

Friday, 4 June 2010

1

2 (9.57 am)

3 THE CHAIRMAN: Good morning.

4 MR ELIAS: Good morning, Sir.

5 THE CHAIRMAN: Yes.

6 MR ELIAS: We are starting promptly.

7 Sir, may I call William Hewitt Moore, General Moore,
8 please?

9 THE CHAIRMAN: Yes. General, would you be kind enough,
10 please, to stand and I will ask that you be sworn.

11 WILLIAM HEWITT MOORE (sworn)

12 THE CHAIRMAN: Thank you very much. Do sit down. Please
13 make yourself as comfortable as you can in the
14 witness-box, but I am going to ask to you get as close
15 as you can to the microphone and to speak into it
16 because, if you don't, it is quite difficult to hear,
17 particularly -- well, there is only one person in the
18 far end of the room today, but it is very difficult to
19 hear down there unless you speak up.

20 Thank you.

21 Questions by MR ELIAS

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

24 A. My name is William Hewitt Moore.

25 Q. General Moore, would you look to a folder, which I hope

1 is to your right hand, and confirm that within it is
2 a statement that you made to the Inquiry? If we go to
3 the last page of it, please, at our BMI06972, do we find
4 your signature above the date of 3 February of this
5 year?

6 A. That is correct.

7 Q. When you signed that statement, General, were you
8 attesting to the Inquiry that the contents of it were
9 true to the best of your knowledge and belief?

10 A. I was.

11 Q. Just to deal with this at the outset, as it were -- and
12 we may look at accounts that you have given in statement
13 form and in other forms, evidence, in the past -- on
14 those occasions, were you endeavouring to tell the truth
15 and be as accurate as you could at that time?

16 A. I was.

17 Q. Thank you.

18 Now the Inquiry, of course, has had your statement
19 and we have all had the opportunity of reading it.
20 I don't propose to take you through it line by line, as
21 I think you know, but to concentrate on certain aspects
22 where it may be you can help us a little further.

23 May I begin just by summarising your career history
24 as you set it out in the statement in detail? I don't
25 go through the detail of it. But it is right, isn't it,

1 that you joined the army in 1976?

2 A. That's correct.

3 Q. You were commissioned into the Royal Artillery. In 1996
4 you took command of 7 Para?

5 A. That's correct.

6 Q. In 2001, in December, you took command of
7 19 Mech Brigade?

8 A. That's right.

9 Q. It is in that context that we will be looking in
10 a little more detail at your deployment to Iraq.

11 In January of 2004 you took over as director of
12 equipment capability at the Ministry of Defence and, on
13 promotion in 2007, you became director general of
14 logistics support and equipment at HQ Land. In January
15 2009 you were appointed deputy commanding general
16 Multinational Corps in Baghdad, returning to the UK in
17 July 2009.

18 A. That's correct.

19 Q. I don't want to know any detail, but you remain in the
20 army as at this moment?

21 A. I do.

22 Q. I just ask you a little, please, about your training and
23 knowledge of some of the aspects this Inquiry is
24 particularly concerned with, some of the so-called
25 techniques. You tell us in your statement, in relation

1 to training, that at Staff College you recall
2 Professor Greenwood delivering lectures on LOAC.

3 A. On the law of armed conflict, yes.

4 Q. As you indicate, he distilled the four basic principles,
5 as you put them, at paragraph 13 of your statement,
6 BMI06945 please.

7 A. That's correct.

8 Q. At (a) to (d):

9 "(a) War is not fought against the sick or wounded;

10 "(b) [It] ... is not directed against prisoners.

11 "(c) [It] ... is waged against an enemy military and
12 not against a civilian population.

13 "(d) International law imposes limitations on the
14 way an enemy combatant is fought (eg with regards [as
15 you say] to chemical weapons ...", and matters of that
16 kind.

17 A. That's right.

18 Q. The indication you give in your statement, taking it
19 shortly, is that that was a mantra, if I can call it
20 that, by which you sought to abide at all times?

21 A. Yes.

22 Q. You had never received any training in tactical
23 questioning, is that right?

24 A. Yes.

25 Q. By the time of your deployment to Iraq in 2003, did you

1 know what tactical questioning entailed in any detail?

2 A. Not in detail.

3 Q. You knew what it was as a concept, of course --

4 A. Yes.

5 Q. -- but you did not know any detail of what was or was

6 not permitted, as it were, in terms of how it should be

7 conducted?

8 A. No.

9 Q. You tell us in your statement that you have received

10 training from time to time on the shock of capture.

11 A. Yes.

12 Q. Do you recall any training which indicated that it would

13 be permissible to maintain or prolong the shock of

14 capture?

15 A. No. In fact my training was completely the opposite in

16 the fact that the shock of capture training that we were

17 instructed about was really about how we might

18 experience the shock of capture and what it was if we

19 were taken by an enemy force.

20 Q. So you were not given any instruction or direction as to

21 how to exploit, if you like, the shock of capture of an

22 enemy prisoner?

23 A. No, and I would have found that against the law of armed

24 conflict if I had.

25 Q. You tell us also, on the same topic of training in your

1 statement -- taking it shortly -- that you have not
2 received any training or indeed been given any guidance
3 on conditioning.

4 A. That's correct.

5 Q. Can we just look at a statement that you made
6 previously? If we go, please, to page MOD000607 --
7 perhaps I should just go to the first page of this
8 statement to deal with this aspect now. Can we go to
9 MOD000601? Thank you. In the copy that we have,
10 General, this appears to be a statement that is not
11 signed and indeed not dated, save that at page MOD000608
12 it is shown in typescript, if you like, to be signed.

13 Do you follow?

14 A. Yes.

15 Q. If we go back to the first page of it again at
16 MOD000601, the second line:

17 "This statement is written further to my statement
18 dated 29 June 2005."

19 That is an earlier statement, obviously.

20 Notwithstanding that it doesn't appear to have your
21 handwritten signature on it, do you recall making this
22 statement?

23 A. Yes.

24 Q. So we can take it that this is what you said?

25 A. Yes.

1 Q. Then can we go back to the page I was referring you to,
2 please, MOD000607? I just want to ask you about that
3 middle paragraph:

4 "I have today, Wednesday 7 December ... been asked
5 by Warrant Officer Spence ... whether I was aware of the
6 term 'conditioning' and what this term entailed and
7 whether it was a brigade standard operating procedure.
8 In response I can state that I have never heard the term
9 'conditioning' before today and had I heard it I would
10 have questioned what it meant."

11 Was that actually correct?

12 A. Yes.

13 Q. So that before 7 December 2005 the term or the word
14 "conditioning" would have meant nothing to you?

15 A. Absolutely, that's correct.

16 Q. And not a word that you had heard before?

17 A. No.

18 Q. I am going in due course just to take you to some
19 documents where we might see that word used, but I will
20 come back to that a little later if I may.

21 Can I ask you, then, still staying with training and
22 your understanding, about hooding? Can we have a look
23 at paragraph 21 of your statement, please, at BMI06947?

24 "Hooding is also something that one might expect if
25 captured by an enemy ...", you say.

1 Was that something that you were taught or trained
2 about?

3 A. No.

4 Q. Do you recall ever undertaking what is sometimes called
5 "conduct after capture training"?

6 A. I was aware of conduct after capture training.

7 Q. Did you actually undertake it or undergo it or
8 participate in it?

9 A. Yes.

10 Q. Which of those? Did you actually receive the training
11 or did you participate in it?

12 A. I can remember, prior to going ashore in the Falklands
13 campaign --

14 Q. Forgive me, you are dropping your voice a little.

15 A. I can remember, just prior to going ashore in the
16 Falklands campaign, being told about conduct after
17 capture and the fact that you were only supposed to give
18 your name, rank, number and I think your religion.

19 Q. Do you recall being given any training as to techniques
20 that might be used upon you when you were captured, such
21 as hooding?

22 A. I can't remember.

23 Q. You say at paragraph 21 that you weren't aware until
24 recently of the Heath ruling from 1972. You are
25 obviously aware of it now, but you would not have been

1 aware of that, would you, in 2003?

2 A. No.

3 Q. So "recently" means in preparation for this Inquiry,
4 does it?

5 A. Yes.

6 Q. You go on to say this:

7 "To my mind hooding would only have been acceptable
8 for security reasons; namely when moving a prisoner from
9 a vehicle to a building in an operational base; to
10 preserve the security of that base."

11 Was that something that you, as it were, deduced for
12 yourself or was that something that you would have been
13 trained or instructed about?

14 A. That is something I deduced for myself.

15 Q. Do you recall ever receiving any training or instruction
16 on the rights or wrongs of hooding?

17 A. No.

18 Q. In making that deduction, then, for yourself, did you
19 give consideration as to whether hooding in itself is or
20 was humane?

21 A. I would have said that -- subject to what I said in my
22 statement about the security aspects, I would have said
23 that hooding would have been inhumane.

24 Q. So what is the position, that if there are operational
25 security aspects which overcome the need for acting

1 humanely, you think hooding could be employed?

2 A. I think hooding is one technique that could be employed,
3 but as a last resort. If you were trying to preserve
4 the security of your base or for other reasons, there
5 are other things you could do as opposed to hooding.

6 Q. The Inquiry has heard about some of them, blacked-out
7 goggles or blindfolds, matters and things of that kind.
8 You would have regarded those as being preferable, would
9 you?

10 A. Yes.

11 Q. But would you agree -- and I don't invite you to simply
12 accept it from me -- that, whether there were
13 operational security reasons or no for hooding, hooding
14 in extremis even, hooding from the beginning must be
15 inhumane?

16 A. I think that if there are no other ways of preventing --
17 of ensuring security, then -- for example, if you were
18 taking somebody out of the back of a vehicle in your
19 camp and you were moving him to a place where the person
20 was going to be held, if there were no other ways of
21 doing it, then I would accept that hooding might be --
22 if hooding was the only way of doing it, that might be
23 acceptable, but as a very last resort. I would prefer
24 to do -- prefer to have used other means.

25 Q. Understanding that and accepting it, if I may say so,

1 General, would you nonetheless accept that, even doing
2 it in those circumstances, hooding would be inhumane?

3 A. Yes, I would.

4 Q. May I move on then, please, to your rank and role in
5 Iraq in 2003? Just to get the dates, you were
6 commanding 19 Mech Brigade as the brigadier, were you,
7 from 28 June to 6 November 2003?

8 A. I was.

9 Q. It was perhaps self-evidently -- and you help us
10 considerably, if I may say so, by the detail you give in
11 your statement -- a job that you had which was
12 wide-ranging and involved a vast number of different
13 aspects.

14 A. That's correct.

15 Q. You tell us, if we could look, please, at BMI06956,
16 paragraph 50 of your statement and on, about some of the
17 conditions, what you described as the "tempo of
18 operations and pressures on 19 Mech Brigade", during
19 your time. You begin by saying this:

20 "Iraq is the most volatile and violent place in
21 which I have ever served."

22 Things are relative, General. You have alluded to
23 the Falklands, for example. You have served in places
24 where peace-keeping operations or stabilisation -- call
25 it what you will -- these sorts of operations have been

1 in progress before?

2 A. I have.

3 Q. In what way, if you can put it briefly, did this
4 demonstrate itself to be more volatile and violent than
5 any other place?

6 A. Well, firstly there -- it seemed that everybody
7 possessed weaponry of some description and so there were
8 a lot of guns in the city and even in the rural areas.
9 The second point is that the place changed very quickly.
10 You could be patrolling through an area one moment and
11 it was very benign, you could come back 10 or 15 minutes
12 or half an hour later and it would have erupted into
13 some sort of violence, be it a tribal feud, be it an
14 attack on soldiers or something along those lines.

15 I think we mounted, in the four or five months we
16 were there, over 500 company level operations -- using
17 about 100/150 people -- company level operations, and
18 you were never quite sure what you were going to find
19 every day that you went onto the streets. We were
20 attacked on a regular basis by small arms fire, by
21 rocket-propelled grenades, by bombs, by mortars, and the
22 nature of the place was that it was extremely violent.

23 Q. By the time that you took over on 28 June, the Inquiry
24 has heard that, after the war-fighting phase, there may
25 have been, for a period of time, a honeymoon period,

1 troops not wearing helmets and things of that kind. Had
2 that period come to an end by 28 June when you took
3 over?

4 A. Yes.

5 Q. So as you go on to describe -- and I am not going to
6 read it through -- in paragraph 51, the tribal feuds and
7 organised crime; in paragraph 52, the terrorists,
8 including foreign fighters, which posed you problems; in
9 paragraph 53, you refer to the infrastructure breakdown,
10 unemployment -- very large unemployment of
11 three-quarters of the population, you tell us in your
12 statement; and you refer, in paragraph 54, to the six of
13 your soldiers killed during the tour as a result of
14 armed action, the bombing of the ambulance which killed
15 Captain Dai Jones, and which it seems, would you agree,
16 had a quite dynamic effect upon soldiers who knew him?

17 A. I think it affected the whole brigade because, under the
18 Geneva Convention, ambulances are supposed to be immune
19 from attack and this proved that those who were
20 attacking us didn't have the same values as we did.

21 Q. And this was regarded as an atrocity?

22 A. Yes.

23 Q. In paragraph 55 -- taking it briefly because, as you
24 understand, we have read the detail and it is there and
25 I know the Inquiry will have it in mind -- you relate

1 that maintaining law and order was made difficult by the
2 conditions: temperatures of between 55 and 60 degrees,
3 no air-conditioning, electricity breakdowns and matters
4 of that kind.

5 You say at paragraph 56:

6 "The rule of law, which normally operates in a civil
7 society, simply did not exist when we arrived in Iraq."

8 At paragraph 57:

9 "19 Mech Brigade also faced a whole range of
10 problems relating to civil administration and
11 infrastructure ...", which problems were outside, you
12 tell us, your original remit.

13 This was in relation to rebuilding schools and
14 matters of that kind?

15 A. Yes. We found ourselves doing everything from paying
16 the public sector workers to trying to regenerate the
17 economy and trying to find employment opportunities for
18 the locals, as well as encouraging trade to come back
19 into Basra in particular.

20 Q. Against that background -- and I have taken it briefly,
21 as you appreciate -- could we have a look, please, at
22 paragraph 37 of your statement because you say here, do
23 you, that after your initial recce, which would
24 presumably have given you some idea of those things that
25 we have just been talking about and the problems --

1 A. Yes. I would say that in the early recce in May we were
2 still in the honeymoon period, but by the early June it
3 was clear from talking to the commanding officers who
4 were part of 7 Brigade that the situation on the ground
5 was starting to change.

6 Q. So what you say at paragraph 37 is:

7 "... after my initial recce I decided to deploy
8 1 QLR to Basra. I knew the CO ... Colonel Mendonca
9 well and considered that he was a strong leader and
10 a good CO. He had performed well during the brigade's
11 training year and transformed the battalion into a more
12 coherent and effective organisation."

13 May I just ask -- and I don't want a lot of detail
14 of about it -- should we understand that transforming
15 the battalion into a "more coherent and effective
16 organisation" meant that, prior to Colonel Mendonca, the
17 situation with 1 QLR left something to be desired?

18 A. No, they were a good battalion. You should not infer
19 that at all. They were a good battalion, but they were
20 quite inward-looking and their training level was not as
21 I would have expected it. But Colonel Mendonca
22 galvanised them into producing much higher standards and
23 becoming a much more coherent and effective battalion.

24 Q. You say that you knew him well?

25 A. Before he took command or --

1 Q. Yes.

2 A. I knew him before he took command.

3 Q. Can we have a look, please, at what you said of him and
4 1 QLR at MOD000602, in an earlier part of the statement
5 we looked at a little earlier, the one that is unsigned
6 but you acknowledge is yours. In the first paragraph on
7 that page, please, you say this:

8 "I knew the commanding officer ... 1 Queen's
9 Lancashire Regiment ... Colonel Mendonca well and
10 considered him a strong leader and a good CO."

11 A. Yes. That was on the basis of the 16 months we had
12 together before we deployed to Iraq.

13 Q. Would you describe him as a man who led from the front,
14 as it were?

15 A. Yes.

16 Q. You say:

17 "He was bright, thought laterally and led his
18 soldiers well. During his time in command he had
19 transformed the battalion, and they were now a much more
20 coherent and effective organisation."

21 In the way you described, I take it.

22 "I also thought that he had the necessary level of
23 robustness to deal with any challenging situations.
24 I had first met [him] ... in 1995 while he was a student
25 at Staff College and he had been the commanding officer

1 of 1 QLR and had worked for me for about 16 months prior
2 to the deployment to Iraq. During this time I had had
3 the opportunity to evaluate him thoroughly and had
4 witnessed his strong performance on several demanding
5 exercises. I had confidence in his ability and deployed
6 his unit in the most challenging area -- that of the
7 central locations within the city of Basra."

8 So you had considerable confidence in his ability
9 and indeed in that of 1 QLR --

10 A. Yes.

11 Q. -- to do what, on any view, was going to be
12 a challenging job?

13 A. Yes.

14 Q. Come August 2003 -- you have been there perhaps six or
15 seven weeks now -- you appended to your statement
16 a letter by way of an exhibit that you wrote on
17 15 August. Can we have a look at that, please, at
18 BMI06794? It is from you to Major General Lamb, the
19 then GOC. We can see it is dated 15 August 2003 and
20 headed "Fifty days on". This, General, was your
21 assessment of the position at that time as you saw it.

22 If we go over to the second page, please, under the
23 heading "UK PLC" and through the rest of that page, you
24 were describing, as we can see in the second paragraph
25 now on the screen, in the middle of it, "...

1 a worsening security situation which is not of our own
2 making", "... applying liberal amounts of sticking
3 plaster to various crises", and you are setting out,
4 aren't you -- and I don't read the whole of it because
5 I think we have all had it -- here what you describe as
6 "the need for direct assistance" from what you call
7 "UK PLC" to supplement the efforts that you and soldiers
8 on the ground were making.

