes, it is undated and unsigned on that page.

2 I think if we go to page 588, we can find two things out

3 from 588. One, it is said to be signed --

4 THE CHAIRMAN: Yes:

5 "I have signed and dated the attached label."

6 Then below it says "signed S Ellis-Davies". But

7 that is printed.

8 MR ELIAS: It is. Did you sign the statement, do you

9 recall?

10 A. I must have done.

11 Q. We get the date, if we go to the paragraph above the

12 reference HRBM/1:

13 "I have today [Friday, 29 July 2005] been shown..."

14 And so on.

15 A. Yes.

16 Q. I move on, please, to ask you a little about some other

17 documents. FRAGO 29, do you recall specifically seeing

18 that?

19 A. Yes.

20 Q. Your tell us in your statement to this Inquiry that this

21 was the first document, I think you put it, "that I had

22 when I came into theatre".

23 A. Yes.

24 Q. By that stage the BGIRO, if I may call him that, was

25 already up and running?

1 A. Yes.

2 Q. Did you review that FRAGO?

3 A. Yes.

4 Q. As part of the process which you described to us at the
5 very beginning of your evidence?

6 A. Yes.

7 Q. The procedure for prisoner handling?

8 A. Yes.

9 Q. From start to finish, as it were. Were you satisfied
10 that it was a document which served the purpose at
11 that time?

12 A. Yes.

13 Q. It never occurred to you, did it, notwithstanding that
14 matters were raised as you told us they were in the
15 training that you gave or in discussion, it never
16 occurred to you that perhaps there was a need to issue
17 an order or a fresh order reiterating the position on
18 the use of, or nonuse, of hoods?

19 A. No.

20 Q. That wasn't something that ever came to your mind, was
21 it?

22 A. No. The FRAGOs that I read when I arrived in theatre in
23 my mind were extant. What I had been asked to do by
24 Colonel Charlie Barnett was to review those with a view
25 to us putting out a MND(SE) policy as a document that he

1 did not want piecemeal.

2 Q. Now, that came as a MND(SE) document ultimately in the
3 form of --

4 A. Yes.

5 Q. -- FRAGO 005.

6 A. Yes.

7 Q. And SOI 390, didn't it?

8 A. Yes.

9 Q. Can we just see what you say about FRAGO 005, please, at
10 BMI05099. You talk about collating, as it were, the
11 information which you told us a little earlier you had
12 sought from a variety of sources:

13 "The aim was to have a policy which was a 'living
14 document', meaning an ongoing document that can be
15 amended."

16 Which you discussed with Colonel Barnett. You
17 drafted it. Colonel Barnett gave you comment and
18 direction on it. Major Clifton also, is that right?

19 A. Yes.

20 Q. You say:

21 "This policy [that is FRAGO 005] was my main piece
22 of work and one of Lieutenant Colonel Barnett's highest
23 priorities."

24 A. Yes. At that stage it was the bulk of what I was doing.

25 Q. It did not in fact contain any direction on hooding, did

1 it?

2 A. No.

3 Q. Should it have done, looking back now?

4 A. To do so would have picked out hooding as a particular
5 issue which I didn't at that stage think it was in our
6 tenure. Yes, with hindsight, given what we know took
7 place in mid-September, but at the stage that I was
8 looking at that, did I think that that one piece of --
9 that one prohibition needed highlighting, no, I didn't,
10 at that stage.

11 THE CHAIRMAN: What do you mean, it's not in our tenure?

12 A. In my time in theatre, sorry.

13 THE CHAIRMAN: Yes, I see.

14 MR ELIAS: The Inquiry heard yesterday from S017 -- I think
15 you have the name of S017 --

16 A. I do, yes.

17 Q. -- on the paper alongside you, and you are probably
18 aware that S017 gave evidence to the Inquiry of seeing
19 prisoners delivered hooded.

20 A. Yes.

21 Q. And of raising that issue, amongst others, with you?

22 A. Yes.

23 Q. Is that right?

24 A. That didn't happen.

25 Q. That's not something that you might have forgotten

1 about; it simply didn't happen, did it?

2 A. No, and I can explain to you, if you wish, why it didn't
3 happen.

4 Q. Please.

5 A. Firstly, there was reference to it being mentioned to me
6 in passing as a courtesy because they were our European
7 partners who were doing this. That would not have been
8 something I would have taken as a courtesy issue in
9 passing. That would have been to me an issue of extreme
10 importance because it involved our coalition partners.
11 So had that happened, that would have caused me alarm in
12 the first instance.

13 I would also never have particularly wanted the OC
14 of the JFIT to be simply saying, "I will deal with the
15 LEGAD", because I had the contact with the LEGADs, and
16 that would have been an issue that I would have thought
17 should be addressed between nations, between certainly
18 legal officer to legal officer. I would have absolutely
19 raised it with Colonel Charlie Barnett if we were in
20 a position whereby our coalition partners, who had their
21 own sensitivities about the internment and detention of
22 civilians, were doing something that as the UK we were
23 not doing.

24 So for that reason, that conversation did not take
25 place.

1 Q. If it had been raising with you the fact that British
2 soldiers were bringing prisoners in hooded, did anything
3 of that kind happen?

4 A. As I understand it, it's mentioned that they were RAF.
5 Mainly the RAF contingent. And again, because of that
6 I can say that that conversation didn't take place
7 because I didn't have a point of contact in the RAF
8 regiment, nor was I -- would I have expected the RAF
9 regiment, given their role, to be regularly or at all
10 capturing internees or detainees. That would have stuck
11 in my mind because if nothing else, I wouldn't have had
12 a point of contact in the RAF regiment to know who to go
13 to and also, being army and being an army captain,
14 I would have mentioned that to my commander legal before
15 wading into another service -- the RAF -- and speaking
16 to them about a practice which was not prohibited.

17 So again, for those reasons I am confident that
18 conversation did not take place.

19 Q. So the Inquiry can be quite confident about that?

20 A. Absolutely.

21 Q. Those conversations or any conversation along those
22 lines could not have taken place with you?

23 A. Absolutely not. And in relation to whether I had been
24 told about army battlegroups, that would have caused me
25 to raise it with commander legal.

1 Q. It may be said, Ms Ellis-Davies, that you deny the
2 conversation because you appreciate the conversation
3 having taken place, you should have done something
4 about it?

5 A. No.

6 Q. That wouldn't be true, would it?

7 A. Absolutely not.

8 Q. You say, if we can look, please, at BMI05100, the end of
9 paragraph 77:

10 "... I was clear in my mind that this was a policy
11 document to cover the aspects from the capture of
12 detainees through to their detention/internment and the
13 reviews thereof."

14 That is to say, FRAGO 005.

15 A. Yes.

16 Q. FRAGO 005 became essentially SOI 390?

17 A. Yes.

18 Q. You go on to say that in paragraph 78, don't you?

19 A. Yes.

20 Q. May I ask you this about it, you say:

21 "... with an additional annex specifically setting
22 out instruction for the handling and tactical
23 questioning of internees, annex G."

24 A. Yes.

25 Q. That means, as I think we have already been told in

1 evidence by others, that was not, as it were, drafted by
2 you?

3 A. No.

4 Q. That was of course a necessary annex, wasn't it, to
5 fulfil the intention of a complete policy document from
6 first to last?

7 A. Yes, there was a need for it. That's why it was put in,
8 yes.

9 Q. Do you recall any issue being raised in relation to the
10 production or distribution of aide-memoire cards for
11 soldiers on the ground?

12 A. Yes. I'm aware that there was a soldiers' card from
13 Colonel Nick Mercer's time in theatre.

14 Q. Is it the case that that card was not actioned, was not
15 produced and distributed?

16 A. That, I think, was my understanding. I think there had
17 been a point at which we weren't sure whether it had
18 been issued or not.

19 Q. To your understanding it never was issued, is that the
20 position?

21 A. I think I got to the point where I did not think it had
22 been issued, or I could not say it had been issued.

23 Q. Should it have been issued?

24 A. Arguably, yes.

25 Q. Was it part of your function, anyway, part of your job

1 in this review, to see that that happened?

2 A. I looked into it for Colonel Charlie Barnett, yes.

3 Q. Why wasn't it issued, do you know?

4 A. I don't recall -- I do not recall him making the
5 decision per se, but it was his decision and he decided
6 that it did not need to go into the policy, which became
7 FRAGO 005.

8 Q. So he took the decision not to advance it, as it were,
9 did he?

10 A. Yes.

11 MR ELIAS: I follow.

12 Yes, thank you.

13 THE CHAIRMAN: Now, I think what we will do is have our
14 afternoon break now. We have a break in the afternoon.
15 Ten minutes please, Major. And I don't need to tell you
16 not to talk to anybody about your evidence.

17 (3.02 pm)

18 (A short break)

19 (3.12 pm)

20 THE CHAIRMAN: Now there will be questions from other
21 counsel.

22 Yes, Mr Singh.

23 Questions by MR SINGH

24 MR SINGH: Yes, thank you, Sir. Can I start by asking you
25 about your training and experience. You mention that

1 you qualified as a solicitor.

2 A. Yes.

3 Q. I think you said in 1999?

4 A. Yes.

5 Q. Was that the year that you finished your training or you

6 started your training?

7 A. No, that's the year I qualified as a solicitor.

8 I started my training in September 1997.

9 Q. Did you then practice in civilian life for a while?

10 A. Yes, I practised for just shy of two years.

11 Q. What sort of work did you do?

12 A. Professional negligence, medical negligence.

13 Q. Do you know the distinction between international

14 humanitarian law and international human rights law?

15 Does that distinction mean anything to you?

16 A. I would put them in the same category of issues.

17 Q. I don't want you to disclose any legal advice that you

18 may or may not have seen; I just want to ask you about

19 your state of mind and yours alone. Did you, either

20 before or during your deployment to Iraq, have a view

21 about the applicability of the European Convention on

22 Human Rights to British forces in Iraq?

23 A. Yes, I did.

24 Q. What was that view?

25 A. My view was that it probably applied.

1 Q. Can I ask you, please, for a document to be put on the
2 screen, which is MOD052218. The Inquiry has seen this,
3 certainly this morning. Do you see this is an email
4 from Colonel Barnett, dated 20 July 2003?