9 A. Yes. In my view there was a failure across Government
10 to support what we were doing in Iraq.

11 Q. Can we just have a look at the last page of the
12 letter -- the next page please -- and the penultimate
13 two lines of the paragraph at the top?

14 "This is one place where we will not get away with
15 a quick in and out strategy, and I hope that history is
16 not about to repeat itself as far as UK and Iraq are
17 concerned.

18 "I know you say that you understand all this, but
19 I am getting increasingly frustrated that the
20 super-human efforts of my soldiers are not being
21 properly supported by UK PLC and the other ministries.
22 These people need to be dragged out here with money and
23 equipment in order to complement the very real
24 achievements made by the military. I would ask you to
25 ensure that this view is represented across Whitehall in

1 an attempt to galvanise the rest of the UK into action.
2 Al Basra and Maysan could be hailed in the future as UK
3 success stories, but UK PLC needs to work very hard and
4 very quickly if this is to be the case (failure and
5 national humiliation are possible). A lack of strategic
6 intent and commitment will directly and dramatically
7 increase the threat to the soldiers on the ground.

8 "The boys are highly motivated, they are working
9 hard and are being extremely well led. I have huge
10 confidence in the brigade's ability to deliver, and to
11 make a difference. UK PLC now needs to follow suit."

12 Reading that out, General, I do not do so to open
13 up, as it were, what might be regarded as the whole
14 resources issue in Iraq because I think the chairman
15 will say that is not part of his terms of reference, but
16 I do ask the question, in relation to the lack of
17 resources, whether, for example, it was to your
18 knowledge in the area of prisoner handling -- prisoner
19 treatment -- did resources or the lack of them impact
20 upon the way that prisoners were handled and the
21 processes and practices that were instituted, to your
22 knowledge?

23 A. I don't think that is true, no. I think that the law of
24 armed conflict governs the way in which prisoners should
25 be handled and that was very clear in our training about

1 how prisoners should be handled and how they should be
2 treated. The resources I was referring to here were
3 things like electricity, generators, commitment --

4 Q. Forgive me, I think we can see that from the letter and
5 I understand that and I am sure that the Inquiry does.
6 That's what you were particularly focusing upon. My
7 question was simply to ask in the round, if you like, if
8 there were a lack of resources. Others have told us
9 that it may have impacted upon the structures that were
10 put in place and the processes that were put in place
11 for the handling of prisoners, but you were not aware of
12 lack of resources having an impact upon that, were you?

13 A. That is correct, and I think there -- if I had have been
14 aware, we would have addressed it and there were lots of
15 opportunities to make me aware, but I was not aware of
16 that being a particular issue.

17 Q. Indeed, just developing that a little, then, if I may,
18 you tell us, I think, in your statement a number of
19 times that prisoner handling issues did not really arise
20 so far as you were concerned. I mean, there weren't
21 problems in relation to prisoner handling, save for one
22 or two issues that you raised with Colonel Mendonca
23 which I will come back to. But prisoner handling issues
24 in general were not matters that were raised with you,
25 is that right?

1 A. That's correct.

2 Q. Can we look please at paragraph 44 of your statement at
3 BMI06955? You say that you don't recall prisoner
4 handling being an issue at the time of handover to you
5 in June.

6 A. That's correct.

7 Q. You say:

8 "As far as I was aware, a system for prisoner
9 handling had been established by 1 (UK) Div which
10 appeared to be working."

11 Would it be fair to say, General, that you assumed
12 it was working because you weren't given any information
13 to the contrary, as it were?

14 A. That's correct.

15 Q. And are you sure that on the handover there was no
16 prisoner handling issue raised with you?

17 A. That's correct. The handover was very short with
18 Brigadier Bradshaw. I was supposed to fly in to Kuwait
19 using the RAF. The RAF plane was cancelled. I ended up
20 getting a civilian flight overnight. I got into Kuwait
21 early mid-morning on the day of the handover, got
22 changed, flew up to Basra Palace by helicopter and by
23 3 o'clock in the afternoon we had handed over, so there
24 was not very much time and we focused on the key
25 operational issues at the time and I don't remember

1 prisoner handling being one of them.

2 THE CHAIRMAN: If I may just ask this? To be fair to the
3 others, your staff had gone before you, presumably,
4 hadn't they?

5 A. Yes, sir.

6 THE CHAIRMAN: How long had they been there by the time you
7 got there?

8 A. Some of my staff had been there for between two and four
9 weeks.

10 THE CHAIRMAN: Yes, I see. So the handover was, as it were,
11 a rolling event?

12 A. Yes, sir.

13 THE CHAIRMAN: You are the last man in, as it were?

14 A. Yes, sir.

15 THE CHAIRMAN: Yes. I see.

16 MR ELIAS: Would you have expected prisoner handling issues
17 to have been raised directly with you in any event or
18 with other members of your team?

19 A. If there had been issues, depending on the severity of
20 them, I would have expected them to be raised either
21 with my team or, if there was a real concern, I would
22 have expected them to be raised with me.

23 Q. Did you have any knowledge when you were in Iraq that
24 hoods were being used on prisoners captured by British
25 soldiers?

1 A. No.

2 Q. If it were still being regarded by some soldiers on the
3 ground -- that is hooding -- as an SOP, a standard
4 operating procedure, perhaps at the point of capture,
5 you simply were not aware of that, were you?

6 A. I was not aware of it.

7 Q. If that were the practice, should you have been aware of
8 that?

9 A. I think I should, yes.

10 Q. And who should have brought that to your attention if it
11 were going on?

12 A. Well there were several ways of which it could have been
13 brought to my attention, either through my chief of
14 staff, through the company commanders that I saw on
15 a regular basis or through the commanding officers.
16 There were plenty of opportunities to bring it to my
17 attention.

18 Q. At MOD000603, going back to the statement we have looked
19 at a number of times now which you were making in 2005,
20 you say just below halfway down:

21 "I also spent a lot of time on the ground, to ensure
22 I was abreast of events in the [area of responsibility].
23 In addition to the more routine business, about four
24 nights a week I would go out with a patrol from one of
25 the battlegroups. My ADC would check on which units

1 were conducting operations during a given day or evening
2 and arrange for me to go with them. I was intent on
3 joining each company of each battalion on a regular
4 basis. This was a pure function of leadership."

5 Understanding that, you were therefore regularly out
6 on the ground, did you never see prisoners hooded?

7 A. I did not.

8 Q. Were you aware, do you recall, General, at this time
9 that there was any ban on the use of hooding?

10 A. I was not aware that there was a ban on the use of
11 hooding.

12 Q. What, you were not aware of the ban, but you simply
13 never saw it in action, as it were --

14 A. No.

15 Q. -- notwithstanding that you were regularly out on the
16 ground?

17 A. That's correct.

18 Q. Can we have a look, please, at a FRAGO I know you will
19 have had your attention drawn to. It is
20 Operation Quebec at MOD030899. This is a FRAGO issued,
21 as we can see, on 13 August, so obviously during your
22 period. If we go over to the second page, we can see,
23 at the very right hand bottom corner, it is distributed,
24 amongst others, to 19 Mech Brigade G3 ops.

25 At paragraph 6:

1 "TQ will take place at BG Main."

2 You would have understood that to mean "tactical
3 questioning", would you --

4 A. Yes.

5 Q. -- if you had seen the document?

6 A. If I had seen the document, yes.

7 Q. "TQ will take place at BG Main HQ under the direction of
8 the [intelligence officer], using brigade TQ assets,
9 arresting soldiers will be required. Prisoners should
10 arrive for TQ bagged and tagged unless over 45 years of
11 age."

12 "Bagged and tagged" there, General, plainly means,
13 doesn't it, "hooded and handcuffed"?

14 A. If I had seen the document, which I hadn't, I would have
15 thought that -- I would have taken that to mean -- to
16 have meant that they would be tagged and have their
17 hands with a bag over them for fingerprinting. That is
18 what would have come to mind had I read it.

19 Q. Why would you have supposed that would be done with
20 prisoners who were under 45 years of age but not
21 over 45?

22 A. I do not know because I had not seen -- I didn't see
23 this at the time. But that would be my reflection
24 on it, having seen it as presented as part of the
25 evidence.

1 Q. Is the position that you would not have expected to see
2 FRAGOs of this kind --

3 A. No, I would not have seen them.

4 Q. But on distribution, as we have seen this -- and we will
5 look at others in due course -- to 19 Mech Brigade, if
6 these practices were going on, would you not have
7 expected to have been made aware of them?

8 A. I would.

9 Q. And if that does mean hooding, you should have been made
10 aware of it, shouldn't you?

11 A. If it did mean, yes, I should have been made aware of
12 it.

13 Q. Were you aware of stress positions being used at any
14 time, either at BG Main or at Basra Palace?

15 A. No, no, not at all.

16 Q. As you are probably aware, the Inquiry has heard some
17 evidence that such practices were going on. But you
18 weren't aware of it?

19 A. I was not.

20 Q. Now, you appreciate, do you, that stress positions may
21 form part of what is called "conditioning"?

22 A. Yes, I understand that to be the case.

23 Q. Part of a softening-up process, if you like -- putting
24 it directly and straightforwardly -- prior to
25 questioning or interrogation; you would have stopped

1 that if you had known about it, would you?

2 A. I would.

3 Q. Can we have a look, then, please, at two further orders
4 in your time to see what the position is? Again, it is
5 at MOD043232. I think you will have seen these before,
6 General, in preparation for giving evidence to the
7 Inquiry. It is Operation Lightning. You see the date
8 of 25 August in the top left-hand column. It we go to
9 the bottom and highlight the bottom of the middle
10 column. Thank you very much.

11 You see under "Concept of operations":

12 "Prisoners are not to be conditioned unless TQ is
13 authorised on the basis of substantial evidence found
14 during searches."

15 "Prisoners are not to be conditioned ..." You tell
16 us, do you, that if you had seen that, it would have
17 been meaningless to you?

18 A. It would have been meaningless to me.

19 Q. But if, indeed, FRAGOs were going out -- and perhaps we
20 should just look over the page, please -- we can see
21 there going out under the name of Colonel Mendonca and
22 Major Royce, by now the BGIRO -- but we can see, can't
23 we, distribution at the foot of the page,
24 19 Mech Brigade in its several branches apparently
25 received copies of this?

1 A. Yes.

2 Q. If this is a reference to conditioning prior to
3 questioning, is not that something about which you ought
4 to have known?

5 A. Yes.

6 Q. So where does the fault, if I may put it that way, lie
7 that you didn't?

8 A. Well, the fault lies in the fact that the staff system
9 in the brigade headquarters did not make the chief of
10 staff aware who did not make me aware.

11 Q. So, if you like, a system failure?

12 A. Yes.

13 Q. Nonetheless, General, does it surprise you if
14 terminology of the kind that we have just looked at in
15 the last two FRAGOs -- if "bagging" does mean
16 "hooding" -- and the Inquiry has heard some evidence
17 about that that perhaps it does -- and if the term
18 "conditioning" or "conditioned" were being used, does it
19 surprise you that that was not, as it were, staffed up
20 to you and/or your chief of staff --

21 A. Yes.

22 Q. -- for consideration?

23 A. Yes, because the opportunities existed on a daily/hourly
24 basis to bring issues that required either
25 interpretation, direction or that were just -- needed

1 a bit more direction. Opportunities existed on
2 a regular basis. That is how a staff works.

3 Q. Is a possible explanation for it not being sent up to
4 you or your chief of staff, as it were, that those who
5 were receiving these documents referring to "hooding"
6 and/or to "conditioning" might have believed that these
7 were techniques which were perfectly acceptable and, if
8 you like, lawful?

9 A. I don't know?

10 Q. Can we look at just one more, please? It is at
11 MOD011741, please, Operation Quintessential. You see we
12 are now running into September, so it is not as though,
13 as it were, these things were all happening in a very
14 compressed period of time. It is 7 September. If we go
15 over to the second page of it, please, we see again in
16 the right-hand column, don't we, the distribution to the
17 various areas of 19 Mech Brigade. But in the left-hand
18 column, just above the photographic evidence underlined
19 and indeed in black highlight:

20 "Detainees are not to be conditioned ..."

21 An injunction it would seem, General, would you
22 agree, that is suggestive of the fact that perhaps in
23 other circumstances detainees were being conditioned?

24 A. I mean, you could read it that way, yes.

25 Q. But, again, you say that was not brought to your

1 attention? It should have been brought to your
2 attention and you ought to have known about it?

3 A. Yes.

4 Q. And if you had known about it, you would have stopped
5 it?

6 A. I would have questioned first of all what it meant.

7 I would have then taken advice -- gone to see my deputy
8 chief of staff who deals with the sort of G1 personnel
9 matters. I would have spoken to my legal adviser
10 because it would have sounded to me like it was inhumane
11 treatment and therefore might be contrary to the law of
12 armed conflict, and I would have gone back and checked
13 with those two advisers to establish what "conditioning"
14 meant, what it entailed and whether it was in accordance
15 with the law of armed conflict.

16 Q. Would you also agree that if this being were handled, as
17 it were, by the various staff branches of
18 19 Mech Brigade, who received under the distribution
19 these FRAGOs that we have looked at as examples, it
20 would not be surprising, would it, if those soldiers on
21 the ground who were required to carry out the concepts
22 and the orders as set out in the FRAGOs we have looked
23 at -- it would not be surprising if they believed that
24 they were permitted to condition?

25 A. I would have found that very surprising because all the

1 soldiers are instructed in the law of armed conflict.
2 The law of armed conflict says that you must treat
3 prisoners in a humane way. From what I understand of
4 "conditioning", that is inhumane treatment of a prisoner
5 and, therefore, I would have expected the commanders on
6 the ground to be questioning the use of such techniques
7 and I would have expected those questions to come up to
8 brigade headquarters.

9 As you have surmised in the evidence you have taken
10 me through, I saw the company commanders on a regular
11 basis, I knew them all, I had been working with them for
12 16 months and I would have expected them to have raised
13 this with me whenever they saw me or with my staff.

14 Q. Again, the fact that nobody apparently did raise it with
15 you might be indicative, might it, of the fact that
16 there were at least some who did not, as it were, hold
17 the same view as you, who thought that conditioning
18 and/or hooding may be accepted practice?

19 A. Sadly, I would have to agree with you.

20 THE CHAIRMAN: May I just ask you: is it an excuse for your
21 brigade staff to fail to see it because they are really
22 concentrating on what are battlegroup orders on how it
23 interfaces or interacts with other units under your
24 command?

25 A. Sir, it is quite possible that -- there were lots of

1 these FRAGOs coming in, they would have probably been
2 three or four a day that were coming in, probably more
3 than that at times, into the brigade headquarters and it
4 is possible that they were not read, they were just
5 noted in terms of where the operation was going on, what
6 coordination we had to provide in brigade headquarters,
7 what resources we had to provide. It doesn't excuse
8 what happened, but it might excuse the fact that the
9 staff didn't pick it up.

10 THE CHAIRMAN: I can see it obviously doesn't excuse what
11 happened, but your chief of staff, for instance,
12 yesterday, said that he thought that they would be
13 concentrating upon what the orders did to coordinate
14 with other units --

15 A. Yes.

16 THE CHAIRMAN: -- and not necessarily on the detail.

17 A. Yes.

18 THE CHAIRMAN: Is that an excuse for not noticing it or
19 should they have been read with much more care and
20 thoroughness?

21 A. I think in an ideal world they should have been read.

22 THE CHAIRMAN: Yes.

23 A. The only mitigation I could offer is the fact that the
24 brigade were very busy and they may not have been read
25 in its entirety.

1 MR ELIAS: Perhaps we may agree on this, General, might we?
2 Whether it should have been picked up or not, the
3 capacity for those on the ground at least to be confused
4 was plainly raised by the terms of these FRAGOs that
5 were being issued.

6 A. I don't think I would agree that people would have been
7 confused. To my mind this was -- conditioning
8 represented inhumane treatment. People were all
9 schooled in the law of armed conflict at all ranks and
10 therefore there is absolutely no excuse for such
11 treatment of prisoners to take place.

12 Q. Therefore any FRAGO which indicated that prisoners were
13 to be conditioned should have been ignored?

14 A. Sorry, I am not with the point you are making.

15 Q. Any FRAGO which indicated that prisoners should be
16 conditioned prior to TQ'ing, that should have been
17 ignored?

18 A. No.

19 Q. So how should it have been dealt with by, if you like,
20 the unit on the ground handling the prisoner?

21 A. I'm sorry, I am lost. I have lost the direction of your
22 argument.

23 Q. Can we go back to the "bagging and tagging"? If
24 "bagging" means "hooding", do you follow, and if the
25 order were that men under 45 were to be hooded, you tell

1 us that anyone should have understood that that would be
2 inhumane and should not be done.

3 A. Correct.

4 Q. So if the order requested -- required -- that those
5 under 45 should be hooded, "bagged and tagged", should
6 that order simply have been ignored by those on the
7 ground who had the duty to carry it out?

8 A. The order should not have been given in the first place.

9 Q. I understand that. That's why I raise the question with
10 you about confusion. Given that it was made and in the
11 terms it was made and given what you say about every
12 soldier understanding the law of armed conflict, it had
13 the potential, didn't it, to create that sort of
14 confusion, "What do I do? I know what the law says, but
15 I know what I am being ordered to do".

16 A. That is why there is a mechanism that exists with all
17 orders that go out for a back-brief, where you have
18 a chance to clarify these aspects or to ask for an
19 interpretation of what was being said.

20 Q. So that's what should have been done?

21 A. That's what should have been done.

22 Q. Can I move on to another topic then, please? That is
23 TQers. Were you aware, as brigadier, of the relative
24 scarcity of TQers, that there were not enough of them?