5 A. Yes.

6 Q. Do you see that you appear to have been copied into it?

7 A. Yes.

8 Q. Do you recall seeing this email?

9 A. I do not recall it now, but I would have seen it, yes.

10 Q. It is referring in the first paragraph to a draft FRAGO,
11 the title, the subject heading, makes it clear in the
12 email that it is FRAGO 455 on categorisation of
13 detainees.

14 It is dealing with arrangements between various
15 nations that were contributing -- contributing nations
16 in the MND, including the US and the UK. Do you see
17 that from paragraph 2?

18 A. Yes.

19 Q. In paragraph 3, it says:

20 "... the draft FRAGO provides for 5 categories of
21 detainees..."

22 Then if we go to the next page, we can see at the
23 top of that page that the categories A to D are listed.

24 A. Yes.

25 Q. Colonel Barnett says in paragraph 4:

1 "A couple of the specific concerns are as
2 follows..."

3 Then can I invite you, please, to read to yourself
4 paragraph (a) before I ask you about paragraph (b).

5 A. Yes.

6 Q. Do you see in paragraph (b) that it refers to hooding
7 a number of times? It begins as:

8 "... a direction to handcuff, ankle shackle and hood
9 [categories] A and B immediately..."

10 A. Yes.

11 Q. "It is also directed that these measures be applied to
12 all the other categories during transportation."

13 Then in the next sentence there is another reference
14 to "hooding may be necessary and lawful in certain
15 circumstances for good reasons", and those are then
16 summarised in the parentheses, do you see that?

17 A. Yes.

18 Q. Colonel Barnett continues:

19 "... we must remember the Geneva Convention
20 obligations that make it clear that individuals must be
21 treated humanely, must be accorded respect and honour,
22 and must be protected from intimidation and acts of
23 curiosity et cetera. This is open to interpretation but
24 for presentational reasons the UK stopped hooding
25 towards the end of the conflict phase and so it is most

1 certainly politically unacceptable for all but the most
2 exceptional cases to be hooded now."

3 A. Yes.

4 Q. It is clear from that, isn't it, that it was being
5 suggested that there might continue to be hooding, at
6 least in the most exceptional cases, by the UK?

7 A. Yes, that's what he is saying.

8 Q. And that it had been stopped not for legal reasons but
9 for presentational reasons?

10 A. Yes. That's what the email says.

11 Q. Did you reply to this email to Colonel Barnett to say,
12 "For goodness sake, you are completely wrong about this,
13 this is all illegal"?

14 A. No, not that I can recall, no.

15 Q. Why not?

16 A. I don't know. I didn't reply to it in those terms.

17 Q. Can I suggest that the reason why you didn't is because
18 you essentially shared Colonel Barnett's views and
19 approach to the whole question?

20 A. I was firmly of the view that we weren't hooding.
21 Whether I would or should have taken issue with it still
22 being a possibility in the exceptional circumstances for
23 the high value assets, no, I don't recall asking him
24 about that or what he meant by it.

25 Q. Can I move to a different topic, please. It is to do

1 with conditioning. You were aware, weren't you, when
2 deployed in Iraq, of the fact that conditioning was
3 taking place?

4 A. No. I didn't know when I deployed to Iraq that soldiers
5 were using conditioning techniques on -- the Baha Mousa
6 case brought that to our attention.

7 Q. Yes, that's what I mean. When I say when deployed,
8 I mean during --

9 A. Yes, sorry, yes.

10 Q. You did become aware of that?

11 A. Yes.

12 Q. It is fair to say, isn't it, that in your evidence to
13 the court martial, you were asked about your state of
14 knowledge of what precisely conditioning techniques
15 might be?

16 A. Yes.

17 Q. Is it fair to say that on a number of occasions, you
18 basically said that you didn't know the details because
19 you hadn't been trained in tactical questioning
20 yourself?

21 A. No, I have never been trained what a conditioning
22 technique might be or how it might be employed, no.

23 Q. Were you ever curious as a lawyer to find out?

24 A. No.

25 Q. You never asked anyone who might know?

1 A. No, I didn't.

2 Q. What it involved?

3 A. No. As far as I was concerned it was not going on.

4 Q. When you discovered that it had been going on, after the
5 death of Baha Mousa, were you curious then?

6 A. No, because even when I became aware that soldiers had
7 been using those techniques, I wasn't aware that that
8 was a taught practice. I would have assumed that it was
9 soldiers using things that they think might make
10 a detainee more pliable, more open to questioning, and
11 that soldiers were quite capable of making that up
12 themselves.

13 Q. I am not suggesting that you would have told soldiers
14 what the techniques ought to be. But weren't you
15 curious as a lawyer to know what the techniques were, so
16 that you could form a view about whether they were
17 lawful techniques?

18 A. No, because in my head I would have taken a conditioning
19 technique to include things like white noise, stress
20 positions, and I knew that -- I knew that a stress
21 position, a soldier could be made to -- an individual
22 could be made to adopt a position which would cause him
23 physical discomfort. I knew that was what you would
24 call a stress position.

25 Q. Was it your view that that was unlawful?

1 A. Yes.

2 Q. So when you discovered that something called
3 conditioning was going on in Iraq --

4 A. Yes.

5 Q. -- were you not curious to discover precisely what that
6 might consist of, so you could form a view on whether it
7 was lawful or not?

8 A. No, because what I was told was patently unlawful. They
9 had been committing assaults on detainees.

10 Q. Can I ask, please, for another document to be on the
11 screen. It is MOD023123. This, you can see, is annex G
12 to a document dated 30 September 2003. Do you see that?

13 A. Yes.

14 Q. On the top right-hand corner?

15 A. Yes.

16 Q. It is SOI 390 as we see from the second line of the
17 heading there?

18 A. Yes.

19 Q. This is after the death of Baha Mousa, is it not?

20 A. Yes.

21 Q. Can I ask you, please, to look at the next page, 124, at
22 paragraph 7, where it states:

23 "Whilst the guarding and holding of internees is
24 a J/G3 function it forms an important part of the
25 conditioning process which allows an internee to be

1 susceptible to the approaches of the TQ."

2 A. Yes.

3 Q. Did you see this document at the time?

4 A. I wasn't in theatre on 30 September.

5 Q. You worked with this document after when you returned --

6 A. Yes, I would have done. I don't know whether I would

7 have seen it in its draft form before I left theatre,

8 but I would have seen it on my return.

9 Q. All right. When you saw it on your return, when it is

10 no longer a draft but an actual policy document to be

11 implemented, did you say immediately to those

12 responsible, "What on earth is going on? Conditioning

13 is unlawful"?

14 A. No, I didn't.

15 Q. Why not?

16 A. Because that's not how I -- how I think I would have

17 read that at the time.

18 Q. I see. What did you understand this document to mean by

19 the word "conditioning"?

20 A. I wouldn't have expected it to mean conditioning in the

21 sense of stress positions, white noise --

22 Q. Why not?

23 A. -- sleep deprivation.

24 Q. Why not?

25 A. That's not how I just read it. That's not how I would

1 have read it.

2 Q. Why not?

3 A. It is not how I now just read it and I don't think

4 that's how I read it at the time.

5 Q. A few moments ago, I thought you told me that you knew

6 what conditioning was; that it consisted of a number of

7 techniques like white noise and stress positions which

8 you knew to be unlawful?

9 A. Yes, conditioning techniques as I would have said would

10 have been in those category of bad things, if that's not

11 too juvenile a phrase.

12 Q. So when here you see the same word again being used,

13 after the death of Baha Mousa, you weren't at all

14 curious to know what that conditioning process --

15 A. I didn't ask, no.

16 Q. Were you curious?

17 A. No.

18 Q. I see. Did you regard Major Clifton as a friend of

19 yours?

20 A. Yes.

21 Q. Presumably you often had discussions with him, did you,

22 about the sort of legal issues that were arising in

23 Iraq?

24 A. Yes.

25 Q. Did you have discussions with him about the sort of

1 things we have just been talking about: stress
2 positions, conditioning and so on.

3 A. Not that I recall, no.

4 Q. Is that answer the same after the death of Baha Mousa as
5 well as before?

6 A. Yes, I think so. I -- I don't recall -- I don't think
7 I recall a conversation with him talking about sleep
8 deprivation or white noise in a legal sense, no.

9 Q. Do you remember in the court martial that you gave some
10 evidence that in your view the proper questioners --

11 A. Yes.

12 Q. -- I paraphrase, the proper questioners were really the
13 ones to be found at the TIF?

14 A. Yes.

15 Q. What did you mean by that?

16 A. They were best placed, as I understood it, to carry out
17 the questioning, interrogation, of internees/detainees.
18 Internees actually. They were the best placed to do it.
19 They had the wider picture, they were across the joint
20 force, across the area of operations. And my
21 understanding was that the intelligence picture as
22 a whole was best fed from there.

23 Q. In around September 2003, were you aware that tactical
24 questioning was going on at battlegroup level?

25 A. I knew there were tactical questions at battlegroup,

1 yes.

2 Q. Presumably from what you just told me, your view was
3 that wasn't the ideal place for such questioning to take
4 place?

5 A. For the -- for the structured questioning in the longer
6 term, the JFIT in my understanding was the best place,
7 although, yes, there were TQers at battlegroup for that
8 initial period.

9 Q. All right. Were you aware of what the TQ'ing involved
10 or what training the TQers had had and things of that
11 sort?

12 A. My understanding was that the TQers had been trained by
13 Chicksands, and that it was trained TQers who were
14 carrying out TQ'ing.

15 Q. You yourself weren't aware of any kind of legal audit,
16 if I can put it that way, of those techniques? You
17 yourself hadn't done it clearly?