25 A. Yes.

1 Q. Was there anything that you could do about that, as it
2 were?

3 A. Not for 19 Brigade. But what we did ensure was that the
4 brigade that was following us, 20 Brigade, were made
5 aware of this quickly so they could get the necessary
6 people away on the appropriate courses.

7 Q. Major Robinson has told the Inquiry that, so far as
8 TQers are concerned, they were -- I use his words -- to
9 some extent anyway "on their own" and with no clear
10 chain of command.

11 A. I don't accept that.

12 Q. You told us a little earlier, in answer to one of my
13 questions, that the detail of what they did you would
14 not have been aware of.

15 A. No.

16 Q. And you played no part in their actual deployment from
17 day to day?

18 A. No. The staff would have deployed them as the demand --
19 as per the demand.

20 Q. If, as the Inquiry knows happened in the case with which
21 the Inquiry is particularly concerned, a TQer were to be
22 sent to, in this case, 1 QLR, to BG Main, to question
23 detainees who had been arrested, would you expect the
24 commanding officer -- in this case Colonel Mendonca
25 then -- to know the detail of what the tactical

1 questioner sent in from brigade was going to do?

2 A. I would have expected him to be responsible for the
3 conduct of what went on in his barracks and I would
4 expect him to be responsible for the assets that had
5 been given to his battalion.

6 This is normal military procedure. If I was going
7 to give him an extra company of soldiers, then they
8 would go under his operational command or operational
9 control and he would have responsibility for them until
10 they were handed back to me at the end of a particular
11 operation. I viewed the TQers in exactly the same
12 light.

13 Q. They were his responsibility. That said, would you
14 expect the CO, for example, to know what -- if I may use
15 the term -- methods the TQer would be using in the
16 course of performing his function at BG Main?

17 A. As part of his overall responsibilities, he had
18 responsibility for the prisoners under his care.
19 I would have expected him to have trusted the judgment
20 of the TQers in the fact that they had been trained and
21 that they were also subject to the law of armed
22 conflict.

23 Q. So to the extent that, as other witnesses have put it,
24 they were the SMEs -- the subject matter experts -- you
25 would have expected him, as it were, to let them get on

1 with that without necessarily knowing the detail?

2 A. Yes, because if I had been the commanding officer,
3 I would have expected them to be acting within the law
4 of armed conflict.

5 Q. I understand. But, for example, to come down to brass
6 tacks, if you like, whether the TQer was questioning
7 a prisoner once, twice or four times was not necessarily
8 the sort of detail that the CO would or need know about?

9 A. No, I would accept that, but I would say that it is the
10 sort of thing that the BGIRO would have known -- should
11 have been able to know, because the CO had passed the
12 responsibility for looking after prisoners to the BGIRO,
13 as you called him, and that -- I would expect the BGIRO
14 to know those sort of details because he was responsible
15 for the prisoners while they were in the hands of his
16 particular battlegroup.

17 Q. I am just going to come back briefly, if I may, to
18 FRAGO 29 and the BGIRO, as we have been calling it, in
19 a minute or two. Just staying with prisoner handling
20 issues rather more generally: when you handed over to
21 your successor, General, you didn't raise with him, did
22 you, any prisoner handling issues that, as it were, he
23 ought to keep his eye open for?

24 A. I really can't remember.

25 Q. Can we just look at issues that were raised with and by

1 you in relation to prisoner handling? You refer to them
2 in your statement to the Inquiry commencing at
3 paragraph 102, BMI06967, where you say that:

4 "Just after Dai Jones was killed, one company from
5 1 QLR conducted a search operation and somebody took
6 photos of the house and brought them to brigade HQ."

7 You did not know the identity of the photographer,
8 you thought it might have been an Iraqi citizen who made
9 a complaint.

10 "From seeing the photographs, I thought the search
11 had caused unnecessary damage and had left the house in
12 an unacceptable and messy state.

13 "When we got together on the Friday with the COs,
14 I put the photos up on a board and asked them all to
15 look at the photos and informed them that this type of
16 behaviour was unacceptable and would harm our
17 relationship with the Iraqis. Following the meeting,
18 I took Lieutenant Colonel Mendonca to one side and told
19 him that his battalion was responsible."

20 So it was a company from 1 QLR. You knew that?

21 A. Yes.

22 Q. "I asked him to ensure that it did not happen again.
23 I cannot remember who took the photographs or what
24 happened to them subsequently."

25 Did Colonel Mendonca give you the assurance that he

1 would deal with the matter?

2 A. Yes.

3 Q. Did he ever report to you how he dealt with the matter
4 or did you hear about it?

5 A. I can't remember.

6 Q. But it was obviously something that you felt strongly
7 enough about that you had to deal with it, as it were --

8 A. Yes.

9 Q. -- at that level?

10 A. Yes. We were there to provide stability and security
11 for the Iraqis. We needed to have the Iraqi people on
12 side with us as we went through the tour and this sort
13 of action would have prohibited or perhaps prevented us
14 in fulfilling our mission.

15 Q. Paraphrasing it perhaps, it was negative publicity for
16 the hearts and minds campaign, wasn't it?

17 A. Yes. I would not have put it quite like that, but
18 I understand what you mean.

19 Q. You go on at paragraph 104 to say this:

20 "On another occasion, I heard unsubstantiated
21 rumours that suggested that some soldiers within 1 QLR
22 were being unnecessarily rough in their handling of
23 Iraqis."

24 Just pausing there, "unsubstantiated rumours"
25 suggests that these were coming from a number of

1 sources.

2 A. Yes, I think it was one rumour I had heard. I can't
3 remember where I got it from. Maybe it was in a meeting
4 with the Iraqis or -- I just cannot remember where this
5 particular piece of information came from.

6 Q. "I had no knowledge as to the veracity of the allegation
7 but I did need to make the CO aware of it. I therefore
8 spoke to Lieutenant Colonel Mendonca and told him to
9 ensure that this was not the case."

10 What would you have expected him to do, having been
11 told this by you?

12 A. Well, I would have expected him to go away and to
13 reassure himself that this was not happening in his
14 battalion.

15 Q. You say that:

16 "Lieutenant Colonel Mendonca went and spoke to his
17 company commanders."

18 He therefore reported that to you after, did he?

19 A. He did.

20 Q. I later heard that one of the company commanders broke
21 down because he felt that they were doing a good job in
22 difficult circumstances, but I do not recall who this
23 was. He [apparently] took the allegation personally, as
24 did Lieutenant Colonel Mendonca."

25 A. Yes.

1 Q. In saying that, General, that Colonel Mendonca took the
2 matter personally, that is presumably exactly what you
3 would have expected?

4 A. Yes.

5 Q. He would have had and ought to have had pride in his
6 battalion and in the job he was doing?

7 A. Yes.

8 Q. And to receive an allegation of this kind would have
9 been a serious matter for him?

10 A. Yes.

11 THE CHAIRMAN: Can I just ask this? These two incidents
12 that you mentioned, presumably from your witness
13 statement, I would take it, occurred before the death of
14 Baha Mousa?

15 A. Yes.

16 MR ELIAS: Forgive me interrupting --

17 THE CHAIRMAN: Sorry --

18 MR ELIAS: I was simply going to say that I was just going
19 to turn to an account you gave earlier along the same
20 lines because I think it does help us with the timing
21 and it may be important.

22 THE CHAIRMAN: Yes.

23 MR ELIAS: I want to take you to that if I may, if you will
24 forgive me, Sir, for intervening.

25 THE CHAIRMAN: No, of course.

1 MR ELIAS: Can we go back to your statement at MOD000604
2 where you deal with these matters? Perhaps in 2005 it
3 would have been fresher in your memory than it is when
4 you were making your statement to this Inquiry; would
5 that be fair?

6 A. Yes.

7 Q. What you say here -- and bear in mind the timings of
8 this because you help us in this statement with the
9 timings -- you say in the second paragraph on this page:

10 "The vast majority of the brigade conducted
11 themselves professionally throughout what was
12 a challenging tour in a demanding environment. There
13 was the odd occasion when soldiers and officers let
14 themselves and their units down, but these were few and
15 far between. As regards 1 QLR, there were only a couple
16 of such incidents. As I have detailed in my earlier
17 statement, on Thursday 14 August ... Captain Dai Jones
18 ... was murdered in a roadside bomb attack on a marked
19 military ambulance. Having offered CO 1 QLR my
20 condolences, I did advise him that I had seen similar
21 incidents in my career and, as a result of which,
22 soldiers had over-reacted. I told him to ensure that
23 this did not happen with 1 QLR."

24 Just pausing there, General, you were obviously,
25 were you, then concerned that, as a result of what had

1 happened to Captain Dai Jones -- the atrocity, as you
2 agreed when I put it to you earlier, the atrocity which
3 had happened -- you were concerned that soldiers may
4 take steps, as it were, to even things out?

5 A. Yes, sadly in history there are instances of that, where
6 soldiers over-react and then the population then
7 over-reacts to what the soldier has done and you get
8 a very quick escalation and I was determined to make
9 sure that that did not happen.

10 Q. So that was the message, as it were, that you gave to
11 Colonel Mendonca?

12 A. Yes, and I gave it to other units when they lost people
13 as well.

14 Q. You go on to say in the statement -- and this is where
15 perhaps the timing comes in so it was shortly after the
16 death of Captain Jones:

17 "Shortly after this, I had resource to speak to
18 Colonel Mendonca again on this subject. At that time
19 I had in my possession a number of photographs of
20 a dwelling which had been searched by members of 1 QLR.
21 It was clear from the photographs that the soldiers had
22 been unnecessarily robust in their search and ...
23 Colonel Mendonca undertook to ensure that this type of
24 incident did not happen again. I am not sure exactly
25 who had taken the photographs ..."

1 That is really in line with what you have already
2 told us, isn't it? You then go on to say this:

3 "The only other time that I had to speak to
4 Lieutenant Colonel Mendonca on a similar subject was
5 shortly afterwards -- the exact date I do not recall."

6 So the suggestion would seem to be, wouldn't it,
7 shortly after -- not long after -- perhaps the death of
8 Captain Dai Jones?

9 A. That's what the statement suggests.

10 Q. Yes. So perhaps, on the face of it anyway, before the
11 death of Baha Mousa?

12 A. Perhaps.

13 Q. You go on:

14 "... the exact date I do not recall. I had heard
15 [please note the word, it is yours] several
16 unsubstantiated rumours ..."

17 If you had said that at the time -- and indeed in
18 your statement to this Inquiry you do refer to "rumours"
19 and not to one -- do you recall that there were more
20 than one?

21 A. I just don't remember.

22 Q. You go on:

23 "... from whom now I do not recall, that soldiers
24 serving with 1 QLR were being 'overly robust' in their
25 handling of and dealings with Iraqi civilians."

1 Did you have concern, General, at that time, that
2 this might indeed be a reaction to the Dai Jones murder?

3 A. It was possible. It would have been possible to link
4 the two.

5 Q. So it would have been likely in your mind that it was
6 a possibility?

7 A. Yes.

8 Q. You go on to say:

9 "I raised these issues with Colonel Mendonca, though
10 where exactly I do not remember, as I saw or spoke with
11 him on a frequent basis ... Colonel Mendonca was clearly
12 upset by these allegations and I understand that he
13 spoke with all his officers and soldiers to explain to
14 them that such allegations undermined the excellent job
15 that the battalion was doing to bring security and
16 stability to Basra."

17 A. Yes.

18 Q. You just go on in the first few words of the next
19 paragraph:

20 "Education of the soldiers remained an important
21 task ..."

22 Do you mean by that or did you mean by that
23 education of soldiers in the realm of prisoner handling
24 and how they should treat Iraqi detainees and civilians?

25 A. It was a general comment, "Education of the soldiers

1 remained an important task ...", and, as I say there,
2 the rules of engagement I believe changed during our
3 time in Basra. My two -- the two lawyers,
4 Colonel Barnett and Major Clifton, were very proactive,
5 as I said there, and we were just making sure that the
6 whole point about the importance of a law of armed
7 conflict was being reinforced to the battalions and
8 I thought that was an important task.

9 Q. You say at paragraph 99 of your statement, if we can go
10 back to that, please, at BMI06966:

11 "Following the deaths of Major ... Titchener [and
12 the other RMPs] ... I spoke to the provost company about
13 the incident. I explained that this was a very sad loss
14 and emphasised the need to maintain our professionalism
15 as we searched for the killers. In particular,
16 I stressed that we must avoid any 'red mist' descending
17 and act professionally and within the law ..."

18 It was the "red mist" effect that you had talked to
19 Colonel Mendonca about effectively?

20 A. Yes.

21 Q. You weren't ever given any report, were you, that such
22 allegations as were being made had been found to be
23 wholly unsubstantiated?

24 A. About what?

25 Q. Well, the issues that you had raised with

1 Colonel Mendonca, the rumour/allegations which you
2 raised with him.

3 A. On the -- I mean, the searching of the house, the
4 evidence was there to see.

5 Q. Yes.

6 A. It had been left in a dreadful mess. On the
7 unsubstantiated rumours about ill-treatment of Iraqis,
8 Colonel Mendonca did come back to me -- and that is
9 inferred in my statement -- when he explained that one
10 of the company commanders was upset by what he had done.
11 I know that he went round personally to all of his
12 company groups and spoke to them and then came back to
13 me.

14 Q. I appreciate it was not being taken on a more formal
15 basis. There was not the evidence so to do.

16 A. No. I would have done the same with any of my
17 commanding officers.

18 Q. I understand. But those were issues that you raised
19 with Colonel Mendonca. Do you recall whether the need
20 to keep an eye on that was something that you passed on
21 when you handed on to your successor?

22 A. I don't recall.

23 Q. You would have expected him, would you, to have had that
24 sort of issue in mind anyway?

25 A. Well, I think one is always concerned about how those

1 under your command are interacting with the people you
2 are there to protect and to give security to. I mean
3 that is a key part of any counter-insurgency -- well,
4 what became a counter-insurgency campaign, because the
5 only way that you win a counter-insurgency campaign is
6 to make sure that the people are protected in the first
7 place and they have confidence in the law and order
8 procedures that allow them to get on and live their
9 normal lives.

10 Q. May I just move on, then, on the question of prisoner
11 handling and issues that may have been raised? The
12 Inquiry has heard now some evidence that the 14-hour
13 deadline brought about by FRAGO 29 -- which was in
14 existence at the time that you came to Iraq, wasn't
15 it -- what I am calling the 14-hour deadline was from
16 time to time not met. Were you ever aware of that
17 deadline being breached?

18 A. No.

19 Q. So breaches of that were not brought to your attention?

20 A. No.

21 Q. Ever?

22 A. No.

23 Q. Should they have been if they were happening?

24 A. I think if they were happening on a regular basis, they
25 should have been brought to my attention because it

1 clearly meant that the procedures that we were adopting
2 were not right or the timeframe wasn't correct or that
3 there was a problem somewhere in the system.

4 The fact that if it was just a -- if it was on an
5 ad hoc basis or fairly -- less regular, then I would
6 have expected my chief of staff to have dealt with them.

7 Q. The fact is it never was raised with you, you say?

8 A. No.

9 Q. At the time of your own handover to take over the role,
10 were you aware that the system of prisoner handling --
11 FRAGO 29 as we have been looking at in this Inquiry
12 quite extensively -- had changed the system markedly
13 from that which had existed before?

14 A. No.

15 Q. In your preparation to take over at the end of June,
16 were you involved in any discussion about a change of
17 regime or system of prisoner handling?

18 A. I can't remember.

19 Q. You do recall, do you, the BGIRO -- you have talked
20 about it a little earlier in your evidence and I said
21 I would come back to it. You recall the BGIRO being
22 appointed at battlegroup level?

23 A. Yes.

24 Q. Do you recall ever being made aware of any concerns that
25 the 14-hour rule, as I am calling it, meant that

1 detainees would be left at battlegroup level for
2 a lengthy period of time, more than double that which
3 had pertained not a month or so before FRAGO 29 --

4 A. No.

5 Q. -- and that that itself might create dangers for
6 detainees? Was that ever a consideration that was
7 brought to your attention?

8 A. No. I -- no, I presumed the 14-hour deadline was more
9 of an administrative issue of being able to transport
10 prisoners down to the internment facility at Umm Qasr.
11 The area of operations was very large -- I have said
12 that in my evidence -- especially if you look at -- the
13 length of time it would take to get down from Maysan or
14 Al Amarah to Umm Qasr would take an awful long time, so
15 that didn't really concern me.

16 Q. You assumed it was a practical --

17 A. Pragmatic, yes.

18 Q. -- and pragmatic step?

19 A. Yes.

20 Q. I follow.

21 The BGIRO, what did you understand, in essence, his
22 responsibilities were?

23 A. He was responsible to the commanding officer for
24 prisoner handling within the battalion.

25 Q. So would you have expected the BGIRO to be, for example,

1 aware of the conditions in which a detainee was held?

2 A. Yes.

3 Q. And to visit that detainee --

4 A. Yes.

5 Q. -- to ascertain the conditions from time to time?

6 A. Yes.

7 Q. Yes. And to be aware of whatever treatment was being

8 meted out to that detainee?

9 A. Yes.

10 Q. Where did that understanding come from, do you recall?

11 A. I think -- I can't remember if I read the details of

12 whatever order came out --

13 Q. FRAGO 29.

14 A. -- but actually if you think back to how we conduct

15 ourselves in barracks in the UK, if there is a prisoner

16 in the guard room, for example, the duty officer is

17 responsible for visiting him, making sure that he is

18 being treated okay and the fact that he has a chance to

19 chat to the prisoner to find out whether he has any

20 needs that aren't being met. That's a sort of culture

21 that is inculcated into the army in peace-time, so it is

22 not a big leap to do it in time of operations.

23 Q. So you assumed that that's the role that the BGIRO would

24 adopt?

25 A. Yes.

1 Q. You say at paragraph 92 of your statement to this
2 Inquiry, at BMI06965 please, that the BGIRO, as well as
3 the battlegroup provost staff, you say here, "... would
4 be responsible for prisoner handling; part of this was
5 the keeping of a record of a prisoner's detention until
6 he is handed over to the TIF".

7 A. Yes.

8 Q. You meant the keeping of a documentary record, did
9 you --

10 A. Yes.

11 Q. -- rather than like, if you know what I mean, a custody
12 record that would be kept --

13 A. Yes. In UK -- let's to go back to my previous
14 example -- when the duty officer used to go and see
15 a prisoner, he would have to record that he had gone to
16 see the prisoner and the time that he went to see it and
17 what the prisoner asked for. So that was the way
18 I would have looked at this.

19 Q. If, as the Inquiry has heard, no such record was kept,
20 that would have been, would it, a total surprise to you?

21 A. Yes.

22 Q. It may be said, General, that in your time as brigadier,
23 if you were unaware of breaches of the 14-hour rule,
24 unaware of the fact that records were not being kept for
25 detainees, unaware -- if it were the case -- that

1 hooding was going on, that stress positions or
2 conditioning was being employed, that this perhaps
3 reflects that too little focus was being put on prisoner
4 handling and its processes by you and your senior staff.
5 What would you say to that?

6 A. I think that the first thing I would say is that one has
7 to trust one's subordinates to be doing what they should
8 be doing. Responsibility for prisoner handling was very
9 clearly detailed to be in the realms of the BGIRO. The
10 British army trains its soldiers properly in the law of
11 armed conflict and we had done that prior to deploying
12 and, therefore, I would have had trust in the system to
13 ensure that prisoners were being handled properly.

14 No issues were ever brought up to me and there was
15 countless opportunities for that to happen. As they
16 weren't being brought up to me, I focused on the other
17 important things that the brigade were supposed to be
18 doing in southern Iraq and got on with them. Had the
19 issues been brought up to me, I would, of course, have
20 dealt with them.

21 Q. I suppose the question is, if the issues were not -- and
22 these various issues -- not brought to you or your chief
23 of staff, does that not in itself perhaps indicate that
24 maybe the priority being given to prisoner handling
25 issues was simply too low?

1 A. No, I don't accept that. I think if people had issues,
2 they would have been brought up because these were
3 important issues of people who were within our charge.

4 Q. May I move on then, please, to the last matter that
5 I want to ask you about, anyway, and that is the part
6 that you played in Operation Salerno. This was one of
7 the operations that you went out on, wasn't it?

8 A. Yes.

9 Q. Just so that we clarify it from the beginning, did you
10 ever see at any stage of the operation or subsequently
11 any of the detainees?

12 A. No.

13 Q. You set out the part that you played. Can we have it on
14 the screen, please, at BMI06968, paragraph 105 and on?
15 I am not going to take you through what you say here in
16 detail, General. You were ultimately on the roof of the
17 hotel, is that right?

18 A. Yes.

19 Q. You were aware of the arrest of detainees?

20 A. Yes.

21 Q. But you didn't ever see them?

22 A. No.

23 Q. You didn't see them, as it were, moved from the hotel to
24 the transport --

25 A. No.

1 Q. -- or thereafter?

2 A. No.

3 Q. And you were never to see them in the BG Main TDF?

4 A. No, because I went straight back from the operation to
5 brigade headquarters.

6 Q. You tell us that you don't have any recollection --
7 although you attended the morning briefing for the
8 operation -- of there being, at that briefing anyway,
9 any link suggested between earlier deaths of soldiers or
10 RMP and those who were to be sought, as it were, in this
11 raid.

12 A. That's correct, although we had heard for some time from
13 various of the sheikhs that I dealt with on a regular
14 basis that hotels were being used by former regime
15 loyalists.

16 Q. But there was no specific connection suggested at the
17 briefing anyway --

18 A. I can't remember that there was.

19 Q. -- as you recall? You tell us at paragraph 110 -- and
20 this may be of some importance -- after the arrest you
21 were being kept in touch, were you, by radio?

22 A. Yes.

23 Q. After the arrest, as you tell us at paragraph 110, it
24 was believed at the time that the company had found
25 a terrorist insurgent cell.

1 A. Yes.

2 Q. That is to say those that had been arrested were members
3 of such, it was believed.

4 A. Yes.

5 Q. In the nature of these things, General, that is likely,
6 is it, to have been understood -- it was being
7 communicated to you, of course -- by all those taking
8 part in the operation at the hotel?

9 A. They would have heard the same radio conversations that
10 I would have done.

11 Q. Yes.

12 At MOD000600, now going back to a statement that you
13 made on 29 June 2005, the first statement I think, the
14 second page -- it is here that you say at the top of the
15 page:

16 "We heard from several sources that former regime
17 loyalists had been operating from hotels particularly in
18 the Basra area. That is why 1 QLR had planned
19 Operation Salerno. The operation started at ...
20 6 o'clock ...", and so on.

21 "My patrol group joined the battles ... deployed on
22 the roof when the suspected terrorists were arrested.
23 My patrol left the operation at 8 o'clock after the
24 suspects had been detained. By that time it was
25 believed that the battalion had indeed found a terrorist

1 cell ..."

2 That would, if it had been true, have been regarded,
3 would it, by the battalion -- perhaps rightly -- as
4 quite a coup?

5 A. Well, yes.

6 Q. The Inquiry knows that the detainees by various
7 routes -- and perhaps not directly in all cases -- were
8 taken to BG Main. You would have been aware of that,
9 would you?

10 A. I would have imagined that's where they would have been
11 taken, yes.

12 Q. You tell us that you were unaware that they were there
13 being tactically questioned. Would you like me to refer
14 to a statement that you made about the matter?

15 A. Yes, please.

16 Q. Let's look at MOD000606, please. We are going back to
17 your second statement now in 2005. In the second
18 paragraph on that page:

19 "On Monday 15 September ... I was unaware that
20 individuals detained by 1 QLR ... were continuing to be
21 held by them and were undergoing tactical questioning."

22 That is correct, is it?

23 A. Yes. If I wrote it in the statement, it was to the best
24 of my knowledge at the time.

25 Q. Can I just read on the rest of that paragraph because it

1 sets out some of the things that you could remember
2 then?

3 "My personal permission was not sought by CO 1 QLR
4 or, as far as I am aware, any member of my brigade staff
5 to detain the men for longer than the 14-hour period
6 allowed ... As far as I recall, at no time prior to this
7 operation was my personal permission sought to extend
8 the detention period for delaying the delivery of a
9 detainee to the ... TIF. Had I received such a request
10 following Op Salerno, I would have consulted a number of
11 parties before making my decision: G2 to establish what
12 the battalion was seeking to achieve and whether it was
13 time critical, the legal adviser to establish whether we
14 could lawfully detain the person and my [chief of staff
15 or deputy] ... for any further advice. Had there been
16 a good reason for continued detention -- an operational
17 imperative for example -- I would probably have approved
18 it as once someone was sent to the TIF, any information
19 or intelligence obtained by the TIF's tactical
20 questioners which might have been of use to the brigade
21 was not passed back to us."

22 Does it follow from that, General, that you would,
23 at that time, have regarded a valid reason for
24 battlegroup holding on to a detainee for longer the fact
25 that it would give them the opportunity to question

1 longer, to get information which would then be valuable
2 to brigade, which would not happen if that same
3 individual was sent on to the TIF?

4 A. My statement is all supposition, as you could see, but
5 my point was -- the point I was making, I think, was
6 that there may have been a reason for hanging on to
7 people for longer than the 14 hours if it led to
8 intelligence that would either preserve life or to help
9 us in our security -- of establishing security within
10 Basra and Maysan Provinces.

11 Q. Again, if this terrorist cell, as it was believed to be,
12 was being questioned by tactical questioning and indeed
13 going over the 14-hour period for that purpose, that is
14 something that you ought to have known about, isn't it?

15 A. Yes.

16 Q. Having played a part -- albeit on the roof, as it
17 happens, of the hotel, a security aspect part -- didn't
18 you have an interest in what happened to this terrorist
19 cell?

20 A. Yes, I did, but this company was one of 20 or 25
21 companies I had under my command at the time. I was
22 responsible for the whole of Maysan and Basra Provinces,
23 not just this particular operation, which was being run
24 by the battlegroup, and I would have had other things
25 that I needed to do.

1 As I said in my statement, each day was an 18-hour
2 day and it was full from getting out of bed in the
3 morning to getting into bed at some time in the early
4 hours the following morning.

5 Q. So this would have been one tiny piece of a large
6 jigsaw?

7 A. Yes, indeed.

8 Q. You recall being told of the death of Baha Mousa?

9 A. Yes.

10 Q. Presumably within minutes of it happening?

11 A. Well, I can't recall -- I can't recall how long
12 afterwards I was told, but the commanding officer rang
13 me personally to tell me.

14 Q. So you were told by Colonel Mendonca?

15 A. I was.

16 Q. And he was obviously shocked, was he, by the news that
17 he had to convey to you?

18 A. He was devastated.

19 Q. And you were too?

20 A. Yes. This was -- the Iraqis, when they are in our
21 custody, are -- we have responsibility for them and for
22 the way that they are treated, so absolutely.

23 Q. Can we just go back, please, to a statement that you
24 made on 29 June 2005 at MOD000600? Now going down
25 towards the foot of the page, please, and just over

1 halfway through the last page with the black redaction
2 in it, do you see the sentence that begins "As
3 I remember ..."?

4 "At the time I was told of Baha Mousa's death, the
5 commanding officer had already asked the Special
6 Investigation Branch to investigate the case."

7 Do you see that?

8 A. Yes.

9 Q. Then it reads on, General, thank you:

10 "I straightaway informed divisional headquarters,
11 both emailing and then speaking with Major General Lamb.
12 During the subsequent period I can recall having many
13 conversations about the case with Colonel Mendonca but
14 cannot recollect any details about the information
15 extracted from the detainees. Most of our
16 discussions were about dealing with the aftermath of
17 the incident; in particular the meetings with
18 Baha Mousa's family ..."

19 You did meet with them, didn't you?

20 A. Yes.

21 Q. "Some documents related to this are attached to my
22 statement. However I can specifically remember ..."

23 That is what I want to ask you about specifically:

24 "... I can specifically remember him ..."

25 That is Colonel Mendonca, is it?

1 "... telling me that he had checked on the state of
2 the prisoners prior to Baha Mousa's death, and had not
3 seen anything untoward."

4 A. Yes.

5 Q. Were those, in essence, the terms in which he told you
6 that he had done so?

7 A. I really can't remember.

8 Q. But you did in 2005, in that statement, as we can see,
9 say that you had a specific memory of that.

10 A. Yes.

11 Q. There is no doubt about it, is there?

12 A. No.

13 Q. Did you understand from him that he had seen the
14 detainees prior to the death?

15 A. Yes.

16 Q. You spoke with the family of the deceased. Could I just
17 ask you please, finally, to look at one document with
18 me? It is at BMI00893. It is the letter, no doubt
19 translated, which you wrote to the father, is that
20 right, of the deceased?

21 A. Yes.

22 Q. You were here expressing your "horror". Was that an
23 accurate sentiment, your horror --

24 A. Yes.

25 Q. -- at the death?

1 A. Yes, yes. I mean, to have -- yes, indeed it was.

2 Q. Given that this was 1 QLR, that you must have learnt not
3 only about the death of Baha Mousa but about the fact
4 that -- I don't think it is an issue in this Inquiry --
5 other detainees taken with Baha Mousa were plainly
6 assaulted whilst in the custody of 1 QLR by a soldier or
7 soldiers, did that very much surprise you?

8 A. It disgusted me.

9 Q. Given that it happened, that there appears to have been
10 conditioning of these detainees, held in stress
11 positions, hooded for very long periods of time, if that
12 be the fact -- and I don't think there is any issue
13 about it, General, now -- that this was happening in
14 September in BG Main, do you accept any responsibility
15 for that in terms of any failing?

16 A. I accept that for -- I was accountable for the actions
17 of the whole brigade. That is a function of being in
18 the chain of command. But I delegate responsibility
19 to -- downwards to my commanding officers and they
20 delegate further. That is the way that one works in the
21 British Army and it's the way that one conducts
22 operations because you need to allow initiative at the
23 tactical level. But we all bear the scars of this
24 particular issue. The fact that it was my brigade,
25 I feel that I am somewhere accountable for the actions

1 of my soldiers.

2 Q. How could it have happened? How could this have been
3 done by soldiers essentially in the last resort, if you
4 like, under your command?

5 A. I think you can -- there is -- there is always a chance
6 that people will act outside the law in any organisation
7 and you have as many checks and balances in that
8 organisation as you can to make sure that that doesn't
9 happen. Sadly sometimes it happens and this is
10 unfortunately one such case.

11 MR ELIAS: Sir, I think I have completed my questions, but
12 may I just take the break to consider that?

13 THE CHAIRMAN: We normally break for ten minutes at this
14 time of day or the morning and we will do so now.
15 Please do not talk to anybody about your evidence during
16 the break, General.

17 (11.30 am)

18 (A short break)

19 (11.37 am)

20 MR ELIAS: Just one very short matter.

21 In a statement that you made for the Al-Skeini court
22 case, you indicated that occasionally you were aware
23 that detainees would be held overnight in barracks for
24 tactical questioning before being transferred to the
25 TIF. Do you recall that now?

1 A. No, I can only think that that may have been referred
2 back to the Baha Mousa incident, where he was clearly
3 held overnight.

4 Q. You don't recall any other occasion?

5 A. No, because I was never asked that particular question,
6 no.

7 Q. You were never asked to extend the 14 hours?

8 A. No.

9 MR ELIAS: I follow. Thank you.

10 THE CHAIRMAN: Now I expect you will be asked questions by
11 other counsel, starting with Mr Singh.

12 Questions by MR SINGH

13 MR SINGH: Thank you, Sir. General, may I started by asking
14 you about Somme Company? As I understand it, that was
15 based at Basra Palace; is that right?

16 A. I can't remember.

17 Q. You don't remember that. The Inquiry has heard some
18 evidence from others who were soldiers in Somme Company
19 that it was standard operating procedure for them to
20 hood prisoners on capture and then take them to
21 Basra Palace. You never saw any of that, is that right?

22 A. No, Basra Palace is a very large area.

23 Q. There has been some evidence to the Inquiry from similar
24 soldiers that they were also ordered to put detainees at
25 Basra Palace into stress positions. Again, are you

1 saying that you saw none of that?

2 A. No. The -- it is a big area and the brigade
3 headquarters was down at one end of the whole of
4 compound, the compound.

5 Q. And you were not aware of it happening --

6 A. No.

7 Q. -- even if you didn't see it?

8 A. No.

9 Q. Can I ask you, please, to look at another passage from
10 a statement that Mr Elias has taken you to several
11 times? It is MOD000605. Can we have magnified, please,
12 the middle paragraph, which begins "On the morning of
13 the operation, Sunday 14 September 2003 ..."?

14 You said that you attended Anzio Company
15 confirmatory orders, where Major Englefield, officer
16 commanding of that company, gave his final briefing to
17 his troops. You then described the purpose of the
18 operation and so on. You describe the uneventful
19 encounter at the first hotel and then you say that Anzio
20 Company moved to the second hotel. Again, your patrol
21 entered and immediately went directly to the roof to
22 prevent anyone escaping across the rooftops. I take it
23 that is all accurate, is it?

24 A. Yes.

25 Q. You then continue:

1 "As I had personal role radio ... on the same band
2 as the company's I was able to monitor their radio
3 traffic ..."

4 Then you describe what you were aware had emerged
5 from the searches. Is that again accurate?

6 A. Yes.

7 Q. Can I ask for a document to be put on the screen please,
8 which is at MOD016020? This is a log sheet, as we see
9 from the top left-hand corner. The formation or unit is
10 described as being 1 QLR Main. The logkeeper is
11 described as being Captain Seeds. Do you remember that
12 name at all?

13 A. Vaguely.

14 Q. The date at the top, as we can see, is 14 September
15 2003.

16 A. Yes.

17 Q. That is the date of Operation Salerno, is it not?

18 A. Yes.

19 Q. About halfway down the left-hand column, do you see
20 under the serial heading the number "105"?

21 A. Yes.

22 Q. Then the time is given as 09.50 hours.

23 A. Yes.

24 Q. At 2, are you able to help us with what that annotation
25 means?

1 A. Sorry, which?

2 Q. The sort of circle with a line vertically through it.

3 A. That is call sign 0, which would be the -- I imagine

4 this is the battlegroup net. Looking at it, it is

5 1 QLR Main, so that would be the base station for the

6 battlegroup, so the headquarters net for the whole

7 battlegroup.

8 Q. Yes. To there, from "J10". Can you help the Inquiry

9 with what that means?

10 A. I can only surmise, but I imagine that is the call sign

11 of Anzio Company.

12 Q. Yes.

13 THE CHAIRMAN: I think we heard evidence about what all

14 these were some time ago, but I have to say I have

15 temporarily forgotten, but that sounds right. It is the

16 company to Battlegroup Main.

17 MR SINGH: Sir, I am grateful. It is partly for that

18 reason, just, as it were, to remind ourselves that

19 I hoped that the witness could help us with that.

20 THE CHAIRMAN: Yes.

21 MR SINGH: I want to look at the content of what the event

22 is and then the action. The event is described as

23 something like:

24 "From J10A reports television camera at A1."

25 We think "A1" is referring to the Haitham Hotel.

1 Would that accord with your interpretation?

2 A. I really don't know.

3 THE CHAIRMAN: Again, I think the evidence is that is right.

4 MR SINGH: We have heard that.

5 "About to move 8 [people]. Request direction on
6 method of move to BG Main."