18 A. No, I hadn't, and I would have assumed that their
19 training would have been okayed legally by the lawyers
20 who advised Chicksands.

21 Q. Just one last topic I would like to ask you about, which
22 is to do with a document which begins at MOD022623.
23 This is dated 3 September 2003. It is a FRAGO 005,
24 which we have heard about?

25 A. Yes.

1 Q. I just want to ask you about a couple of the annexes
2 to it. First, at 22636, is annex C?

3 A. Yes.

4 Q. It may be helpful if we can have on the screen at the
5 same time to compare them 22638 as well. The first one
6 is headed, isn't it "Form to be Given to Detainee
7 Suspected of a Criminal Offence"?

8 A. Yes.

9 Q. The second one alongside it is to be given to an
10 internee?

11 A. Yes.

12 Q. The first one includes, expressly, doesn't it, in number
13 2:

14 "You do not have to say anything about the
15 allegation made against you."

16 A. Yes.

17 Q. Whereas we don't see that right being read out to an
18 internee in the second document, do we?

19 A. No.

20 Q. Why is that?

21 A. I can't recall now, but I would say that I was taking
22 from the criminal form, from what you would expect for
23 the protections of a criminal detainee. It isn't in the
24 other one, and I can only assume from that that I took
25 a view -- assuming I drafted that -- that that wasn't in

1 the same sense applicable to an internee in the
2 protections given, because the idea was to hand these
3 people over to the military -- no, not the military, the
4 Iraqi criminal justice system in the detainee sense.

5 Q. In relation to the internee, did you have a view at the
6 time about whether they had to answer questions?

7 A. I can't recall in any detail. However, common sense
8 would say that obviously you can't use force, violence,
9 threats in order to --

10 Q. Sorry, I didn't want to interrupt you, had you finished?

11 A. -- in order to make them answer your questions.

12 Q. Would you include in that the concept of moral coercion?

13 A. By what do you mean moral coercion?

14 Q. Well, are you aware of Article 31 of Geneva Convention
15 IV?

16 A. If you could show it to me, please.

17 Q. Yes, we will certainly have it on the screen. It is
18 MOD020336:

19 "No physical or moral coercion shall be exercised
20 against protected persons, in particular to obtain
21 information from them or from third parties."

22 A. Yes, I would --

23 Q. Does that ring a bell now?

24 A. Yes, I was certainly familiar with GC IV at the time.
25 I had read it several times when I was in theatre.

1 Q. So do you agree with me now that they don't have to
2 answer questions?

3 A. Yes, yes.

4 Q. So why was that not explained to them?

5 A. I can't recall why we didn't put in a phrase to that
6 effect, but as I say, I would have certainly taken it as
7 a given that you cannot use violence, threats,
8 et cetera, in order to force an internee to answer your
9 questions. And I would expect that from a trained
10 interrogator.

11 MR SINGH: Sir, thank you, those are our questions.

12 THE CHAIRMAN: Thank you very much.

13 Mr Donmall?

14 Questions by MR DONMALL

15 MR DONMALL: Thank you, Sir. Major Ellis-Davies, firstly,
16 out of MND HQ, you didn't work in the same office as
17 Colonel Barnett, did you?

18 A. We didn't have an office. We had an ops room. It was
19 a departure gate of the airport, so it was an open plan
20 ops room. There were no doors between us. He was not
21 in my gathering of two desks. He was just round the
22 corner.

23 Q. You were both very busy during the tour?

24 A. Yes.

25 Q. You presumably would not run absolutely everything by

1 him?

2 A. I would run almost everything by him. He's that kind of
3 man.

4 Q. You said in response to a question from Mr Elias that
5 you had discussions on hooding and blacked-out goggles?

6 A. Yes.

7 Q. During the tour. Is it possible you could be
8 remembering in part some conversations that took place
9 after mid-September?

10 A. I am clear in my mind that I was aware of the goggles,
11 black tape option. Before I went to theatre, because --
12 and I say that because --

13 Q. If I may, insofar as you answered Mr Elias regarding
14 conversations in theatre --

15 A. Yes.

16 Q. -- is it possible that some of those conversations you
17 are remembering may have taken place after --

18 A. Yes, they could have happened both pre-and post 14,
19 15 September, yes.

20 THE CHAIRMAN: Pause a moment. Each of you, please wait for
21 the other one to either finish the question or the
22 answer.

23 A. Sorry.

24 MR DONMALL: I apologise, sir.

25 With regards to the 14-hour timeline, you said that

1 on occasion you were aware of difficulties that
2 battlegroups had meeting that time limit.

3 A. Um-hm.

4 Q. Presumably not all difficulties in fact eventuated in
5 them going over the time limit?

6 A. No.

7 Q. Mr Elias referred you to your SIB statement. Could
8 I just quickly go back to it to MOD000584. If I could
9 just have highlighted the bottom half of that page, you
10 say that the common theme was units wanting to extend
11 the period. You then go on in this paragraph to say you
12 basically gave advice that they should provide it as
13 soon as possible -- deliver them as soon as possible?

14 A. Yes.

15 Q. At the bottom you say:

16 "I was not aware of a circumstance in which a unit
17 failed to act on my advice."

18 A. Yes.

19 Q. Is that the position?

20 A. Yes.

21 THE CHAIRMAN: Please wait.

22 A. Sorry.

23 MR DONMALL: With regards to a document you haven't been
24 shown, but you refer to in your second statement,
25 MOD049705, these are -- perhaps we could have 703, just

1 for the context. These are the minutes of a legal
2 conference of 3 September. Now if you return to 705,
3 the top half under 4. In particular you are asked about
4 the fifth bullet:

5 "Commander legal will address outstanding issues of
6 delays over 48 hours from apprehension to delivery to
7 the TIF..."

8 Your evidence is you have very little memory of the
9 meeting, is that right?

10 A. Very little memory at all.

11 Q. Colonel Barnett remembers this as being a reference to
12 the delay of delivery of paperwork to the TIF. That's
13 his recollection; are you in a position to disagree with
14 that?

15 A. I wouldn't disagree with it. I would definitely say
16 that I never got -- I regularly didn't get paperwork
17 until after the 48-hour point and it was a -- a bug bear
18 that paperwork took quite a long time for a variety of
19 reasons to get to us at Div HQ. That's one of the
20 reasons why there was no 48-hour review, because we
21 weren't getting the paperwork.

22 Q. If we could also now have on screen MOD022625, and this
23 is a part of FRAGO 5, it's the bottom of paragraph 12.
24 It is talking about documentation and you see there it
25 says:

1 "... copies of the witness statements [and other
2 documentation] must be sent to both the TIF and J3 ops
3 HQ MND(SE) within 48 hours of apprehension."

4 Does that lead you to think that the reference to
5 48 hours in the legal minutes is in fact a reference to
6 the delay with regards to paperwork?

7 A. It could well be the paperwork, a reference to the
8 paperwork, yes. I certainly wouldn't disagree with
9 that.

10 Q. Finally, soldier card. You said initially in response
11 to questions from Mr Elias that you didn't recall
12 Colonel Barnett making a decision per se on the issuing
13 of a soldier's card.

14 A. Yes.

15 Q. You then agreed that he at some point took a decision
16 not to advance it. Can we just have the email
17 MOD049528, and the top half of this. You see him
18 saying:

19 "We need to do a little work on the soldier card...
20 it can probably follow the FRAGO guidance ..."

21 Isn't the position this: you would look at the
22 matter after this issue of the FRAGO had been sorted out
23 and then that FRAGO was issued on 3 September and then
24 matters got overtaken by the events of mid-September.

25 A. Quite possibly. I would not disagree with that at all.

1 MR DONMALL: I have no further questions, sir.

2 THE CHAIRMAN: Ms Dobbin?

3 Questions by MS DOBBIN

4 MS DOBBIN: Thank you, Sir.

5 Major, when you reviewed FRAGO 29, were you aware
6 that it effectively reversed a number of orders that had
7 preceded it?

8 A. I don't know.

9 Q. I mean, for example, were you aware that there had been
10 a number of orders which had restricted the period of
11 time that battlegroups can keep detainees or that there
12 had been an order which had sought to restrict where the
13 questioning of detainees could take place?

14 A. Sorry, yes, I was.

15 Q. Were you aware at all that those orders had been born of
16 a concern that detainees were being exposed to risks if
17 they were being left in the hands of the battlegroups?

18 A. Yes, because I was aware that there had been deaths in
19 custody, yes.

20 Q. Taking all of that into account, when you read FRAGO 29
21 and went through it in detail, did it not cause you
22 concern as regards the risks it was exposing detainees
23 to, in allowing them to be in the hands of battlegroups
24 for 14 hours and taking the RMP element out of the
25 process where previously they had been in it?

1 A. No.

2 Q. Is it a question that that just didn't cross your mind
3 at all?

4 A. I don't think that I thought that the removal of RMP
5 from the equation put a significant additional risk into
6 the risk that this entire piece carries with it
7 inherently.

8 Q. What about leaving detainees with battlegroups for an
9 extended period of time, given that the previous orders
10 had sought to restrict that? Did that not cause you
11 concern?

12 A. I was comfortable with the 14-hour period that was
13 extant when I arrived in theatre.

14 Q. That wasn't the question. The question was whether or
15 not having -- if you were aware that previous orders had
16 sought to restrict the time, did it not cause you
17 concern that it had been extended?

18 A. No.

19 Q. To 14 hours?

20 A. No.

21 Q. In terms of the opening hours of the TIF, can I just
22 check: it was your understanding for some time, wasn't
23 it, that it was closed at night.

24 A. Yes.

25 Q. I think that was at the beginning of --

1 A. Yes.

2 Q. Your deployment, is that right?

3 A. Yes.

4 Q. What was it that, as it were, resolved that issue and
5 clarified it?

6 A. My recollection is that that was clarified by the MPS at
7 the TIF.

8 Q. Do you have any recollection of Major Royce prior to
9 that point complaining to you that it was intolerable
10 that it couldn't be accessed at night?