7 Then the "Action" in the right-hand column, do you
8 see, states, "Plasticuffs but no sandbags".

9 A. Yes.

10 Q. Did you listen in to the radio traffic when that was
11 said?

12 A. These are two different nets. The personal role radio
13 is on the net of the internal company net, and the
14 reason that I had the personal role radio on was to make
15 sure that you could deconflict your actions or
16 coordinate your actions with the guys who are moving
17 around the hotel. This is a completely different net.
18 This is the company headquarters reporting back to the
19 battlegroup headquarters, so I would not have heard that
20 on the net. I was not monitoring that net.

21 Q. So do I take it from that that you did have access to
22 the Anzio Company net?

23 A. Yes. Whatever was on the -- whatever was going on the
24 personal role radio, yes.

25 Q. Can we look at a document, please, which may help with

1 that? It is at MOD016789. From the top left hand of
2 the page, this appears to be 1 QLR Anzio. It appears
3 that the compiler of this log is someone called Ainley
4 and the date is 14 September 2003. Do you see that?
5 A. Yes.
6 Q. About halfway down the page, under "Serial [number]", do
7 you see "731"?
8 A. Yes.
9 Q. Again, "To" is "0" and then "J10" we see. Then:
10 "Due to presence of media, how do you wish us to
11 proceed with prisoner handling ...", that appears to
12 say.
13 Do you see that?
14 A. I do.
15 Q. At line 48 -- perhaps line 49 -- the instruction appears
16 to state:
17 "Our normal methods bar sandbagging."
18 A. Yes.
19 Q. Did you hear that?
20 A. No, because on the -- even presuming this is the
21 internal Anzio net, I think I said it in my statement
22 that I left the operation at 7.30 and went back to
23 brigade headquarters. So by that stage I would have
24 left the operation.
25 Q. Forgive me, General, I thought that in paragraph 111 of

1 your statement to this Inquiry you told the Inquiry that
2 you left after the detainees had gone.

3 A. That may be the case. I didn't see the detainees. What
4 I do know is I was back in brigade headquarters by
5 8 o'clock.

6 Q. Can we move to another topic, please? To introduce
7 this, I would like to look with you at a document at
8 MOD031229. Do you see this is a document headed "Death
9 in detention" and dated 18 September 2003?

10 A. Yes.

11 Q. From three pages further on at MOD031232, do you see
12 that it is signed off by a person called Major Fenton?

13 A. Yes.

14 Q. Do you recall seeing this document?

15 A. I can't remember seeing it, but it is quite possible
16 that I did.

17 Q. Who was Major Fenton in relation to you?

18 A. He had just taken over as the chief of staff of the
19 brigade.

20 Q. When he addresses it, going back to the first page if we
21 may, to "Commander" --

22 A. Yes.

23 Q. -- that would appear to be addressed to you, would it
24 not?

25 A. Yes. I just can't remember seeing it.

1 Q. I understand that. The Inquiry has seen this many
2 times. Can we just look at a few passages please
3 together. Paragraph 3 under "Chronology", there is
4 a table and at 10.30 hours on the Sunday, do you see
5 "Hoods placed on detainees"?

6 A. Yes.

7 Q. "Hoods were removed periodically throughout the day by
8 provost staff."

9 A. Yes.

10 Q. Then, in the bottom entry on that page, at 21.30 to
11 22.00 hours:

12 "Battalion provost sergeant ordered hoods and cuffs
13 to be taken off."

14 A. Yes.

15 Q. "TQ team then required that they were put back on."

16 A. Yes.

17 Q. Over the page at 07.30 to 12.00 on the following day,
18 the Monday:

19 "Final three detainees undergo TQ."
20 The right-hand column states:
21 "Hooded again after TQ, and remained that way until
22 detainee died."

23 A. Yes.

24 Q. The last entry on the Tuesday, at 8.30 hours, the second
25 and third columns:

1 "On arrival at TIF, QLR platoon commander accused
2 publicly of brutality by officer commanding TIF."

3 A. Yes.

4 Q. And:

5 "Brigade informed two detainees admitted to hospital
6 with injuries -- full details not known. One
7 subsequently admitted to ... hospital under QLR guard
8 with renal failure. Second returned to TIF."

9 In paragraph 5 on the same page, after saying there
10 is no clear answer about who is responsible for TQ and
11 prisoner handling in theatre, the point is made that:

12 "Responsibility throughout however must be assumed
13 to lie with the CO, delegated to the BGIRO."

14 Under 6, "Procedures", bottom of the page, at
15 paragraph (a), under "TQ", the two tactical questioners
16 are referred to and then it is said that one of them --
17 "It is on his advice that we hood and handcuff
18 detainees, in order to enhance the shock of capture and
19 improve the level of information extracted from the
20 suspect".

21 Presumably, General, when you read this you were
22 shocked?

23 A. I was.

24 Q. Did it raise, at least in your mind, question marks --
25 not necessarily final answers as to who should take

1 responsibility for the fact that these things could have
2 happened at BG Main, but at least question marks about
3 who should bear responsibility for allowing these things
4 to happen?

5 A. Yes.

6 Q. Did it raise, at least in your mind, question marks over
7 what kind of command and leadership Lieutenant Colonel
8 Mendonca was giving at BG Main?

9 A. It must have done.

10 Q. Now, a few weeks later you gave some citations in
11 respect of Colonel Mendonca, did you not?

12 A. I did.

13 Q. Can we just look at a document at BMI --

14 THE CHAIRMAN: I am tolerably familiar with that --

15 MR SINGH: Sir, I am grateful.

16 THE CHAIRMAN: -- and I know its glowing terms. I suspect
17 I know the point you are going to make, but please make
18 it.

19 MR SINGH: I am grateful, Sir. I will do it as quickly as
20 I can. It is at BMI01150. I think one document will
21 suffice for my purposes, General.

22 This is, as the Inquiry knows -- although it is
23 blacked out at the bottom -- you who were then the
24 brigadier -- is that right -- dated 6 October 2003.

25 As the chair has reminded us, it is glowing in its

1 praise for Lieutenant Colonel Mendonca, is it not?

2 A. It is.

3 Q. Was that really an appropriate way to describe him in
4 early October 2003, given the question marks that you
5 just told me about?

6 A. Yes, because when I discussed this citation with
7 General Lamb, we looked at the Baha Mousa issue, which
8 was of course -- the investigation had not completed,
9 the SIB investigation was going on, it was clear that
10 Colonel Mendonca had passed responsibility to the BGIRO
11 in this particular case; but as the investigation was
12 ongoing and the responsibility had lain with the BGIRO
13 for the prisoner handling, I saw no reason to change
14 what I wrote.

15 MR SINGH: General, thank you.

16 Sir, those are my questions.

17 THE CHAIRMAN: Thank you very much. Ms Dobbin?

18 Questions by MS DOBBIN

19 MS DOBBIN: General, in the court martial you were asked to
20 give evidence as to your impression of Major Royce, who
21 was the 1 QLR BGIRO before Major Peebles took over. You
22 said that he was a bright and capable man; is that
23 right?

24 A. I have not -- that's what I believe. I haven't got the
25 evidence in front of me, but --

1 Q. If I can remind you of what you said in the court
2 martial. You said that he was bright and capable, that
3 he had a good brain, that he was a lateral thinker, that
4 he conducted his duties well, that he was a good man for
5 the future and that he had performed well in challenging
6 circumstances. Does that accord with your memory of
7 him?

8 A. Yes.

9 MS DOBBIN: Thank you. Sir, that is all.

10 THE CHAIRMAN: Thank you.

11 Ms Simcock?

12 Questions by MS SIMCOCK

13 MS SIMCOCK: Thank you, Sir.

14 General, at no time prior to the death of Baha Mousa
15 were you aware of Major Clifton having given any legal
16 advice that the hooding of detainees or the placing of
17 them in stress positions was either appropriate or
18 lawful; is that right?

19 A. That's correct.

20 Q. In the discussions after the death of Baha Mousa, no one
21 suggested to you that Major Clifton had given such
22 advice; is that also right?

23 A. That is correct.

24 Q. Had Major Clifton given such advice, would you have
25 expected, as brigade commander, to hear about that,

1 perhaps through your chief of staff at the time?

2 A. I would have expected it to have been a discussion
3 between my deputy chief of staff and the legal adviser
4 and myself because that's how we dealt with personnel
5 instances or stuff that was -- that's how we dealt with
6 legal instances, like rules of engagement within the
7 brigade.

8 Q. Yes. So you would have expected to hear about it at the
9 time, but also, at the very least, you would have
10 expected to hear about it after the death of Baha Mousa,
11 would you not?

12 A. I would.

13 Q. Moving on, could we have on screen, please, MOD054650?
14 Thank you. This is Major Clifton's appraisal report for
15 the relevant time. Do you recognise that document?
16 Perhaps page 3 will be more familiar to you at
17 MOD054652. You see your name and signature there under
18 the date of 10 November 2003; is that right?

19 A. Yes, yes.

20 Q. Did this set out your views on Major Clifton's
21 professional competence and performance at that time?

22 A. It did.

23 Q. We see there that you described him as a first class
24 officer --

25 THE CHAIRMAN: Ms Simcock, I have read it. I am not a jury.

1 MS SIMCOCK: Very briefly, Sir ...

2 Your view at the time was he was a strong and highly
3 capable SO2 legal; is that right?

4 A. That's correct.

5 Q. Does that remain your view of Major Clifton?

6 A. That's my memory of Major Clifton.

7 Q. Your view was that he was a careful lawyer; is that
8 right?

9 A. Sorry, a what?

10 Q. A careful lawyer.

11 A. Yes.

12 MS SIMCOCK: Yes, thank you, Sir.

13 THE CHAIRMAN: Yes. Mr Langdale?

14 Questions by MR LANGDALE

15 MR LANGDALE: General, I have only a very few questions
16 relating to two topics, if I may. Firstly, the matter
17 about which you were asked by my learned friend Mr Singh
18 in relation to your citation with regard to
19 Colonel Mendonca. I think you gave evidence at the
20 court martial that when you had become aware of what
21 apparently had gone on at the TDF at 1 QLR Main, you
22 considered what you understood had gone on and you
23 concluded that it was not something that could be laid
24 at his door personally. That was your view at the time.

25 A. That is correct.

1 Q. I am quoting words -- I can give the reference if
2 necessary and put it up on the screen -- that were used
3 in your evidence.

4 The second matter relates to the issue with regard
5 to the question of discipline in 1 QLR. You have given
6 evidence to the Inquiry already this morning about the
7 matters in relation to which you spoke to
8 Colonel Mendonca. Just this, first of all: did it seem
9 to you that he had, as a result of being spoken to by
10 you, taken appropriate action as the CO?

11 A. Yes.

12 Q. Another aspect of your evidence at the court martial
13 I would like you to deal with: I think you were asked
14 about the suggestion that 1 QLR was an ill-disciplined
15 unit and I think you indicated that, in your view, you
16 would just not agree with the suggestion that they were
17 an ill-disciplined unit.

18 A. I saw a lot of 1 QLR because they were stationed very
19 close to me in Basra and at no time did I see any
20 ill-discipline in that unit.

21 Q. You never felt -- again if I can just cite something you
22 said in the court martial -- that it was a battlegroup
23 that was out of control in that sense.

24 A. Certainly not, because if I had felt that I would have
25 taken the appropriate action to deal with it, as I did

1 when the rumours surfaced.

2 MR LANGDALE: Thank you. That is all I need to ask.

3 Thank you, Sir.

4 THE CHAIRMAN: Mr Evans?

5 Questions by MR EVANS

6 MR EVANS: Thank you, Sir.

7 General Moore, you said in evidence that there were
8 plenty of opportunities to make you aware of problems if
9 there had been any. How, if I can put it this way, were
10 you plugged into your brigade and at what level?

11 A. First of all we had been working together for 16 months
12 before we deployed to Iraq, including quite a busy
13 training year, therefore I knew all the company
14 commanders personally, I knew them socially, I had
15 worked with them, and -- in fact from captains and
16 above.

17 Therefore, when I was out and about in Basra and
18 Maysan, I would see the company commanders on a very
19 regular basis and would have a chance to talk to them
20 and their sergeant majors. I also, through the evening
21 sitreps, would talk to the commanding officers, at first
22 every night and then two or three times a week, and then
23 on a Friday we would all get together to discuss what
24 was happening on operations and where we were going to
25 go.

1 In addition, I spent a lot of time with the
2 regimental sergeant majors, which I got in on a periodic
3 basis, to get a feel for what was happening and how they
4 thought their battalions were coping with the
5 operations. So I saw a lot of people a lot of the time.

6 Q. So if there had been any unhappiness about issues such
7 as prisoner handling, would you have expected those
8 issues to have come to your attention by one or other of
9 the routes that you have described to us?

10 A. Yes.

11 Q. Have you seen the video of Corporal Payne in the TDF?

12 A. I have.

13 Q. What was your reaction to that video when you saw it?

14 A. Well, it was just horrible.

15 THE CHAIRMAN: I don't think you really need to labour that,
16 Mr Evans.

17 MR EVANS: Perhaps I can put a question this way: would you
18 have considered law of armed conflict training that you
19 and your soldiers had received prior to going to Iraq to
20 have been sufficient to have let any soldier know that
21 the sort of treatment witnessed in that video was not
22 appropriate?

23 A. Yes.

24 Q. You were asked a little about FRAGO 29 and the
25 responsibilities of the BGIRO, as we call him. May we

1 just have, please, that order on screen briefly? It is
2 at MOD017091. If we could blow it up at the bottom of
3 the page at letter (c). Thank you. This is FRAGO 29,
4 General. If you just look at paragraph 1:

5 "Battlegroups are to appoint a BG internee review
6 officer (BGIRO) who is responsible to the CO for making
7 the initial decision as to whether an individual is to
8 be interned on the information provided by the patrol.
9 This is likely to be the battalion ops officer or IO."

10 Then if we can turn the page:

11 "The BGIRO is responsible for maintaining an audit
12 trail which will start following the point of capture
13 through to sustained internment or release of
14 individuals."

15 Is that the documentary record to which you referred
16 in your evidence?

17 A. It is.

18 Q. You were asked about your reaction to Baha Mousa's death
19 and you said that you were horrified. What did you do
20 after that as far as Baha Mousa's family was concerned
21 and the wider public concern that would obviously have
22 surrounded this event?

23 THE CHAIRMAN: Again, I don't want to stop you, but I am
24 well aware of what he put in his statement and he
25 obviously did a great deal to try to repair the damage.

1 Who wouldn't?

2 MR EVANS: Well, I am grateful, Sir. I need not take you to
3 that and I will move on to the final matter.

4 You were asked a little about the change of timing
5 between the earlier FRAGO which allowed six hours for
6 transfer to the TIF at Umm Qasr and FRAGO 29 which
7 extended the period allowed for transport to 14 hours.
8 You said, I think, in your evidence that, because of the
9 area of operations which included Maysan and Al Amarah,
10 it took -- and I think these were your words -- "an
11 awful long time" to get people physically down to
12 Umm Qasr. Can you tell us how long it did take to get
13 from -- well, first of all, Maysan down to Umm Qasr,
14 approximately?

15 A. It would have been a three- or four-hour drive without
16 stopping.

17 Q. What about Al Amarah? Would that be about the same?

18 A. Yes.

19 Q. Were there security issues about that journey as well?

20 A. Yes. You could not have just driven. You would have
21 had to have moved tactically in places, especially when
22 going through Basra. It would have been a -- a straight
23 drive was easy, but no -- there was no such thing as
24 a straightforward drive. The chance of being ambushed
25 or bombed on the way was relatively high.

1 Q. So just in terms of physically arranging that kind of
2 transport for detainees, would there have been a time
3 delay built into the process of arranging transport to
4 take prisoners to Umm Qasr by road from those outlying
5 districts?

6 A. I think that would have been incorporated in the
7 14 hours, if that is what you are asking.

8 Q. Well, I am really after why it was felt necessary to
9 extend it to that length of time.

10 A. Yes.

11 THE CHAIRMAN: He is not responsible for the order. You
12 might have asked the other witnesses, but I see the
13 point.

14 MR EVANS: I am trying to address the factual matters, Sir,
15 yes.

16 THE CHAIRMAN: I see the point.

17 MR EVANS: I follow. Finally this, in terms of helicopter
18 transport, with the heat that was building up by that
19 stage in Iraq, did that have an impact on the ability of
20 helicopters to fly?

21 A. Yes. For example, when we had the riots and the whole
22 of Basra seemed to be on the streets in August, there
23 was only one helicopter which could fly, which was
24 a chinook, and it was only able to fly for half an hour
25 during the period. I remember getting up in the

1 helicopter to try to get a view of the city as to where
2 things were. So helicopter transport was very limited.

3 MR EVANS: Thank you. Thank you, Sir.

4 Further questions by MR ELIAS

5 MR ELIAS: General, just one matter: you were asked by
6 Mr Singh questions as to what you may or may not have
7 overheard on the net. I think the time being put to you
8 was entries at 9.30 or thereabouts. Please look at
9 MOD000599. It is your statement, do you recall, of 29
10 June 2005. If we go over the page, you give the account
11 which I put to you a littler earlier, but in about
12 line 7 or 8 can you see:

13 "My patrol left the operation at 08.00 hours after
14 the suspects had been detained."

15 That appears to have been your recollection then.

16 That's when you would have left the scene, is it?

17 A. Yes, yes.

18 MR ELIAS: Thank you.

19 Questions by THE CHAIRMAN

20 THE CHAIRMAN: Before you go, just one or two things that
21 I want to ask you about.

22 So far as your talks with the regimental sergeant
23 majors, I know from evidence that I have heard that the
24 RSM of 1 Queen's Lancashire Regiment thought that he had
25 been cut out of the loop, as it was put, in relation to

1 handling detainees. Did he ever tell you that?