11 A. I wouldn't disagree that he may have said that, because
12 I do recall conversations with him about the myth, the
13 urban myth of the TIF opening hours. So that wouldn't
14 surprise -- have surprised me, that he had said words to
15 that effect.

16 MS DOBBIN: Thank you, Sir, that is all.

17 THE CHAIRMAN: Mr Ashley?

18 Questions by MR ASHLEY

19 MR ASHLEY: Major, during your evidence to the court
20 martial, you said on a number of occasions that the
21 welfare and handling of the detainees was the
22 responsibility of the apprehending unit, and that ran
23 effectively from the point of capture until delivery at
24 the TIF?

25 A. Yes.

1 Q. Do you stand by that?

2 A. Yes.

3 MR ASHLEY: Thank you.

4 THE CHAIRMAN: Mr Beer.

5 Questions by MR BEER

6 MR BEER: Thank you, Sir. You were not aware, were you, at
7 any time before the death of Baha Mousa of
8 Russell Clifton having advised that hooding or the
9 placing of detainees in stress positions was appropriate
10 and lawful?

11 A. No.

12 Q. But you had regular and detailed contact with him
13 between the period of your arrival on 7 July and the
14 death of Baha Mousa in mid-September?

15 A. Yes.

16 Q. You equally had regular contact with majors Royce and
17 Peebles?

18 A. Yes.

19 Q. Did either of them suggest to you in that period that
20 any such advice had been given?

21 A. No.

22 Q. In the discussions that occurred after the death of
23 Baha Mousa, both formal and informal, did you hear any
24 suggestion then that Major Clifton had sanctioned the
25 use of hooding or stress positions?

1 A. No, not that I recall in theatre, no.

2 Q. Whether rumours or more formally?

3 A. No.

4 Q. In relation to your role of authorising any extension
5 beyond the period of 14 hours of detention, is it right
6 that Lieutenant Colonel Barnett had instructed you,
7 Major Clifton and Captain Hamnett, that if a request for
8 such an extension was made, then you should refer that
9 to him?

10 A. I don't recall that direction. No.

11 Q. Did you in fact refer requests for extensions to him?

12 A. I do not recall having an application made to me to
13 extend the time.

14 Q. So the issue may not have arisen?

15 A. So I can't recall ever taking that as an application of
16 a unit ringing me, saying, "Sian, can we deliver them in
17 however number of hours". I can't remember a specific
18 incident of that actually occurring.

19 Q. Lastly this, you would agree that in the spectrum of
20 approaches of the lawyers, that Russell Clifton would be
21 at the cautious, careful, methodical end?

22 A. That was always my assessment of him, yes.

23 Q. Not the type of person to shoot from the hip?

24 A. No.

25 Q. He would follow practice and procedure in relation to

1 the giving of advice?

2 A. That was my assessment of him, yes.

3 MR BEER: Thank you.

4 THE CHAIRMAN: Mr Bourne?

5 Questions by MR BOURNE

6 MR BOURNE: Major, when you gave training to soldiers before
7 you were deployed to Iraq, do you remember using a slide
8 presentation?

9 A. Yes.

10 Q. Can we just have up BMI05128? Do you remember this
11 being one of the slides?

12 A. Yes.

13 Q. Does this fairly summarise what you sought to teach the
14 soldiers about detention?

15 A. Yes.

16 Q. We can have that off the screen, thank you.

17 There were weekly meetings of the Detainee and
18 Internee Review Committee, were there not?

19 A. Yes.

20 Q. Attended by, among others, S017?

21 A. Yes.

22 Q. On her weekly visits for that purpose, would you say you
23 were often absent?

24 A. I was very rarely absent from the headquarters.

25 Q. Was it easy for you to travel, in fact, and to leave

1 your post?

2 A. My -- the role that I was doing required me to be out of
3 the headquarters very infrequently. The DIRC meetings,
4 the internee review committee meetings where --
5 I considered them to be my baby and I wouldn't have
6 missed one intentionally and I certainly wouldn't have
7 planned a visit so I would miss it.

8 Q. If anyone had any concerns about the procedures of
9 handling detainees, would that committee have been an
10 appropriate place to raise it?

11 A. In my view, that was the ideal forum to raise it.

12 Q. Because?

13 A. Because at that meeting you had all of the people who
14 were the players in the internee/detainee piece.
15 Provost were there, J2 were there, very often the POLAD
16 would be there, I would be there, and I would expect
17 representations from the JFIT to be there. So -- and G3
18 were the owners of it so they would be there. So that
19 is the audience you have for issues to be raised of
20 any -- of any relevance to the interneers/detainees.

21 Q. Can we then go back to a document that Mr Singh asked
22 you to look at. The page is MOD052219. Can we blow up
23 4(b). Do you remember looking at this a few minutes
24 ago?

25 A. Yes.

1 Q. In particular, the last sentence of paragraph 4(b),
2 I think your evidence was you can't actually remember
3 forming an opinion on this, or indeed reading this at
4 the time.

5 A. That's right.

6 Q. If we look at that last sentence, the words that say
7 "the UK stopped hooding towards the end of the conflict
8 phase", those words if taken alone presumably would
9 represent your understanding of the position?

10 A. Yes.

11 Q. But you would take issue with "for presentational
12 reasons"?

13 A. I think so, yes.

14 Q. Then, if the correct position is the UK stopped hooding,
15 if one goes on to the reference to "all but the most
16 exceptional cases" are not to be hooded now, can you say
17 whether you would have understood that as in some way
18 suggesting a resiling from the fact that the UK had
19 stopped hooding?

20 A. I'm not sure I understand the question.

21 Q. Well, let me put it this way: reading it now, do you
22 read it as Colonel Barnett suggesting that the UK might
23 in any circumstances start hooding again.

24 A. He says in that email he thinks it would be acceptable
25 in exceptional circumstances. So it is -- it is a step

1 below a total prohibition.

2 Q. I understand.

3 We can have that document off the screen.

4 Your working relationship with Colonel Barnett, was
5 there any difficulty for you in raising with him any
6 matters of concern that you might have from time to
7 time?

8 A. None whatsoever.

9 Q. Finally this: Ms Dobbin, a moment ago, asked you about
10 any concerns you might have about the risks of a system
11 in which internees were left with battlegroup for an
12 extended period. What, if any, safeguards against those
13 risks did you see in the system?

14 A. First and foremost, the 14-hour rule is a safeguard in
15 itself. To get them there within 14 hours, that there
16 was a BGIRO in place who, in my experience, was either
17 a major or a senior captain, and they quite clearly had
18 vested within them the responsibility for this issue.

19 And also my understanding then and now was that it
20 was provost staff who were the soldiers being used to
21 carry out the detainee handling whilst they were in the
22 battlegroup unit areas. And that -- those issues
23 I would have taken to be safeguards.

24 Q. If there was a residual risk that battlegroup might
25 misbehave towards internees, would you have seen that as

1 primarily a legal issue?

2 A. Given that detainees would be held for a restricted
3 period of time in a unit, and the role of the BGIRO,
4 I would have expected the BGIRO to know what was going
5 on and it's a command and leadership issue in terms of
6 what was going on in that unit.

7 MR BOURNE: Thank you very much.

8 Further questions by MR ELIAS

9 MR ELIAS: Just two matters, please, Major. You said
10 a moment or so ago that the 14-hour rule was a safeguard
11 in itself. Could I just ask you to explain that? The
12 14-hour rule was guarding against what, so far as the
13 detainees or internees were concerned?

14 A. I think it is desirable that you place a time limit on
15 the amount -- a limit on the amount of time that
16 a detainee remains with the unit who have captured him
17 and that he is taken to a place where you have MPS who
18 are the subject matter experts of prisoner handling. So
19 there was a restriction on that amount of time they were
20 there.

21 Q. So what was the risk of leaving the detainee with the
22 guarding unit for longer than 14 hours? As you foresaw
23 it?

24 A. The risk is obvious, that you are leaving a detainee
25 with those who have been involved in the capturing of

1 them. I think it is a well established concern that you
2 take detainees away from those who have captured them.

3 Q. So that in essence -- forgive me, I don't want to
4 interrupt you -- was perhaps the main reason for having
5 a 14-hour or some time rule, was it?

6 A. It is one of the main reasons, yes.

7 Q. The other quite separate matter was simply to ask you
8 this: again you said in answer to your counsel a moment
9 or so ago, the DIRC, the board, was the ideal forum, you
10 said, for matters of prisoner handling concerns to be
11 raised. Can I ask you this question about that, please:
12 in relation to what I will call the physical aspects,
13 whether it is hooding or the moving or the restraining
14 or any other physical aspect of prisoner handling, was
15 any concern ever raised at the DIRC.

16 A. No.

17 MR ELIAS: Thank you very much.

18 Questions by THE CHAIRMAN

19 THE CHAIRMAN: That was a review body, is that right?

20 A. Yes.

21 THE CHAIRMAN: Speaking from experience of hearings and
22 things, did you have a long list or short list of
23 reviews to get through or what?

24 A. It would vary from week to week as to how many were
25 coming up for their particular point of time that they

1 needed reviewing. Off the top of my head I think they
2 were 10 days, 28 days, but it would depend on how many
3 detainees. So it would vary, in short.

4 THE CHAIRMAN: Would it be a busy day for you, going to
5 those reviews?

6 A. The meeting itself would be anything up to a couple of
7 hours. I would prepare for it so the days prior to it
8 would be busy as well, but they are in a context of busy
9 days.

10 THE CHAIRMAN: All round, yes.

11 Just one or two other matters I wanted to ask you
12 about. SOI 390, which you have been asked about by
13 Mr Singh, and paragraph 7 of the annex G,
14 "conditioning", I am a little puzzled by your saying
15 that you knew conditioning in terms of what you said,
16 and I don't think it is remotely juvenile, a bad sense,
17 is that right?

18 A. Yes.

19 THE CHAIRMAN: You have thought of it before in that sense
20 of things like stress positions and that sort of thing
21 going on, in conditioning, in the bad sense.

22 A. Yes.

23 THE CHAIRMAN: Well, if that's right, when you looked at 7
24 when you came to review it subsequently as I see it --
25 or even have a hand in drafting it perhaps -- I do not

1 think it was you who did draft this, was it?

2 A. No, it would have been the subject matter expert.

3 THE CHAIRMAN: When you saw that paragraph 7 "conditioning"

4 process, why did you not think that it was in the bad

5 sense?

6 A. It didn't raise alarm bells with me. I can't say now

7 why, but it didn't -- it didn't ring alarm bells, the

8 use of that word in that context in paragraph 7.

9 THE CHAIRMAN: You see, what I am puzzled over is if you had

10 always thought of conditioning before as something that

11 raised alarm bells, I assume, is that right?

12 A. Yes, if someone was speaking to me about conditioning

13 techniques in the context of sleep deprivation, white

14 noise, they would have -- that would have alarmed me.

15 The way I think I read it at the time, that use of that

16 word mustn't have alarmed me at that stage.

17 THE CHAIRMAN: Again, I am puzzled why not.

18 A. I am afraid I cannot assist.

19 THE CHAIRMAN: You can't explain. All right.

20 Now, you have been asked about Major Clifton who

21 was, I understand, a friend of yours.

22 A. Yes.

23 THE CHAIRMAN: So what you have to say to me, obviously

24 I have to evaluate it in that background. What about

25 Colonel Barnett, was he a friend of yours?

1 A. He was my commander legal.

2 THE CHAIRMAN: I see that.

3 A. There is a significant seniority gap between us.

4 THE CHAIRMAN: Yes.

5 A. As far as him being a colonel and me being a captain,
6 I would consider us to get on very well, yes.

7 THE CHAIRMAN: If it's not too difficult for you to say so,
8 knowing that he is coming to give evidence tomorrow,
9 what was your assessment of him in his legal matters?

10 A. He ran a tight team. He had lots of legal meetings. He
11 would work very late into the night, and most nights he
12 would have both Captain Hamnett, the other SO3 legal and
13 myself, waiting for him to have our legal meeting, be
14 that at 10 o'clock or 11 o'clock or midnight, and that
15 is the ship that he ran. He was very clear that he was
16 in charge and that he gave us direction. But by the
17 same token, he let us do our jobs but he wanted to know
18 what was going on. And as a member of his staff
19 I wanted to make sure that he knew what was going on,
20 because I would have hated to have been in a position
21 whereby something was raised to him at chief of staff
22 prayers or in any other forum that he hadn't been
23 briefed by us on.

24 THE CHAIRMAN: Was he the sort of lawyer who asks other
25 people for their views about a legal problem, or was he

1 the sort of lawyer who took his own line and that was
2 it? Or anything in between, perhaps.

3 A. He had very much his own views and his own line. But
4 even as a captain, I felt able to air my views quite
5 robustly with him, without any fear that he would pull
6 rank on me and not let me voice my views.

7 THE CHAIRMAN: I follow. So he wasn't somebody who -- felt
8 that you were a little intimidated or diffident about
9 making your views plain?

10 A. No, I could have my views. He was very much in charge.

11 THE CHAIRMAN: He would not necessarily agree with them.

12 A. He would not necessarily agree with them.

13 THE CHAIRMAN: I follow. Thank you very much indeed. I am
14 grateful to you for coming to the Inquiry and giving
15 your evidence. That is all the questions that you are
16 going to be asked by the Inquiry and you are now free to
17 go. Thank you very much.

18 A. Thank you, Sir.

19 THE CHAIRMAN: Have we got some read only?

20 MR ELIAS: We have, Sir.

21 Summary of witness statements by MR HALLIDAY

22 Summary of witness statement of JASON LEE MARTIN

23 MR HALLIDAY: Yes, Sir, there are two today. The first is
24 Jason Lee Martin.

25 Corporal Martin was a regimental medical assistant

1 within 1 QLR during Op Telic 2. He was initially based
2 at Battlegroup Main at the regimental aid post. By the
3 time of Op Salerno, he was a company medic for Anzio
4 Company and therefore based at Camp Stephen.

5 On Sunday, 14 September 2003 he acted as medical
6 cover and as a vehicle commander of a Bedford lorry on
7 Operation Salerno. It is Corporal Martin's recollection
8 that the detainees taken from the Hotel Haitham were
9 transported from the hotel to BG Main in the lorry that
10 he commanded. He tells the Inquiry that he does not
11 recall the detainees being hooded nor did he see any
12 signs of injury. He stated that after offloading the
13 detainees, he did not go into the detention centre and
14 that he left BG Main approximately one hour later and
15 had no further contact with him.

16 The Inquiry obtained a statement from
17 Corporal Martin principally because Lee Graham has
18 described a medic who visited the TDF on the Monday and
19 asked Corporal Payne to demonstrate the choir. Mr
20 Graham did not name this medic but the physical
21 description he gave resembled Corporal Martin to some
22 extent at least although it might be said to resemble at
23 least one other 1 QLR medic also.

24 In the event, in his statement Corporal Martin has
25 denied that he is the medic described by Mr Graham.

1 Indeed, he says that so far as he can remember, he did
2 not even visit Battlegroup Main on the Monday.

3 Some time after Corporal Martin gave his statement,
4 another witness, Private Daniel Ellis, gave oral
5 evidence to the Inquiry, Sir, and in his oral evidence
6 Private Ellis says that he had spoken to Corporal Martin
7 outside the TDF about the fact that detainees were being
8 assaulted inside the building. Because of this, the
9 Inquiry asked Corporal Martin's solicitors to take
10 instructions from their client as to whether or not this
11 conversation did in fact take place. In correspondence,
12 Corporal Martin's solicitors informed the Inquiry that
13 Corporal Martin's instructions are that he did not have
14 such conversation with Private Ellis. In the light of
15 this, and in the light of the fact that Corporal Martin
16 had already provided a signed statement saying that his
17 only involvement with the detainees was to deliver them
18 to Battlegroup Main, the Inquiry team took the view that
19 it was unnecessary to obtain a further statement from
20 Corporal Martin to deal with Private Ellis' specific
21 allegation.

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Witness statement of JASON LEE MARTIN

Witness Name: JASON LEE MARTIN

Statement No: 1

Exhibits: 0

Dated: 2 December 2009

THE BAHA MOUSA PUBLIC INQUIRY

Witness Statement of Jason Lee Martin

1 I, Jason Lee Martin will say as follows:-

2 1. I make this statement in response to the
3 Inquiry's Rule 9 Request dated 21 October 2009. I have
4 read this Request, and I seek here to cover everything
5 it raises to the best of my ability and recollection.

6 Career History

7 2. After joining the army in 1988 I underwent
8 initial training at Albemarle Barracks near Newcastle.
9 This training lasted some twelve months.

10 3. My first posting was to Paddebourne, Germany
11 with a support company to 1QLR where I spent some three
12 to four years.

13 4. I was then transferred to Weeton Barracks
14 outside Blackpool where I joined A Company of 1QLR.

15 5. I was based at Weeton for approximately three
16 years during which I did a couple of tours to Northern
17 Ireland but I am unable to recall the dates of those
18 tours.

19 6. I was subsequently transferred to Berlin with
20 the A Company of 1QLR where I remained for some four to
21 five years during which time I went on a tour to Omagh
22 in Northern Ireland for two years. It was at this stage
23 that I transferred to the medical centre as an RMA3.

24 7. After Berlin I went to Catterick where I have
25 remained ever since, save for a short stint in

1 Osnabruck, Germany where I worked in the garrison
2 medical centre as an RMA1. In 2003 I undertook a tour
3 of Iraq as part of 1QLR on Op Telic 2.

4 8. I am a corporal now and hold the post of RCMT
5 (Regimental Combat Medical Technician class 1).

6 Training

7 9. As stated before I underwent initial training at
8 Albemarle. This training was of a general nature
9 including physical fitness, an introduction into the
10 army way of life, drill, discipline, weapons training
11 etc.

12 10. Over the years I have done annual training
13 exercises. I have been asked whether I underwent any
14 training with regard to the law of armed conflict. It
15 is possible that I did receive such training and there
16 may have been a video as to what could and could not be
17 done in respect of prisoners of war but I am unable to
18 recall any detail.

19 11. I underwent various courses for promotion.
20 Firstly I did the junior NCO's cadre which I first tried
21 in Berlin and then subsequently passed at Tidworth.
22 This training taught me how to be a section 2IC.

23 12. I also attended a course for promotion to RMA3
24 in Germany whilst I was in Berlin. This training was of
25 a grass roots nature in relation to first aid and lasted

1 some six weeks. Subsequently I underwent RMA2 training
2 which was a five day internal course run by the internal
3 medical staff. I did this course whilst based in Omagh
4 Northern Ireland. The course included techniques of
5 basic childbirth and medical aspects of nuclear,
6 biological and chemical warfare. I then underwent RMA1
7 training in Keogh Barracks Aldershot for some five to
8 six weeks. This training was more in depth medical
9 training.

10 13. None of the training that I have undergone has
11 had any aspects relating to detainees. In particular
12 none of the medical training involved any aspects
13 relating to the treatment of detainees.

14 14. In February of this year I converted my
15 qualification to RCMT1 at Keogh Barracks. This
16 conversion course was substantially the same as the RMA1
17 course and once again did not include any aspect
18 relating to the treatment or handling of detainees.

19 15. I have never personally had any dealings with
20 prisoners at any stage of my military career. To the
21 best of my recollection I never had any training on the
22 detention and treatment of prisoners. More particularly
23 I never received training on assessment of the health of
24 prisoners for detention or any other particular purpose.