2 A. No, Sir.

3 Q. Would you have expected him to say anything about that?

4 A. Yes, Sir.

5 Q. Would you have --

6 A. Could I qualify that? I think if it was a concern to

7 him, I would have expected him to -- if it was

8 a concern -- I would expect him to raise any concern he

9 had to me. So if it was a concern to him, I would have

10 expected that he might have raised it.

11 THE CHAIRMAN: I follow. Now, I expect that you have read

12 some of the evidence about what happened, have you, in

13 the TDF?

14 A. I have read some of it, Sir, yes.

15 THE CHAIRMAN: Have you read Corporal Payne's evidence?

16 A. No, sir.

17 THE CHAIRMAN: Probably not.

18 It certainly seems that on that period of time, to

19 say the least, he was a little out of control. Would

20 you have expected the regimental sergeant major, with

21 his ear to the ground, to have known that such

22 a corporal might be out of control?

23 A. I would have expected the regimental sergeant major to

24 be able to identify anybody who was out of control.

25 THE CHAIRMAN: Before the event or as the event occurs?

1 A. Well, the regimental sergeant major will have a very
2 good feel for what is happening across the battalion, so
3 I would expect him to know, if there was a liability,
4 where it would exist.

5 THE CHAIRMAN: If Corporal Payne was a liability, would you
6 have expected him to have known about that?

7 A. Yes, Sir.

8 THE CHAIRMAN: You see, again there is evidence that the
9 provost sergeant, Sergeant Smith, didn't apparently pay
10 as much attention to the prisoner handling -- and I am
11 talking generally at the moment -- as Corporal Payne.
12 The regimental sergeant major, ought he to have known
13 that that might involve a risk?

14 A. Yes, the regimental sergeant major was located in the
15 same barracks as where the provost staff were, so
16 I imagine that he would have known if there was a risk.

17 THE CHAIRMAN: That's the sort of thing a good regimental
18 sergeant major ought to know, isn't it?

19 A. That's exactly the reason I used to have them in, to try
20 and get --

21 THE CHAIRMAN: To talk to them.

22 A. -- to get a feel for what was happening in the
23 battalions and find out if they had a concern.

24 THE CHAIRMAN: Thank you. Now two other matters. We know
25 that the detainees were guarded by some soldiers who had

1 taken part in the raid. Would you have thought it
2 sensible for them to have been told, just before they
3 went on guard, that there was a rumour, at any rate,
4 that the detainees were concerned with the murder of the
5 RMPs?

6 A. I don't think I would have been concerned because
7 I would have expected them to act appropriately.

8 THE CHAIRMAN: Right. So you don't think that there was
9 really any concern about telling them that?

10 A. No -- I'm sorry, Sir, I don't follow your line of
11 questioning.

12 THE CHAIRMAN: Well, let me be frank. One of the things
13 that passes through my mind is whether it was really
14 sensible for them to be told that they were guarding
15 people who may have been concerned in the murder of the
16 RMPs with, as you put it, feelings running high or might
17 be running high.

18 A. I don't know whether they were told or not, but I guess
19 people would have known in the --

20 THE CHAIRMAN: There is evidence they were told.

21 A. Okay, Sir.

22 THE CHAIRMAN: I wondered if you thought that was a sensible
23 thing.

24 A. I think if they were -- if they were told that these
25 people could be dangerous because they had been

1 involved, that would be a sensible thing to do because
2 you would be -- you would separate them out from being
3 perhaps maybe a detainee who was being held before he
4 was going to be handed back to the Iraqi police.

5 I think there would be an element that these guys could
6 have been dangerous and I think that would have been
7 sensible. But I can see why somebody was told that.

8 THE CHAIRMAN: All right. The final thing I want to ask
9 about is this: I, at any rate, get the impression that
10 this Inquiry has heard a lot more about what went on
11 than the court martial heard. I don't want you to
12 comment about that. I simply want you to tell me if
13 you, yourself, having read some of the material that has
14 been before the Inquiry, get the same impression.

15 A. I think --

16 THE CHAIRMAN: There is a reason for asking this. If you
17 don't know, then please say so.

18 A. I don't know, Sir.

19 THE CHAIRMAN: The question I was going to ask you is
20 whether you thought you knew more about
21 Colonel Mendonca's status as a commanding officer of the
22 battalion now than you did when you were giving your
23 evidence to the court martial.

24 A. I haven't read as much -- I haven't read a lot about
25 the -- I have followed the Inquiry, but not read --

1 THE CHAIRMAN: But you haven't read the detail of it?

2 A. Not in depth.

3 THE CHAIRMAN: All right. That's a fair point. Thank you
4 very much.

5 Well, I am very grateful to you for sparing time to
6 come to the Inquiry to give your evidence and answer
7 questions. Thank you very much. You are now free to
8 go.

9 A. Thank you, Sir.

10 MR ELIAS: Thank you, Sir.

11 MR MOSS: Sir, I call Major General Richard Barrons, please.

12 THE CHAIRMAN: Yes.

13 General, if you could remain standing for a moment
14 or two, I will ask that you take the oath.

15 RICHARD LAWSON BARRONS (sworn)

16 THE CHAIRMAN: Thank you very much. Please sit down. Make
17 yourself as comfortable as you can in that rather
18 uncomfortable witness-box. If you would be kind enough
19 to station yourself so that you can speak into the
20 microphone, then we will all be able to hear what you
21 have to say.

22 I am sorry if you have been kept waiting, but we are
23 now ready to hear your evidence. Thank you very much.

24 Questions by MR MOSS

25 MR MOSS: Would you start, General, by giving your full

1 name, please?

2 A. My name is Richard Lawson Barrons.

3 Q. If you look on the table in front of you, you should
4 find a copy of your statement to the Inquiry. Please
5 turn up the last page, which we have at BMI06243. For
6 understandable reasons I think it was signed
7 electronically at the time when you gave the statement
8 to the Inquiry on 2 December of last year. Are you able
9 to confirm to the Inquiry that when you gave this
10 statement, the contents were true to the best of your
11 knowledge and belief?

12 A. They were true. There is, however, one typo in
13 paragraph 59.

14 Q. In 59?

15 A. In the second sentence which currently reads, "I was
16 however aware of FRAGO 152 ...", it should read, "I was,
17 however, not aware of FRAGO 152 ..."

18 Q. Thank you. General, as you may have heard with the last
19 witness, your statement stands as your evidence to the
20 Inquiry and my task is to take you to certain matters
21 arising out of it. May we start, albeit briefly, with
22 your career history? I think you tell us that you
23 joined the army back in 1977.

24 A. Correct.

25 Q. Your early career I think with the Royal Regiment of

1 Artillery?

2 A. Correct.

3 Q. You went to the army staff college in 1991 and I think
4 then had some early experience as a chief of staff in
5 the rank of major with 11 Armoured Brigade; is that
6 right?

7 A. That's correct.

8 Q. You saw service in the Balkans and also saw service
9 while a major as OC of a battery in Northern Ireland?

10 A. Very briefly, yes.

11 Q. As a lieutenant colonel, you tell us in your statement
12 that you served as military adviser in Bosnia, as the
13 military assistant to the chief of the general staff,
14 but that you also served as a commanding officer, being
15 CO of the 3rd Regiment Royal Horse Artillery.

16 A. Correct.

17 Q. Of relevance to this Inquiry, in 2001, as a full
18 colonel, were you posted as the chief of staff of
19 3 (UK) Division?

20 A. That's correct.

21 Q. And served with them for Op Telic in the second half of
22 2003?

23 A. That's correct.

24 Q. I think you are now, is this right, a major general
25 still in the army?

1 A. That's correct.

2 Q. And serving as the chief of staff of the Allied Rapid
3 Reaction Corps?

4 A. No, that is not correct. I was the chief of staff of
5 the Allied Rapid Reaction Corps at the time the
6 statement was drafted in the summer of last year and
7 I was moved at very short notice to take up a post in
8 Afghanistan in headquarters ISAF in late October last
9 year, from which I have just returned.

10 Q. Thank you. May I ask you some questions about your
11 training, please, General? First of all may we start
12 with matters relating to pre-deployment training for
13 Op Telic? May we look at paragraph 14 of your
14 statement, please? If we can have that on the screen.
15 BMI06220. You tell us there, towards the bottom of the
16 page, that the pre-deployment training was very much
17 a rushed process and you say that that was due to being
18 committed to Operation Fresco. The Inquiry has heard
19 quite a lot about that.

20 Can I just ask you this? Was Operation Fresco the
21 only reason that gave rise to difficulties at the
22 pre-deployment training stage for Op Telic 2?

23 A. It is the only driving reason that I can recall, simply
24 because the force elements that were committed to
25 Op Fresco could not at the same time be training for

1 their anticipated deployment to Iraq.

2 Q. There has been some evidence to the Inquiry -- both in
3 relation to Op Telic 1 and Op Telic 2 -- about late
4 warning of deployment. Was that a factor --

5 A. Yes.

6 Q. -- in the training?

7 A. Yes, that was a factor.

8 Q. So that was a factor too. But Fresco the predominant?

9 A. Yes. Even if the warning had been given, the fact is
10 that until the Government was content to release the
11 forces from Op Fresco, they weren't available to devote
12 themselves to the training that they would normally do.

13 Q. Over the page, paragraph 14, you say that as a result
14 there was a compression of what needed to be done,
15 reduced training and preparation to less than optimal
16 levels. Was that perhaps, in your statement, putting it
17 a bit low?

18 A. No, I stand by that. It was reduced to less than
19 optimum levels. And, of course, that then has to
20 subsequently take into account the fact that the
21 situation in Basra changed very quickly once they had
22 deployed.

23 Q. Would you yourself, in your role, General, as chief of
24 staff of the division have had any role in the training
25 programme?

1 A. I had an oversight role, but much of it fell to the
2 brigade and the army's training organisation. Much more
3 of my focus was on the drawing together of the
4 multinational division partners.

5 Q. Just one feature if I may take it shortly: there is
6 evidence given to the Inquiry which would tend to
7 suggest that, as far as prisoner handling is concerned,
8 the only training that was provided by OPTAG for
9 Op Telic 2 was as part of public order training, which
10 concentrated very much on actions taken at the point of
11 capture, and that there may not have been any other
12 training at all in the OPTAG package on prisoner
13 handling. Was that something of which you were aware?

14 A. No.

15 Q. Does that surprise you?

16 A. No, given the time available for training and the fact
17 that the OPTAG training would have assumed that normal
18 annual law of armed conflict training had been done
19 before the pre-deployment training.

20 Q. Did you understand that the normal annual law of armed
21 conflict training would descend into detail of how
22 prisoners should be handled on operations?

23 A. I understood that it would cover the principles.

24 Q. May I turn then to your own earlier training, if I may?
25 May we look, please, next, at paragraph 59 of your

1 statement in that context, General? You say there that
2 you have not given any training on the practice or
3 prohibition of deprivation of sight by hooding,
4 blindfolding or the use of blacked-out goggles. May
5 I ask you, if you hadn't given any training, whether you
6 had received any training in that regard, sight
7 deprivation of prisoners, at any stage in your long
8 career?

9 A. No.

10 Q. What about the use of blindfolds or hoods on exercises
11 at any time prior to Op Telic? Is that something that
12 you had seen --

13 A. No.

14 Q. -- blindfolds or hoods used?

15 A. No, not at all.

16 Q. May I ask you, then, if I may, about your understanding?
17 If it is not something that you had any training in and
18 it is not, General, something which you had seen in
19 exercises, would you, on the eve of your deployment to
20 Op Telic 2, as it were, have had an understanding as to
21 whether or not prisoners could be deprived of their
22 sight in certain circumstances?

23 A. My understanding was that prisoners must at all times be
24 treated humanely.

25 Q. Understanding that, would that have given you an

1 understanding as to whether they could be deprived of
2 their sight or is it something which you simply have not
3 turned your mind to?

4 A. I don't believe I turned my mind to it.

5 Q. If you had been asked the question at the time by
6 perhaps a subordinate officer, "Can we use blindfolds on
7 prisoners?", what would your answer have been?

8 A. My answer would have been that we would need to take the
9 appropriate legal advice to be clear.

10 Q. So far as stress positions are concerned, had you had
11 any specific training in relation to stress positions?

12 A. No.

13 Q. May we look at paragraph 68 of your statement, please?

14 This is the section, to give you the context, of your
15 statement, General, that dealt with tactical questioning
16 and interrogation. Do you see that in paragraph 68,
17 having been asked about stress positions, you say
18 a third of the way down the paragraph --

19 A. Yes.

20 Q. "I do not think that the use of stress positions has any
21 value in the conduct of military operations ... save
22 possibly for certain special forces operations where
23 temporary (by which I mean for a period of minutes) use
24 of stress positions preserves the susceptibility of
25 a high value detainee to provide time-sensitive

1 intelligence to a TQer who arrives ... on the scene."

2 You go on to say, a little further down, that your
3 understanding, which I have just quoted to you:

4 "... is derived from generic pre-operational
5 training received from OPTAG prior to Op Telic 2."

6 Can I just ask you about that? What part of the
7 OPTAG training gave you an understanding about the use
8 of stress positions?

9 A. My understanding from the OPTAG training was that stress
10 positions were unlawful and were not to be used. The
11 speculation in paragraph 68 about a dispensation for
12 certain special forces operations I think is unhelpful
13 on my part. I am not a special forces trained officer
14 and I am speculating that in some circumstances, for
15 example connected theoretically to things like weapons
16 of mass destruction, then a different regime might
17 reasonably have been applied. But I am not -- I am
18 speculating there from a position of no knowledge.

19 Q. Thank you. May I concentrate then on the OPTAG
20 training? You say that it was taught on the OPTAG
21 training or you understood from the OPTAG training that
22 stress positions were unlawful. In what part of the
23 OPTAG training did that come up, can you remember?

24 A. I can't recall.

25 Q. Might it have been in the section of the OPTAG training

1 that dealt with the theory of conduct after capture?

2 A. I can't recall.

3 Q. Thank you. Finally, so far as training is concerned,

4 then, may I just ask you this? Were you aware, prior to

5 Op Telic 2, of what is sometimes referred to as the

6 "Heath directive", the statement by Prime Minister Heath

7 in 1972, the conclusions of the Parker Report?

8 A. No, not at all.

9 Q. Did you have any awareness of a specific prohibition on

10 the use of what's known as "the five techniques"?

11 A. No.

12 Q. Can you remember, when at army staff college, whether

13 there was a section of the training that dealt with

14 counter-insurgency?

15 A. There was a section of training that dealt with

16 counter-insurgency.

17 Q. You don't remember the Parker Report or --

18 A. No.

19 Q. -- coming up during the COIN training?

20 A. No, this is, after all, 1991.

21 Q. Thank you. May we turn then, please, to Op Telic

22 itself? Can we start just briefly with the chain of

23 command and your role? Your general officer commanding

24 of course was General Lamb. That is right, isn't it?

25 A. Correct.

1 Q. There would have been a deputy chief of staff. Was that
2 Colonel Le Grys?

3 A. Indeed.

4 Q. You set out for us in paragraph 29 of your statement --
5 can we have a look at it, please -- the chain of command
6 in relation to prisoner handling matters and who you
7 would have expected to be involved in those matters.
8 You include the GOC and yourself. Then you say:

9 "... Colonel Barnett (commander legal),
10 Colonel Le Grys [as the deputy chief of staff] ...
11 Colonel Warren (provost marshal) and ... Colonel
12 Le Fevre ... [on the intelligence side]."

13 Does that remain your understanding of the main
14 players, as it were, in relation to prisoner handling
15 matters?

16 A. It is.

17 Q. You go on to say that you would expect the media and
18 POLAD to have an involvement as well. But is it
19 apparent from paragraph 19 that you are accepting that
20 you yourself had some responsibility in relation to
21 prisoner handling matters?

22 A. I completely accept that.

23 Q. Would that be in particular in relation to the G2
24 intelligence and the G3 operations side, those being the
25 branches that would routinely --

1 A. Indeed.

2 Q. -- be reported up through the chief of staff rather than
3 the deputy chief of staff?

4 A. Correct.

5 Q. The Inquiry has heard quite a lot of evidence now about
6 the role of the chief of staff. You, of course, were
7 the senior staff officer -- would this be right --
8 responsible for ensuring the smooth running of the staff
9 side at the divisional headquarters?

10 A. Indeed.

11 Q. Would you accept that you had a duty to alert the GOC to
12 matters which you thought he might need to know about
13 that had come to your attention?

14 A. Indeed.

15 Q. And that your role would have involved putting into
16 effect the intent of the GOC?

17 A. That's absolutely correct.

18 Q. So far as the handover is concerned that you received,
19 you detail in your statement the process for the relief
20 in place. Of course 3 Division was taking over, wasn't
21 it, from 1 (UK) Division. But it is right, as you
22 stress in your statement, is it, that there was for you
23 the additional complication that it was going to be
24 a multinational division for Op Telic 2? Is that right?

25 A. That's correct. It was both a relief in place of one UK

1 divisional headquarters by another and the major step
2 change in a transition to Multinational Division
3 (South-East).

4 Q. I hope I will be forgiven for not going to the detail of
5 it in your statement, but you do set out some of the
6 particular challenges that that gave rise to: different
7 rules of engagement, communication and IT issues, so far
8 as the other troop contributing nations were concerned.
9 Would that be right?

10 A. Indeed. That is absolutely right.

11 THE CHAIRMAN: Can I just ask this? How would you then
12 refer to the 3 (UK) Division? Would you refer to it as
13 the "Multinational Division" or --

14 A. Sir, I would be very clear that Multinational Division
15 (South-East) is not a shorthand for 3 (UK) Div. 3 (UK)
16 Div provided the staff framework for Multinational
17 Division (South-East). They are not synonymous.

18 THE CHAIRMAN: So the multinational part of it came into the
19 divisional headquarter's responsibility?

20 A. Indeed. In fact that was our role as a multinational
21 headquarters -- no longer as a national divisional
22 headquarters.

23 THE CHAIRMAN: No. So there was no other organisation or
24 formation that took over the multinational part of it?

25 A. No. Our primary role was as a multinational

1 headquarters and we retained some specific UK national
2 responsibility.

3 THE CHAIRMAN: Thank you.

4 MR MOSS: Presumably and in fairness to you, General, in
5 taking over as the chief of staff at the divisional
6 level that had the multinational element and having to
7 coordinate that as the chief of staff, you presumably
8 would have had a heavy focus -- certainly at the time of
9 the handover -- of coordinating the multinational
10 element of the division?

11 A. My primary focus was the construction of a multinational
12 division and its place within the US-led coalition
13 operation.

14 Q. The handover that you received was presumably from your
15 predecessor, Colonel now General Marriott; would that be
16 right?

17 A. That's correct.

18 Q. You tell us in your statement -- correct me if I have
19 this wrong -- that you would not really have expected,
20 so far as your personal handover is concerned, to have
21 received many documents physically.

22 A. Absolutely.

23 Q. Such as it was, you would have perhaps expected the main
24 operational order to be a document that was handed over
25 and looked at, but otherwise perhaps a briefing on the

1 key issues.

2 A. The focus would have been on a discussion of the key
3 issues. There would have been very little time for
4 requirement to look at detailed documents during the
5 handover.

6 Q. I am going to come on shortly to FRAGO 152. You will
7 know the order that I am referring to, I think, in
8 saying that, the early order from Op Telic 1 --

9 A. Yes.

10 Q. -- that contained the prohibition on covering prisoners'
11 faces. Just at a general level, how would you expect
12 extant orders that still had a relevance to be handled
13 then within a divisional handover?

14 A. Within the divisional staff handover, those staff
15 branches that held extant documents would be expected to
16 hand them over to their successors, so that everyone was
17 quite clear what the extant set of instructions were and
18 where to find them.

19 Q. So when an Inquiry such as this is looking at
20 a particular document, we should be interested to
21 understand which of the staff branches the order would
22 have been most relevant to, to understand where it
23 should have figured in the handover. Would that be
24 fair?

25 A. Indeed.

1 Q. So far as detainee issues are concerned, may we look at
2 paragraph 25? Still dealing with the handover, you tell
3 us that it is possible that you discussed detainee
4 issues with Colonel Marriott. You go on to say you
5 recall a very brief passage in a conversation on other
6 matters in which Colonel Marriott remarked that hooding
7 was banned.

8 Can I just ask you in general terms, are you able to
9 recall now anything else about that discussion of a ban
10 on hooding?

11 A. No, I am not.

12 Q. You tell us in your statement that you don't recall the
13 context in which it arose. Do you remember -- and I
14 don't want you to guess -- one way or the other whether
15 any deaths in custody were discussed at the handover or
16 whether the Breadbasket incident might have been
17 discussed?

18 A. You have asked me not to guess. My recollection is very
19 patchy, but I am -- I sense the conversation arose as
20 a result of a general discussion about things like the
21 Breadbasket incident.

22 Q. Again, if you really don't remember, please do say so,
23 but can I ask: do you remember whether Colonel Marriott
24 mentioned to you that there had been differences of view
25 and some debate between different staff officers and

1 different formations about whether or not hooding should
2 be prohibited?

3 A. No, I have no recollection of that at all.

4 Q. If that was mentioned, do you think it is something that
5 you would be likely to recall?

6 A. Yes.

7 Q. I think you made a correction that may be relevant to
8 this at the beginning of your evidence. Can you just
9 help us? Do you recall now whether or not you
10 physically saw that order, FRAGO 152, the one that
11 contains the prohibition on covering prisoners' faces?

12 A. I have no recollection at all of seeing FRAGO 152.

13 Q. The Inquiry has heard some evidence that, for some
14 soldiers at least, hooding prisoners at the point of
15 capture would have been seen as routine or a standard
16 operating procedure. Can I ask you first of all, does
17 that surprise you if there has been significant evidence
18 to that effect from soldiers?

19 A. It does surprise me.

20 Q. May we look at paragraph 27 of your statement, please?

21 You set out there that during the handover of any post,
22 you would expect the incumbent to pass on all
23 information and its location that his successor would
24 need to be able to take on the work as seamlessly as
25 possible.

1 Against that background, can we turn to have a look
2 at FRAGO 152 please? We have it at MOD019145. The date
3 of it is 20 May and it is obviously an Op Telic 1, 1
4 (UK) Armoured Division order. The FRAGO itself dealt
5 with some graffiti analysis issues first and then
6 "Legal", with renewed guidance being attached.

7 If we go over the page, we see the renewed guidance
8 entitled "Detention of civilians". It had a section
9 dealing with the rules of engagement, the power to
10 detain and the power to intern and a section on minimum
11 force. If we just turn to that briefly, just so you
12 have the context. At paragraph 4, "the use of
13 reasonable force", and then timescales for handing over:

14 "Within six hours of detention does not mean that
15 a unit can hold for up to six hours but ..."

16 Then over the page, the guidance given in the second
17 line down:

18 "Under no circumstances should their faces be
19 covered as this might impair breathing."

20 And a reminder about the Geneva Convention, military
21 law and the conclusion, just to give the flavour of it.

22 Having refreshed your memory of that, can you help
23 us with this? Which branches do you think ought to have
24 been involved in FRAGO 152 being handed over at
25 divisional level?

1 A. That FRAGO was of direct interest to obviously the legal
2 branch, to the intelligence branch in that they
3 certainly and clearly dealt with detainees, of direct
4 interest to the provost branch, who deal with policing
5 matters, to the political adviser -- the POLAD -- to the
6 media branch and to the G3 operations branch as the
7 coordinator of all other aspects of the headquarters,
8 given the significance of the detainee issue generally.

9 Q. If you would take it from me for the moment -- you may
10 remember it yourself, General, from later orders -- but
11 the timescales I briefly referred to on the previous
12 page, paragraph 4, were subsequently changed even during
13 Op Telic 1, so those parts of this order were no longer
14 the relevant and extant timescales by the time of the
15 handover.

16 Given that that was the case, can I ask you, in
17 general terms, how would you have expected this
18 provision about not covering prisoners' faces to be
19 cascaded down so that Op Telic 2 lower formations and
20 soldiers on the ground would have been aware of it?

21 A. If we are talking about at the moment of issue of this
22 document in May 2003 --

23 Q. Forgive me, my fault. I am talking about the latter
24 stage. At the stage of the handover --

25 A. Okay.

1 Q. -- obviously one would expect it to have been cascaded
2 down during Op Telic 1, shortly after the date of its
3 issue, but what about when it comes to Op Telic 2? How
4 should brigade and how should soldiers on the ground
5 have come to know of it?

6 A. As an extant order, it is an extant order. So at the
7 level of the brigade headquarters, the incoming brigade
8 should have been handed the set of extant instructions
9 and briefed on it. The same should have occurred at
10 battlegroup level, where the incoming commanders -- the
11 commanding officer and the company commanders and the
12 battlegroup ops officers -- simply should have had an
13 exchange of extant instructions.

14 Q. So there is a process, as it were, of horizontal
15 communication, battlegroup to battlegroup --

16 A. Yes.

17 Q. -- brigade on brigade?

18 A. Yes.

19 Q. What about, though, cascading it back down? It might be
20 said that for some soldiers this was news, if you like,
21 it was a change of procedure that they couldn't cover
22 prisoners' faces and couldn't use sandbags. Would there
23 not have been a case for this being re-issued from the
24 top, from divisional headquarters, as an SOI, to make
25 clear that prisoners' faces shouldn't be covered and

1 that prisoners shouldn't be hooded?

2 A. It would have been reasonable for the divisional
3 headquarters to have re-issued an instruction if it had
4 been aware that there was either a significant change or
5 that there was doubt. But in the absence of either of
6 those two things, there would have been no reason for
7 the divisional headquarters to alight on it.

8 THE CHAIRMAN: Sorry, just let me read what you said because
9 I have to see it on the transcript.

10 If there had been a significant change or if there
11 had been -- may I put it in this way -- any problems
12 that you knew about it, is that right?

13 A. Correct, Sir. If the incoming force had, on being
14 briefed that this was the extant instruction, been
15 surprised by that or it had created any sense of doubt,
16 then that should have been raised by the chain of
17 command to the divisional headquarters and an order to
18 establish clarity should then reasonably have been
19 issued. But in the absence of any indications that
20 there was doubt or uncertainty or confusion, there would
21 have been no reason for the divisional headquarters to
22 think that it had to re-issue an instruction that was
23 already extant.

24 MR MOSS: May I just explore that with you briefly? It may
25 be said that that process makes the knowledge of

1 Op Telic 2 soldiers dependent upon two things: one is
2 that the order got down in the first place during
3 Op Telic 1; the second is that the horizontal exchange
4 of information from battlegroup to battlegroup has been
5 carried out efficiently. Would you agree with that?

6 A. I would say there are three ways. There are three parts
7 to this particular aspect. The first is that the order
8 should have been conveyed to all members of Op Telic 1,
9 as you say; secondly, that during the handover between
10 the incoming 19 Brigade and the outgoing 7 Brigade, at
11 all levels of the chain of command down to company level
12 there should have been a handover of those instructions;
13 thirdly, key pieces of information like that should have
14 formed part of the pre-deployment training for
15 19 Brigade in that the in-place force, 7 Brigade, should
16 communicate that sort of thing back to the UK training
17 machine to make sure that the appropriate training
18 occurs before deployment.

19 Q. At your level, if one goes back to that handover that
20 you had with Colonel Marriott -- and appreciating that
21 there are many issues that would have been in your area
22 of responsibility obviously -- did you do anything
23 yourself to make sure that the prohibition on hooding
24 that you had been alerted to was something that was
25 known to the lower formations and to Op Telic 2 troops?

1 Did you check that position?

2 A. No, I don't believe I did and I don't believe at the
3 time that there was any sense that it was an issue that
4 was in doubt or needed re-affirming.

5 Q. Did you become aware at any stage yourself or hear
6 suggestion or rumour of the use of hoods during
7 Op Telic 2 prior to Baha Mousa's death?

8 A. No, I did not.

9 Q. If, as the Inquiry has heard, at least on some evidence,
10 that was a standard operating procedure when 1 QLR
11 arrested suspected insurgents and that it was something
12 that was used by a number of the 19 Mech Brigade
13 battlegroups, at least in the early stages of
14 Op Telic 2, is that something which should have filtered
15 up one way or the other to MND(SE) level?

16 A. If that was the case, it is something that, had it been
17 made known to the divisional headquarters, the
18 divisional headquarters would absolutely have acted
19 on it.

20 Q. That doesn't quite answer my question though; that's to
21 say, "If we had known, we would have done something".
22 Should it have been something that filtered up and was
23 something that should have been within the awareness of
24 the divisional headquarters if it was happening on the
25 ground?

1 A. The divisional headquarters will depend on that
2 information being provided by its subordinate chain of
3 command or by some other third party.

4 Q. Again, if it is something that was happening on a fairly
5 routine basis, if the system had been working properly,
6 would you have expected people at divisional level to be
7 aware of it?

8 A. You would have to define what you mean by "the system
9 working properly".

10 Q. The system whereby those at brigade would understand
11 what was happening on operations and that would be
12 passed up in various forms of assess reps and meetings
13 and so on to divisional headquarters?

14 A. I would expect that if the chain of command was in any
15 doubt about the procedures that it was applying or was
16 detecting things that it felt was inappropriate, I would
17 have expected them -- indeed required them -- to report
18 it.

19 Q. Thank you.

20 May we turn then to Op Telic once you were underway,
21 as it were, in your post? I will deal with this matter
22 briefly, but you devote quite a bit of your statement --
23 it is not a criticism at all -- to the fact that acting
24 as the occupying power, your division was responsible
25 for both internal and external security -- that is

1 right, isn't it -- in the area of operations.

2 A. Correct.

3 Q. You set out in some detail the fact that the
4 requirements of that and the expectation of the local
5 population was simply beyond the capability of your
6 force to discharge. Does that remain your view?

7 A. Absolutely.

8 Q. Presumably the expectations that you are speaking of
9 there are such matters as the restoration and the
10 maintenance of the infrastructure, of the services, of
11 the administration and governance, those sort of
12 matters?

13 A. Correct.

14 Q. Again, just taking it briefly, you set out -- again
15 I don't take you to the detail -- the particular
16 challenges early in Op Telic 2 that were faced. First
17 of all, a rise in the level of insurgency. You set out
18 that that affected the electricity supply, which was
19 cut, leading to difficulties with oil, air-conditioning
20 and so on, all of those making the operational
21 circumstances more and more difficult in Op Telic 2 --
22 would that be right?

23 A. That is absolutely correct.

24 Q. -- and together with that, the climatic conditions,
25 getting into the hottest part of the year, July and

1 August. Were all of those features that combined to
2 make the early months of Operation Telic 2 what you set
3 out in your statement as being a particularly
4 challenging operational environment?

5 A. Absolutely correct.

6 Q. May we look just briefly at one of the orders which you
7 say in your statement you would have been involved with?
8 We have it at MOD023094. Do we see there the main
9 concept of operations order for the Multinational
10 Division (South-East)? Do you have that at 3 August?

11 A. Yes.

12 Q. Just taking it briefly, if we go on to page MOD023097,
13 do we see there, set out under "Lines of operation", you
14 say in your statement that this is an order which you
15 would have been very much involved with. The main four
16 areas of action, lines of operation, I think, are
17 security, essential services, economy and governance.
18 Without perhaps going to the detail under each of those,
19 does that set out the breadth of the issues that you
20 were dealing with at your level of command?

21 A. It does.

22 Q. Annexed to this, the Inquiry knows that there was the
23 legal annex to the concept of operations for the
24 division. If we just look, please, at MOD019751, just
25 taking it briefly, in terms of the concept of operations

1 for your division under "Detainees and internees",
2 "Apprehension", we see that it was stated that:

3 "All persons apprehended by coalition forces should
4 be treated as a minimum in accordance with the standards
5 laid down under LOAC for prisoners of war regardless of
6 their [actual] classification."

7 A. Correct.

8 Q. In terms of general guidance and the concept of
9 operations that was given, "Prisoners of war", the
10 requirement to treat humanely at all times, on the
11 right-hand side, provide food and water, medical care,
12 protect from physical and mental harm and so on without
13 going through every line.

14 Does that set out quite shortly the overall
15 standards that the division was attempting to set in
16 terms of the standards expected for prisoners and how
17 they should be handled?

18 A. It does for the multinational division, yes.

19 Q. Thank you. Can I ask you some questions, then, about
20 how the detail of that developed, the prisoner handling
21 issue?

22 Can we look, please, at paragraph 39 of your
23 statement? I think you set out there, don't you, that
24 during the war-fighting phase of an operation you would
25 expect J2 or G2 -- the intelligence side -- to really be

1 in the lead in dealing with handling of any prisoners of
2 intelligence value if it was at the war-fighting stage
3 of operations. Is that right?

4 A. If we can just focus on the word "handling" there.

5 I would expect the J2 branch to be the lead for
6 determining the value of prisoners. I would not expect
7 them to be the lead on the physical handling of
8 detainees. That would fall to others.

9 Q. Thank you. Over the page, at paragraph 40, you say that
10 with the ending of hostilities, other issues effectively
11 come to the fore -- I paraphrase, but you set them
12 out -- political, operational, logistical and so on,
13 medical and presentational. You say that as a result of
14 that -- paragraph 41 -- that you would then think, after
15 the war-fighting phase, that it is appropriate for the
16 G3 staff branch to become responsible for the handling
17 of detainees and to coordinate input where necessary
18 from the other staff branches. Is that, as it were,
19 your understanding of the conventional approach of which
20 staff branches would be in the lead?

21 A. Yes, because detainees, as an issue, spans the
22 responsibilities of a number of organisations and
23 assumes a significant profile, so it would naturally
24 fall to the G3 staff branch to lead on.

25 Q. May we look briefly please at MOD016186, FRAGO 29. This

1 again, so that you have your bearings, General -- it may
2 be familiar to you, FRAGO 29 -- is another 1 UK order.
3 As you will see from the date, 26 June, it was very
4 close to the time of the divisional handover.

5 Were you aware, as set out in the scope of the order
6 at the top -- if we could have that expanded please --
7 that in fact, by the time of the start of Op Telic 2, it
8 had been announced that the G2 branch was to assume
9 overall control of the internment process?

10 A. Yes.

11 Q. Did that surprise you, if you were aware of it at the
12 time, at the beginning of Op Telic 2?

13 A. It wouldn't surprise me because it would be natural for
14 the G2 branch to lead on the intelligence aspect of the
15 handling of a detainee population, but it wouldn't occur
16 to me to assume that it meant that they had exclusive or
17 sole responsibility for the handling of detainees.

18 Q. It might be said that that would be understandable if
19 this order had said that the G2 side was to lead on the
20 intelligence aspects of it and the value of detainees,
21 but what was in fact written in the order was that G2
22 branch was to assume the overall control of the
23 internment process. Do I understand you correctly that
24 you perhaps would not have seen that or read that
25 entirely at face value?

1 A. I would not have taken that entirely at face value.

2 Q. I raise this for your assistance on it in part because
3 of what was then said in a later order at the time of
4 the multinational division. Can we look, please, at
5 FRAGO 5 of 3 September? It is MOD022623. You will see
6 the date of that, 3 September. It is now an MND order,
7 of course.

8 If we can just go ahead to page MOD022627, just to
9 remind ourselves, General, that this was one of the
10 orders of which you were one of the signatories.