25 16. I have never received training on record

1 keeping in respect of the medical care provided to
2 prisoners. However, I am aware that in respect of army
3 personnel a form FMed965 is completed. This document
4 shows the patient's number, rank, name, nature of
5 complaint, the history of when the complaint started,
6 the results of any examination and the medical treatment
7 that was given. This document would accompany a soldier
8 whenever the soldier goes on operations. It is not, by
9 its nature, intended for detainees.

10 17. I have never received any training in regard to
11 any process or practice of assessing the fitness for
12 questioning and/or "conditioning" of prisoners of any
13 category.

14 Hooding

15 18. I have never received training in the use of
16 hoods. I also never saw hoods used in Iraq.

17 Blacked out goggles

18 19. I did not receive any training in the use of
19 blacked out goggles and I did not see them being used.

20 Stress positions

21 20. I have not received any training in the use of
22 stress positions and although I have heard the term
23 mentioned in general army parlance I have had no
24 experience of it and do not know what constitutes
25 a stress position.

1 Noise

2 21. I have similarly not received any training in
3 respect of the use of discomforting levels of noise in
4 relation to detainees.

5 Food/Water

6 22. As far as I am aware every prisoner should be
7 treated the same as any other person. I cannot,
8 however, recall any specific training that taught this.
9 The general principle that I am aware of is that each
10 prisoner, regardless of who they are or what they have
11 done, from a medical point of view should be treated
12 according to their injuries as this is the sole aspect
13 of importance to a medical officer.

14 Sleep deprivation

15 23. I have never received any training on the use
16 of sleep deprivation in relation to detainees.

17 Force

18 24. I have a vague recollection that I underwent
19 some arrest and restraint training lessons many years
20 ago. I cannot remember the details of those lessons
21 save to state that the principle message of the training
22 was that minimum force should be used to achieve the
23 objective.

24 Plasticuffs

25 25. I have never received training in the use of

1 plasticuffs but I saw detainees coming into the camp at
2 BG Main who were wearing them on occasion. To the best
3 of my recollection the detainees were plasticuffed to
4 the front. The detainees that I saw were not hooded.

5 Shock of capture

6 26. I have no knowledge of this term and do not
7 know what it means.

8 Conduct after capture

9 27. The only training that I recall taught us that
10 if captured we should only give our name, number, rank
11 and date of birth. I cannot recall which specific
12 training taught me this.

13 Pre-deployment training

14 28. I do not recall any pre-deployment training
15 save for spending some days acclimatising in Kuwait
16 prior to transferring to Iraq.

17 29. I cannot recall receiving any training from the
18 intelligence corps, any branch of military intelligence,
19 the RMP or staff from the Military Corrective Training
20 Centre.

21 30. I do recall receiving training from the PT
22 staff in relation to physical fitness however I don't
23 recall these lessons as having been part of Pre
24 Deployment training. The arrest and restraint training
25 lessons that I received were in all probability given by

1 PT staff as well.

2 31. I did not undergo any training whilst in
3 theatre in Iraq.

4 32. I have never at any stage in my military career
5 received any training in tactical questioning or
6 interrogation.

7 Orders and practice in relation to the handling and
8 treatment of detainees/internees during Op Telic

9 33. As previously stated I have never received any
10 training of any nature whatsoever in regard to the
11 handling and treatment of detainees or internees.
12 Whilst on Op Telic I performed a medical function in the
13 medical centre and I do not recall receiving any orders
14 in respect of the handling or treatment of prisoners of
15 any category.

16 1QLR discipline in relation to prisoner handling

17 34. I cannot comment on the extent to which the
18 chain of command in the 1QLR battlegroup sought to
19 impose and maintain discipline in terms of the standards
20 applied in the handling of prisoners. I cannot recall
21 any disciplinary incidents.

22 Subsequent experience

23 35. I do not recall that any actual practices in
24 relation to medical matters or otherwise changed during
25 Op Telic 2 after 16 September 2003. I was also not

1 involved in any further training, operations or
2 exercises subsequent to Op Telic 2 which related to
3 prisoner handling or to the medical treatment that is to
4 be provided to prisoners.

5 Rank and day to day role as at 14 September 2003

6 36. I arrived in Basra Iraq in May 2003 and stayed
7 there until November 2003. I cannot recall specific
8 dates. I transferred to Iraq from the medical centre at
9 Catterick army barracks. I held the rank of Corporal.

10 37. Initially I was posted to BG Main where I was
11 based at the Regimental Aid Post (RAP). I reported to
12 Captain Bartels who was the medical officer. The other
13 medical personnel who worked there whose names I can
14 recall are Sergeant Goulding who was the medical
15 sergeant and two medics called Steven Winstanley and
16 Steven Baxter. I cannot recall any other names.

17 38. My day to day task involved attending to the
18 soldiers on sick parade and treating soldiers as and
19 when they came into the RAP. On occasion if a patrol
20 went out I would go out as the medical cover. I do not
21 remember seeing any arrests out on patrol save for the
22 arrests that were carried out at the Hotel Haitham,
23 which I will refer to later.

24 39. Some time before the death of Captain Dai Jones
25 I was moved to Camp Stephen where I became the company

1 medic for A Company. There I reported to Sergeant Major
2 Tomkinson. I seem to recall that the officer commanding
3 A Company was Major Davies. I remained at Camp Stephen
4 until I left Iraq in November.

5 40. Whilst at Camp Stephen I attended to soldiers
6 on sick parade. If in any particularly instance
7 I needed to refer any particular medical issue further
8 I would refer it to the RAP at BG Main.

9 41. I would also travel to BG Main now and again if
10 I needed a second opinion in respect of a specific
11 medical complaint or to obtain medical supplies.

12 42. I never examined or treated any detainees
13 whilst I was in Iraq.

14 Nicknames

15 43. I have two nicknames. The first nickname is
16 "Moomin" because people thought I looked like
17 a character off a children's television programme and
18 the second one is "Buzz". Those older soldiers who know
19 me well will often call me "Moomin" whilst younger
20 soldiers who do not know me so well often call me
21 "Buzz".

22 BG Main in the period 14-16 September 2003

23 44. During this period I was based at Camp Stephen.
24 On a date which I cannot recall but which I suspect was
25 14 September 2003 I was asked to be the vehicle

1 commander on a Bedford truck that was going out on an
2 operation. It was my view that I was performing two
3 functions namely medical cover and vehicle commander.

4 45. The vehicle left in the morning and travelled
5 to a hotel. I travelled in the front of the vehicle.
6 Subsequently detainees were bought out of the hotel and
7 placed in the back of the Bedford wagon. It is possible
8 that I got out of the vehicle to open and shut the
9 tailgate when the detainees were loaded onto the vehicle
10 but I cannot remember now.

11 46. I cannot recall any of the names of any of the
12 soldiers who were in the vehicle with me.

13 47. I cannot recall how many arrested
14 persons/detainees were placed in the vehicle. I do
15 recall however, that the detainees were restrained with
16 plasticuffs to the front but I do not remember them
17 being hooded. They appeared to me to be able bodied and
18 in a normal condition.

19 48. After the detainees had been placed in the
20 vehicle we drove to BG Main and parked outside the
21 detention facility. The detainees were offloaded and
22 taken into the detention facility. Once again I may
23 have opened the tailgate of the vehicle to allow the
24 detainees to be taken off but I cannot be sure. They
25 may well have walked right past me but I didn't pay much

1 attention to them as there was nothing that caused me to
2 give them more than a passing glance. I had no dealings
3 whatsoever with the detainees after they were offloaded.
4 As regards their condition I did not see any injuries
5 nor any signs which might suggest injury.

6 49. I did not go into the detention centre. After
7 the detainees were offloaded I went to the RAP to have
8 a cup of coffee. I may have discussed the operation
9 that had just been completed but I cannot recall
10 discussing the detainees specifically. After an hour or
11 so I then left BG Main and travelled back to
12 Camp Stephen. I cannot recall the specific time
13 I arrived at BG Main and the specific time I left
14 BG Main but I believe that I left BG Main in the late
15 afternoon.

16 50. I have no knowledge of what arrangements were
17 in place regarding the detainees or the times at which
18 particular guards were on duty. I had no role or
19 responsibility at all in regard to the detainees during
20 the period of their detention at BG Main. I also did
21 not receive any orders, instruction or guidance
22 regarding the handling of the detainees. I performed
23 purely the function of a vehicle commander of the
24 vehicle that transported the detainees from the hotel to
25 the detention centre at BG Main.

1 51. As far as I can remember, I did not return to
2 BG Main over the following few days.

3 52. I cannot comment on the conditions of the TDF
4 because I never went into it.

5 53. I also have no knowledge as to how the
6 detainees were treated either in the TDF or in BG Main
7 generally. I do not know if any medical treatment was
8 afforded to the detainees.

9 54. I also cannot comment on whether there were any
10 visitors to the TDF.

11 55. I did become aware at a later stage that there
12 had been a death in detention. I do not recall how
13 I heard this information or the specifics of the
14 information that I received. I do not recall anybody
15 stating what the cause of death had been, or speculating
16 on that.

17 56. I did not report anything relating to the
18 detainees to anyone. I had no reason to do so. They
19 had been arrested in what appeared to me to be
20 a legitimate operation and I had only been involved in
21 commanding the vehicle that transported from the hotel
22 to the detention centre. I did not see anything
23 relating to the detainees that merited any reporting.

24 57. The Inquiry has referred me to a number of
25 documents, in respect of which I comment as follows.

1 58. In regard to the record of the tape recorded
2 interview with Steven Winstanley (MOD003625_R), I did
3 not do a stint at B Company, rather it was at A Company
4 at Camp Stephen; furthermore, I was not in BG Main every
5 day as he suggests. Other than these points, I am in
6 broad agreement with most of what he says about me. His
7 description of my appearance is substantially correct:
8 I was about 5 foot 8 inches tall broad build with brown
9 hair and a slightly receding hairline but not thinning
10 on top.

11 59. As regards the evidence of Lee Graham
12 (BMI01005_R) I do not know Lee Graham. I do not know
13 who he is referring to in paragraph 104 of his statement
14 but it was definitely not me. I am certain that I never
15 entered the detention centre or asked Corporal Payne to
16 "show me the choir" or words to that effect. Whilst the
17 general description of the person is somewhat similar to
18 a description of me, I am 5'8" tall, not 5'6", and I do
19 not think that I was wearing a maroon coloured t-shirt
20 on the day. To the best of my recollection I would have
21 been wearing combat 95 trousers and a combat jacket as
22 I had been out on an operation with my Company.

23 60. I cannot comment on the "briefing document"
24 (MOD002323_R) save to confirm that I am also known by
25 the nickname "Moomin". However, the following sentence

1 "the JNCO cannot recall treating the two soldiers but if
2 he had it would be in the medical log which he believes
3 is held at Camp Stephen, Al Basrah Iraq" reminds me that
4 whilst I was in Osnabruck in Germany a lawyer from
5 a firm 'ITN' who was apparently acting for Mr Crowcroft
6 came to see me and wanted to know if Crowcroft had ever
7 reported sick at Camp Stephen with injuries or bruising
8 to his hands. I informed the lawyer that I had no
9 recollection of his having done so but that if he had,
10 it would be recorded in the medical records. To the
11 best of my recall I gave a written statement to this
12 effect. This would seem to tie in with a further
13 document that has been referred to me by the Inquiry
14 namely BMI02561 (paragraph 149 of the statement of
15 Corporal Crowcroft).

16 Media

17 61. I have never given an account of matters
18 relevant to the Inquiry's terms of reference to the
19 press or media.

20 Statement of Truth

21 I believe that the facts stated in this witness
22 statement are true.

23 Signed: Jason Lee Martin.

24 Dated: 2 December 2009.

25

1 Summary of witness statement of RAYMOND ANTHONY MCNALLY

2 The second witness, sir, is Raymond Anthony McNally.

3 During Op Telic 2, Private McNally was a member of

4 Helles Company 1 QLR, based at BG Main and working in

5 the CQMS stores with, amongst others,

6 Colour Sergeant Huxley and Private Felton. He was not

7 directly involved in Operation Salerno. He recalls on

8 two occasions a large group of detainees being held in

9 the TDF but is not able to be specific as to when this

10 was.

11 He states that he was instructed by

12 Colour Sergeant Huxley not to go into the TDF and that

13 he complied with this instruction. He states that he

14 does not recall ever hearing any shouting or screaming

15 coming from the TDF. He tells the Inquiry that he did

16 not see or hear about detainees being hooded or the use

17 of stress positions during Op Telic 2.

18 The Inquiry obtained a statement from Mr McNally in

19 relation to photographs allegedly taken by

20 Private Felton and stored on a laptop owned by

21 Private McNally. Private McNally confirms the account

22 that his laptop was used by Private Felton and then sold

23 to Colour Sergeant Huxley, but says that he has no

24 knowledge of what photographs may or may not have been

25 stored on it.

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Witness statement of RAYMOND ANTHONY MCNALLY

Witness Name: Raymond McNally

Statement No: 1
Exhibits:

Dated: 14 December 2009

THE BAHA MOUSA PUBLIC INQUIRY

Witness Statement of Raymond Anthony McNally

1 I, Raymond McNally, will say as follows:-

2 1. I make this statement in response to the
3 Inquiry's Rule 9 Request dated 8 October 2009. I have
4 read this Request, and I seek here to cover everything
5 that it raises to the best of my ability and
6 recollection.

7 2. I have been shown and have read copies of the
8 accounts given by Private ("Pte") Felton at BMI00839 and
9 Warrant Officer Class 2 ("WO2") Huxley at BMI01703.

10 Career History

11 3. I have been a serving member of the Armed Forces
12 for approximately twelve years during which time I have
13 been involved on an operational deployment to Iraq and
14 on a tour of Northern Ireland. I was not involved in
15 prisoner handling on either of these occasions or at any
16 stage during my career to date. I continue to serve as
17 a member of the Armed Forces.

18 Pre Deployment Training

19 Conditioning and Shock of Capture

20 4. I have been asked by the Inquiry to provide an
21 account of any training or guidance I have received on
22 the practice or prohibition of establishing or
23 maintaining the "shock of capture" or of the
24 "conditioning" of prisoners of any category.

25 5. I am not aware of the terms "shock of capture"

1 or "conditioning" and do not recall being trained
2 specifically on either during my time in the Armed
3 Forces. I have also been asked to provide an account of
4 my training and understanding on the practice or
5 prohibition of the following five techniques which
6 I deal with in detail below:

7 (a) Deprivation of sight by hooding, blindfolding or
8 blacked out goggles;

9 (b) Stress positions;

10 (c) Subjecting a prisoner to discomforting levels of
11 noise;

12 (d) Provision of food and water to prisoners; and

13 (e) Permitting a prisoner to sleep.

14 Deprivation of Sight by Hooding, Blindfolding and
15 Blacked Out Goggles

16 6. Prior to Op TELIC 2 I attended pre-deployment
17 training in Batus, Canada in 2003. This was provided to
18 The First Battalion, The Queens Lancashire Regiment
19 ("1QLR") as a whole and lasted approximately two months.
20 To the best of my recollection, this training covered
21 aspects of prisoner handling, and in particular the need
22 to restrain Prisoners of War ("PWs") with plasticuffs
23 and how to "Bag and Tag" PWs. I cannot now remember
24 whether I was taught how plasticuffs should be applied.

25 7. I was taught by way of practical demonstration

1 that the purpose of "bagging" was to restrict a PW's
2 sight at the point of capture and for the period of
3 their transportation to a secure location for security
4 reasons to prevent them from being able to gather any
5 sensitive information from within the base location.
6 Once in a secure location, I was taught that a PW's
7 sight should no longer be deprived because there was no
8 longer a security justification for this. In light of
9 the time that has elapsed since I received this
10 training, I cannot now remember whether I was trained to
11 "bag" with hoods, blindfolds or blacked out goggles.
12 I was also taught to "tag" PWs at the point of capture
13 by detailing information such as the PW's name and the
14 place of their capture on labels and attach these labels
15 to the PW for identification purposes.

16 8. I do not recall hoods being expressly prohibited
17 on the training course, nor any mention that covering
18 a PW's entire head carried the potential risk of
19 impairing their breathing. I do not remember what
20 method of sight deprivation was used when I received
21 practical "bag and tag" demonstrations on this course.
22 I do not recall seeing or hearing about any detainees
23 being hooded during Op TELIC 2. To the best of my
24 recollection, during Op TELIC 2 I only saw deprivation
25 of sight being achieved through the use of blacked out

1 goggles.

2 9. I confirm that this provides a full account of
3 my recollection of the training that I received on sight
4 deprivation.

5 Stress positions

6 10. I understand the term "stress position" to mean
7 placing an individual in an uncomfortable position which
8 is difficult to maintain for a sustained period of time.
9 An example of a stress position is to squat with your
10 knees bent and with your back against a wall.

11 11. My understanding of this came through the
12 pre-deployment training course in Batus where I can
13 recall being taught that stress positions were expressly
14 prohibited and should not be used under any
15 circumstances. To the best of my recollection, I was
16 taught about the prohibition of stress positions during
17 a lecture briefing on the training course but I cannot
18 now remember exactly what was said nor I can I recall
19 the reasons given for its prohibition. I do not recall
20 seeing or hearing about stress positions being used on
21 detainees on Op TELIC 2.

22 12. I confirm that this provides a full account of
23 my recollection of the training that I received on
24 stress positions.

25 Sleep deprivation

1 13. In so far as I can recall, my pre-deployment
2 training in Batus expressly prohibited the use of sleep
3 deprivation on PWS but I do not remember specific
4 details in this regard. To the best of my recollection,
5 I was taught about the prohibition of sleep deprivation
6 during a lecture briefing on the training course but I
7 cannot now remember exactly what was said nor
8 I can I recall the reasons given for its prohibition.
9 I was not aware of sleep deprivation being used on
10 detainees on Op TELIC 2.

11 14. I confirm that this provides a full account of
12 my recollection of the training that I received on sleep
13 deprivation.

14 Provision of Food and Water

15 15. I was taught on the pre-deployment training
16 course in Batus that PWS should be provided with food
17 and water at regular intervals which, from memory, was
18 in between our meal times. The training taught that
19 deprivation of food and water was absolutely prohibited.

20 16. During my deployment on Op TELIC 2, I would
21 collect food prepared for the detainees from the
22 cookhouse and bring the food back to the CQMS store. To
23 the best of my recollection, the medics then collected
24 the food and water from the CQMS store and delivered the
25 food and water to the detainees themselves.

1 17. I cannot now remember which group of
2 instructors specifically taught me about the five
3 techniques detailed above at paragraphs 6-16, however,
4 as far as I can recall, the Royal Military Police
5 ("RMP") were responsible for training on the majority of
6 prisoner handling aspects.

7 Laws of Armed Conflict

8 18. In addition to the pre-deployment training
9 I received in Canada, I also attended an Individual
10 Training Directives ("ITD") package in 2003 with 1QLR at
11 Catterick Garrison, prior to my deployment on Op TELIC
12 2. ITDs are compulsory and provided annually to all
13 serving members of the Armed Forces.

14 19. As part of the ITD training package, I can
15 recall being provided with training on Rules of
16 Engagement ("ROE") and a sit down brief which included
17 watching a video on the Laws of Armed Conflict ("LOAC").
18 Although I cannot recall specific details from this
19 brief, I do remember being told that PWs should be
20 treated with respect. In light of what I was taught as
21 part of my pre-deployment training in Canada,
22 I understood that treating PWs with respect meant that
23 PWs should be treated humanely, fed, provided with water
24 and not mistreated in any way.

25 20. I can also remember being provided with small

1 aide memoires booklets as part of my training which
2 detailed information on ROE, prisoner handling and basic
3 Arabic language.

4 21. I have been asked by the Inquiry to provide an
5 account as to whether I received training from the
6 Intelligence Corps, the RMP, Military Corrective
7 Training Centre staff or Physical Training staff. I can
8 recall that instructors from each of these categories
9 were involved in my pre-deployment training in Canada as
10 well as the ITDs.

11 Other Training Courses

12 22. I have not attended or heard of the Conduct
13 after Capture ("CAC") course previously and so cannot
14 provide any details as to its content.

15 23. I have not received any training on Tactical
16 Questioning or Interrogation during my time with the
17 Armed Forces.

18 24. I did not provide or receive any additional
19 training on prisoner handling (either in theatre or
20 otherwise) other than what I have described above and
21 I did not attend any courses for subsequent promotion or
22 specialist courses which involved training or
23 instructions on prisoner handling.

24 25. I confirm that this is the full extent to which
25 I can recall the pre-deployment training received on

1 prisoner handling and LOAC.

2 Orders and Practice in relation to the handling and
3 treatment of detainees/internees during Op TELIC

4 26. I have been asked by the Inquiry to provide an
5 account of any orders that I personally gave or received
6 for Op TELIC 2 in respect of the handling and treatment
7 of prisoners of any category.

8 27. It would be usual practice for any such orders
9 to be disseminated to the Battlegroup by way of
10 a briefing once they were issued. However, I did not
11 give and I do not recall receiving any orders relating
12 to prisoner handling for the period of my deployment,
13 nor would I have expected to receive any such orders
14 given that I was not personally involved in the handling
15 of any prisoners for the duration of the tour.

16 28. I have been asked by the Inquiry to provide my
17 understanding on how the Battlegroup came to adopt the
18 relevant practices used in relation to those detained at
19 BG Main. Other than through the training IQLR received
20 pre-deployment, I am not aware of how the BG came to
21 adopt these practices and I do not know the extent to
22 which the chain of command were aware of these
23 practices.

24 IQLR discipline in relation to prisoner handling

25 29. I have been asked by the Inquiry about the

1 extent to which the chain of command in 1QLR sought to
2 impose and maintain discipline in terms of the standards
3 applied in handling prisoners of any category during
4 Op TELIC 2.

5 30. I was not personally involved in handling
6 prisoners and so I am not aware of how 1QLR sought to
7 maintain discipline in this regard. I did not hear of
8 any instances when soldiers from the Battlegroup were
9 disciplined for their treatment of the detainees during
10 Op TELIC 2.

11 Rank and Role in September 2003

12 31. I deployed to Iraq as a Pte with Helles
13 Company, attached to 1QLR. I worked in the Company
14 Quarter Master Sergeants ("CQMS") store based at BG Main
15 with Sergeant ("Sgt") Huxley, Lance Corporal ("LCpl")
16 Clemence (Second in Command), Pte Felton and
17 a Non-Commissioned Officer whose name I cannot now
18 recall. I reported directly to Sgt Huxley and held no
19 command responsibility of my own.

20 32. My day to day duties on tour included:

21 (a) CQMS Store Duty;

22 (b) Collecting rations from Basra Palace to stock
23 the CQMS Store;

24 (c) Guarding the camp (not detainees) at BG Main on
25 stag duty; and

1 (d) Delivering water to soldiers at BG Main.

2 Baha Mousa and those detained with him

3 33. I have been asked by the Inquiry to provide an
4 account of the circumstances in which I came to be at
5 Hotel Haitham or BG Main during the period that
6 Baha Mousa and those detained with him were being held
7 by 1QLR.

8 34. I was not involved in the arrest operation at
9 Hotel Haitham at which I understand Baha Mousa and those
10 detained with him were captured. I cannot specifically
11 remember Baha Mousa or these detainees. I am therefore
12 unable to provide any details in relation to these
13 individuals.

14 35. During the period of my deployment, I can
15 recall witnessing two separate groups of detainees (one
16 of approximately ten individuals and the second of
17 approximately six individuals) arriving at BG Main in
18 vehicles outside the Temporary Detention Facility
19 ("TDF") which was approximately only ten metres away
20 from and opposite the CQMS store. I cannot however
21 remember at what point during the tour I witnessed each
22 of these groups of detainees arrive, nor can I recall
23 whether they arrived before or after the death of
24 Baha Mousa.

25 Temporary Detention Facility

1 36. As far as I can recall, on both occasions the
2 detainees had blacked out goggles to deprive their sight
3 on arrival at BG Main and were made to sit down on the
4 ground in lines outside the TDF. I did not witness them
5 being taken into the TDF and could not see any visible
6 injuries to any of the detainees I saw. On both
7 occasions I only remember having sight of the detainees
8 for no longer than three minutes from inside the CQMS
9 store and I did not witness any soldiers mistreat the
10 detainees during this time.

11 37. The TDF was a small building which I did not
12 enter at any stage during the tour and so I am unable to
13 comment upon the conditions of it. Sgt Huxley was
14 adamant that neither I nor any other member of the CQMS
15 staff should go inside the TDF or speak to any of the
16 detainees but I cannot recall his reasoning for this.
17 I was therefore told to keep away from TDF by Sgt Huxley
18 and followed his instructions accordingly. I can
19 confirm that these two occasions described above are the
20 only two times I remember witnessing detainees during
21 Op TELIC 2.

22 38. I have been asked by the Inquiry to provide an
23 account of any shouting I could hear emanating from the
24 TDF during Op TELIC 2 and of any medical treatment
25 afforded to the detainees. To the best of my knowledge,

1 I did not hear any shouting or screaming from the TDF
2 but I can recall medics being in the vicinity of the TDF
3 on various occasions during the tour. I did not,
4 however, witness the medics going inside the TDF to
5 provide medical treatment to detainees in particular.

6 39. I cannot recall anything being said subsequent
7 to the death of Baha Mousa about the treatment and
8 handling of the detainees at BG Main.

9 Subsequent Experience

10 40. I am not aware of what, if any, changes were
11 made to the actual practices adopted by 1QLR in relation
12 to the handling of prisoners after 16 September 2003 and
13 the death of Baha Mousa.

14 41. The only training I have continued to receive
15 post Op TELIC 2 of relevance to the handling of
16 prisoners is the annual ITD package. It is possible
17 that slightly more time is spent on modules relevant to
18 prisoner handling and ROE, but otherwise the detail and
19 content of the training has not differed from that which
20 I received prior to Op TELIC 2 and it has remained
21 consistent with what I was previously taught. I have
22 not been involved on any further operational deployments
23 since Op TELIC 2, and so have not received
24 pre-deployment training in this area after 2003.

25 Laptop

1 42. I have been asked by the Inquiry whether I had
2 a laptop with me during Op TELIC 2 on which digital
3 photographs were stored.

4 43. I can confirm that I did have a laptop with me
5 on tour which I used to watch movies on. I may have
6 also stored some photographs on the laptop which I had
7 taken on Pte Felton's digital camera from my time on the
8 tour but I cannot now be sure of this. I did not have
9 a digital camera of my own at the time.

10 BMI00839

11 44. I have been shown document BMI00839 which
12 I understand to be an extract from the Rule 9 witness
13 statement of Pte Felton to the Inquiry in which Pte
14 Felton provides the following account at paragraph 32 in
15 relation to the laptop I owned during Op TELIC 2:

16 "I tried to take sneaky pictures of what I saw of
17 treatment of detainees on previous occasions with my
18 digital camera, because I was trying to obtain evidence
19 as I knew what was happening was wrong. These pictures
20 were stored in a hidden folder on Private McNally's
21 laptop, because I had run out of storage space on my
22 camera. Colour Sergeant Huxley later bought this laptop
23 from Private McNally and found and deleted them when we
24 returned to Alma barracks Catterick."

25 45. I can remember Pte Felton borrowing my laptop

1 at times during Op TELIC 2 but I was not aware of any
2 occasion on which Pte Felton stored his digital
3 photographs on the computer and I do not remember seeing
4 any of Pte Felton's photographs on the laptop at the
5 time. It was my understanding that Pte Felton borrowed
6 my laptop for the purposes of watching movies. Sgt
7 Huxley did purchase the laptop from me in Cyprus in
8 approximately 2004 but I do not know whether Sgt Huxley
9 deleted any photographs from the laptop.

10 BMI01703

11 46. I have been shown document BMI00839 which
12 I understand to be an extract from the Rule 9 witness
13 statement of Sgt Huxley to the Inquiry in which Sgt
14 Huxley provides the following account at paragraph 63 in
15 relation to the laptop I owned during Op TELIC 2:

16 "I did buy a laptop from Pte McNally in 2004 whilst
17 in Cyprus to use for my work as one was not provided to
18 me, and he was selling it because he needed money.
19 I have checked and the only photographs stored on the
20 laptop are those put there by Pte McNally and me of the
21 CQMS team while on tour and are not relevant to the
22 Inquiry."

23 47. I cannot remember what photographs were stored
24 on the laptop at the time I sold the computer to Sgt
25 Huxley. I agree with the remainder of the account

1 provided by Sgt Huxley above.

2 Media

3 48. I have never given any reports or account of
4 matters relevant to the Inquiry's terms of reference to
5 the press or media, nor have I ever been approached by
6 anyone in the press to discuss these events.

7 Statement of Truth

8 I believe the facts dated in this witness statement
9 are true.

10 Signed: Raymond Anthony McNally.

11 Dated: 14 December 2009.

12

13 THE CHAIRMAN: Yes, thank you very much.

14 MR HALLIDAY: Thank you sir. Tomorrow's witnesses will be
15 Colonel Barnett, Brigadier Carmichael and James
16 Murray-Playfair, sir.

17 THE CHAIRMAN: Thank you. 10 o'clock tomorrow, please.

18 (4.05 pm)

19 (The Inquiry adjourned until 10.00 am, Thursday, 29 April
20 2010)

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