11 A. Indeed.

12 Q. Do you see that there?

13 A. I do, yes.

14 Q. Within this there was a section which dealt with the key
15 responsibilities. We have MOD022645: do we see that
16 despite what was written in the earlier FRAGO 29 by this
17 stage -- 3 September -- what was being said was that
18 paragraph 3 dealt with brigade matters but at divisional
19 level, paragraph 5:

20 "The handling of internees and detainees is a J3 led
21 operation."

22 Does that seem to be reverting in contrast to
23 FRAGO 29 to the more conventional way of internment and
24 the handling of detainees being dealt with?

25 A. I can't recall the process that took us to that point

1 but my recollection of it is that at this stage, early
2 September, this was our view -- our collective view --
3 of how this matter needed to be dealt with.

4 Q. Was it understood, so far as you can recall, that that
5 was a change from how it had been set out at the very
6 end of Op Telic 1 in that earlier FRAGO 29?

7 A. I can't recall whether it was sensed to be a significant
8 change or a change at all. I simply recall that is how
9 we set out that it was now going to be done.

10 Q. The issue may be of relevance to this Inquiry in this
11 sense: it might be said that those two orders coming at
12 the very end of Op Telic 1 and then fairly shortly after
13 in early September in Op Telic 2, it might be said that
14 there appears to be some degree of changing one to the
15 other and perhaps even confusion about which staff
16 branches actually had the lead in relation to internment
17 and detainee matters; do you think that is fair?

18 A. I do not think that is fair because I think the point of
19 the FRAGO dated 3 September was to make sure that people
20 were clear where their responsibilities lay.

21 Q. May I turn then please to -- having looked at the
22 process generally -- the issue of hooding and how that
23 was dealt with in the orders? As you have already
24 indicated, you knew from your own handover, did you not,
25 about the prohibition on hooding right from the start of

1 Op Telic 2?

2 A. Indeed.

3 Q. May we start, please, with a document that we have at
4 MOD052218?

5 Do we see, General, towards the lower half of the
6 page that there was an email from Colonel Barnett,
7 commander legal, of course, to yourself as chief of
8 staff as well as to Major Hulme and to Mr Burke-Davies?

9 A. I do.

10 Q. The three of you are named as the main recipients, and
11 the "Colonel, Simon and Ben", presumably the "Colonel"
12 there is you?

13 A. It is.

14 Q. The context you can pick up from paragraph 1 of
15 Colonel Barnett's email. He is referring to "this draft
16 FRAGO". If you take it from me for the moment that that
17 appears to be a reference to a coalition level FRAGO,
18 five lines down, the reference to "CJTF-7".

19 A. That is correct.

20 Q. "As a result elements of it are unlawful for our nations
21 or politically unacceptable and we cannot therefore
22 apply these orders in their entirety."

23 That's what he was saying by way of instruction. If
24 one goes over to paragraph 4 on the next page, please,
25 at paragraph (b), there is a direction to handcuff,

1 ankle-shackle and hood cat A and cat B immediately. It
2 also directed that these matters be applied to all other
3 categories during transportation.

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

17 Can I just ask you a few questions about that? Do
18 you remember now receiving this email or the issue
19 having arisen?

20 A. I don't recall the email, but I do remember the issue in
21 the context of many similar issues where instructions
22 would be issued by CJTF-7, a US coalition headquarters,
23 that were driven by a US perspective of the nature of
24 the operation and how it was to be managed, but then
25 conflicted with what the participating nations in

1 MND (South-East) were willing to do. And of course
2 that -- this case and many other cases then had to be
3 resolved.

4 Q. Did this explanation fit with your own understanding of
5 the prohibition of hooding, first of all in this sense,
6 that Colonel Barnett was saying that it had been for
7 presentational reasons that the UK stopped hooding? Was
8 that your understanding or did you know one way or the
9 other?

10 A. No, I simply knew that it had been stopped by the UK.

11 Q. What seems to be being said here by Colonel Barnett was
12 that in some circumstances -- perhaps exceptional
13 ones -- hooding might be seen as lawful, but that it
14 would be seen as politically unacceptable in all but the
15 most exceptional cases. Again, was that your
16 understanding or did you understand there to have been
17 a complete prohibition?

18 A. No, I understood that hooding had been prohibited.
19 I also understood -- then and now -- that there can be
20 an operational case for blindfolding in order to
21 preserve your operational security.

22 Q. Thank you. Can we come back then, please, to FRAGO 5,
23 which we were looking at earlier on for the purposes of
24 considering the division of staff branches?

25 Sir, I notice the time. I am not, I am afraid,

1 obviously going to finish my questioning before
2 lunchtime. I wonder if that might be a convenient
3 moment.

4 THE CHAIRMAN: You would not like to finish this part of it
5 while we are on it or do you want to stop now?

6 MR MOSS: Sir, I think this part of it will take five or ten
7 minutes, but I am entirely in your hands.

8 THE CHAIRMAN: We will break off now as we normally do.
9 Back at 2 o'clock. Thank you.

10 I am bound to ask you not to speak to anybody about
11 your evidence during the short adjournment. I am sure
12 you understand.

13 A. Indeed, Sir.

14 THE CHAIRMAN: Thank you.

15 (1.00 pm)

16 (The short adjournment)

17 (1.58 pm)

18 THE CHAIRMAN: Yes, Mr Moss.

19 MR MOSS: General, I had turned to FRAGO 5 and the contents
20 of it in relation to hooding. Can we look, please, at
21 MOD049695? This is a memorandum of 28 August, as you
22 see. If we go over the page, you can see that it is
23 from Colonel Barnett. Going back to the first page, we
24 can see that it is putting up the MND policy for
25 apprehending, handling and processing of detainees, and

1 it was sending up a draft of what, some five days or so
2 later, was to become FRAGO 5, the main divisional order
3 on internees.

4 Can I ask you about the process? At the top of the
5 page one sees that it is addressed to General Lamb, but
6 coming through you. Would that be the routine way for
7 these matters to be put up at the top of the divisional
8 headquarters?

9 A. Yes, it would. The legal adviser had direct access to
10 the GOC if he felt it necessary, but routinely staff
11 work of this nature would go through a number of
12 iterations and eventually, once I was content with it,
13 be put to the commander.

14 Q. You say exactly that in your statement -- we need not
15 turn it up -- that it would have gone through a number
16 of iterations and something like this, dealing with
17 internees, would have had input from a number of staff
18 branches. Can you help with this? Would you have
19 become involved only once the staff branches had between
20 them settled on a policy and therefore you saw it only
21 at the stage when it was being put up to the GOC or
22 might you have been consulted and involved beforehand?

23 A. I might have been involved at the start of a piece of
24 work if they were unclear on the thrust of it or I felt
25 I wanted to impose particular guidance on it. But,

1 routinely, only once the senior staff had delivered
2 something to a reasonable level of maturity would they
3 bring it to me. It is simply a question of time
4 management.

5 Q. Appreciating the passage of time, do you happen to
6 remember to what extent, if any, you had engagement in
7 this particular order, FRAGO 5, the policy for handling
8 and processing detainees and internees?

9 A. Other than recalling that I was engaged in the work,
10 I can't remember any specifics.

11 Q. If we go back to the FRAGO itself, please, at MOD022623,
12 we see, do we not, General, at paragraph 2 in the
13 introduction, that the policy purported to set out the
14 procedure for the handling of internees and detainees
15 from the point of apprehension to the authorisation of
16 continued detention, internment or release, and that the
17 aim of the policy was to ensure a common approach to
18 internee and detainee handling across the divisions'
19 area of operations. So it was covering a broad range,
20 wasn't it, within the prisoner handling spectrum?

21 A. Yes, indeed.

22 Q. Without taking you through it and its many annexes to
23 prove a negative, would you take it from me for the
24 moment that the prohibition on hooding is not contained
25 anywhere within this FRAGO?

1 A. That's correct.

2 Q. Can I ask you, first of all, did you notice that at the
3 time when it came up to you and the GOC?

4 A. I don't recall whether I noticed it or not, which
5 I understand is not a helpful answer. I think the point
6 being that if hooding at the time was an issue that was
7 felt to be of significant interest at the level of
8 divisional headquarters, then it would have been on my
9 radar, but I do not recall it being at that level of
10 prominence.

11 Q. Given the breadth of the policy and that it was stated
12 to set out the procedure for handling internees and
13 detainees from the point of apprehension to the
14 authorisation of continued detention and its policy of
15 ensuring a common approach to handling of prisoners,
16 would you agree that it would have been desirable if the
17 prohibition on hooding had been restated somewhere
18 within this policy?

19 A. Not necessarily, because the document had to service the
20 needs of all the constituent troop-contributing nations
21 in MND(SE). But if the issue of hooding was of
22 particular interest to the UK, which I think is the
23 case, then it would in general terms have been
24 undesirable for it to appear in a document that went to
25 all the contributing nations because it would confuse

1 them in some cases and antagonise them in others and
2 it would possibly be dealt with another way therefore.

3 Q. Perhaps without going into details about individual
4 nations, was there ever an awareness that other
5 troop-contributing nations within the division were
6 using hessian sandbags as hoods?

7 A. No.

8 Q. So that doesn't really provide a reason, does it, for
9 not addressing the prohibition within an order such as
10 this?

11 A. I think the point I am making is that if the UK has
12 a prohibition -- which it did in my understanding --
13 then putting it in an instruction that applied to the
14 whole of the multinational division -- bearing in mind
15 that much of the division was not operating in its first
16 language when it was using English with us -- there is
17 a risk firstly of confusion, and I simply don't know the
18 other nations' policies on this, so I can shed no
19 further light on that. Secondly, it may be something
20 that would be better dealt with on strictly UK channels.

21 Q. Help us with the UK channels then. If it was not
22 appropriate to go into this individual FRAGO, how might
23 it have found its way into the procedures for the UK?

24 A. If it was felt to be of sufficient prominence then it
25 would have been appropriate for the GOC or indeed

1 myself, on his behalf, to issue a UK-specific
2 instruction.

3 Q. And that would have gone down specifically to presumably
4 19 Mech Brigade, rather than to the brigades from the
5 other troop-contributing nations?

6 A. It would only have gone to 19 Mech Brigade if it was a
7 UK-only instruction.

8 Q. May we look just briefly, please, at BMI07932, at
9 an extract from the evidence of Colonel Barnett to this
10 Inquiry. You will see at paragraph 134 that
11 Colonel Barnett says that:

12 "... I had originally wished to include some
13 guidance additional to that which we eventually issued."

14 And he remembered speaking to J2 intelligence staff
15 and provost staff, advising them that he was preparing a
16 "single comprehensive document on detainee procedures".

17 "I wished to insert sections on tactical questioning
18 and arrest and custodial procedures and I requested that
19 they provide me with some suitable paragraphs on these
20 aspects. However, they were not keen to do so. They
21 explained that such areas had already been trained ...
22 and would therefore render the document either
23 inaccurate if too short or too unwieldy if too long.
24 I accepted that advice."

25 I just ask: were you aware of an initial desire on

1 the part of Colonel Barnett to include more
2 comprehensive and more detailed instructions, including
3 on tactical questioning and arrest and custodial
4 procedures, within the FRAGO?

5 A. No.

6 Q. You were not consulted about that matter?

7 A. No.

8 Q. Whether in the FRAGO going to all of the
9 troop-contributing nations or, as you have suggested
10 might have been done, in something specific to the UK
11 element, would it not have been desirable at this time,
12 given that there was this statement of procedures,
13 somehow for the prohibition on hooding to have found its
14 way into the guidance?

15 A. With the benefit of hindsight it would clearly have been
16 appropriate, but the fact is at the time the issue of
17 hooding had not assumed its current prominence and
18 therefore there was no particular reason for I or the
19 staff to single it out, either for specific additional
20 guidance or for some clever inclusion in
21 a divisional-wide instruction.

22 Q. You were not, yourself, aware, should I take it, at the
23 time, of any general lack of guidance on the procedures
24 that should be used at the point of capture and from the
25 point of capture to battlegroup detention facilities and

1 so on?

2 A. I was not aware or I would have done something about it.

3 Q. Can I move then just briefly to the issue of TQ'ing
4 which we have touched on just briefly? Could we look,
5 please, at paragraph 66 of your statement, where you
6 were asked to give an account of what guidance, orders
7 or publications were in place for carrying out TQ at
8 battlegroup level. You said that you do not know what
9 guidance, orders or publications were in place at that
10 time.

11 "The responsibility for guidance at battlegroup
12 level rests initially with the brigade ... but primarily
13 with the CO and chain of command within each
14 battlegroup."

15 Can I just help to clarify this? From your position
16 as the chief of staff at division, where should such
17 guidance on TQ'ing procedures have been issued from?

18 A. In the case of the United Kingdom, the guidance rests
19 initially in decisions to be taken at MoD level, which
20 would have been conveyed and discussed with the
21 Permanent Joint Headquarters.

22 Q. Could I just interrupt you there? It is my fault for
23 asking an unclear question. Within theatre --

24 A. Within theatre it is the responsibility of the
25 divisional headquarters to take such guidance as it has

1 received or conceived and issue it to the chain of
2 command, using the chain of command. So in the case
3 that we are talking about here, I would have issued
4 instructions on behalf of the GOC to 19 Mech Brigade and
5 indeed the other troop-contributing nations as
6 appropriate.

7 Q. Taking it shortly, did you ever turn your attention to
8 the question of what guidance was available for TQers?

9 A. Not that I can recall.

10 Q. The Inquiry knows that JWP 1-10 does give some guidance
11 on tactical questioning -- it includes the Geneva
12 Convention prohibitions in Article 17, for example --
13 but that it might be said to be at a fairly high level
14 of generality. Was that something which was familiar to
15 you?

16 A. As a JWP, in general terms, yes, it was.

17 Q. You were never alerted specifically, then, to what might
18 be said to be a general paucity of more detailed
19 guidance for TQ'ing --

20 A. No.

21 Q. -- when you were in theatre?

22 A. No, I was not.

23 Q. Can I just ask you this, moving on to matters relating
24 more specifically to Baha Mousa: at any time before his
25 death on the evening of 15 September, had you heard

1 anything, good or bad, about the conduct of 1 QLR as
2 a battlegroup?

3 A. No, I had not heard anything specific about 1 QLR
4 battlegroup.

5 Q. Does it follow that you had not heard any rumours about
6 heavy-handedness on arrest or over-robustness in search
7 operations that they may have carried out --

8 A. Not related to 1 QLR, no.

9 Q. -- or any issues arising following the murder of one of
10 their officers, Captain Dai Jones, in terms of conduct
11 by 1 QLR?

12 A. Beyond the sense within the divisional headquarters that
13 life on the ground in the city of Basra was becoming
14 more difficult, more threatening, as well as being
15 environmentally extremely challenging, no.

16 Q. Thank you.

17 Could we turn then to paragraph 71 of your
18 statement? You set out in paragraphs 71 and 72 the
19 difficulty that you have in recalling when and how you
20 became aware of Baha Mousa's death and that you don't
21 recall specific conversations with the brigade chief of
22 staff, Major Fenton.

23 Can I just give you this indication? The Inquiry
24 has heard evidence from Colonel Murray-Playfair, whom
25 presumably you recall --

1 A. Um-hm.

2 Q. -- to the effect that he remembered that he was the
3 acting chief of staff at the time of Baha Mousa's death,
4 that you were away on a conference, unusually -- the
5 only time he recalled you being away for any period of
6 time, that you were away for about a week -- and so
7 Colonel Murray-Playfair was acting chief of staff on the
8 date of Baha Mousa's death and for about a week
9 thereafter. Does that now ring any bells for you?

10 A. I can't recall it with any precision, but it sounds
11 entirely plausible in that I did make one or two short
12 visits to the UK and one or two very short visits, a day
13 or so, to Baghdad during my tenure.

14 Q. But you wouldn't seek to quarrel with his evidence that
15 essentially he was dealing with the chief of staff
16 responsibilities at the time of the death and for the
17 week after and indeed had access to and was using your
18 email account for that purpose?

19 A. Absolutely not, in that he was my deputy when I was away
20 from the headquarters.

21 Q. Thank you. Against that background, I am not going to
22 go to the vast majority of the emails in the week after
23 Baha Mousa's death, save for this: could we just look at
24 MOD016128, please? Colonel Murray-Playfair told us that
25 this was one of those emails being sent from your email

1 account, but very much by him. If we could just expand
2 that just slightly one down, we will see, I think,
3 Colonel Murray-Playfair's initials at the back of those
4 bullet points. Do you see that there?

5 A. I do.

6 Q. You commented about this email, General, in your
7 statement. Could we look at the middle bullet point
8 that refers to divisional policies? Do you see the
9 sub-bullet point that says:

10 "Detention procedures based on normal unit drills
11 for detaining own soldiers. Additional guidance (no
12 hooding or stress positions) believed to have been
13 issued by 1 [Division] in July but corporate loss of
14 memory (and lack of e-connectivity or e-handover of
15 documents) may account for this having been lost."

16 That is the paragraph I am going to ask you some
17 questions about. If we just look at how you dealt with
18 that in your statement, please. It is paragraph 81.
19 You were referring to that email and you said:

20 "It was known that hooding had been banned in
21 theatre, and so the reference in this email to
22 additional guidance being lost is most likely
23 a reference to the inability to locate the document
24 containing the guidance rather than the policy itself."

25 General, without criticism of you, is that an

1 inference and a reconstruction or do you actually
2 remember that being the case?

3 A. I am clear in my own mind that I understood that hooding
4 had been banned, as we have already discussed. I cannot
5 recall whether or why the specific guidance issued by
6 1 Div was to hand or not and my view remains that, given
7 the transition between information systems from the
8 1 Div turn to the 3 Div turn and the challenges of
9 information management in that environment, complicated
10 by that transition, it is entirely plausible that we
11 could not locate the document issued by 1 Div at that
12 time.

13 Q. Understanding that there may have been a difficulty in
14 locating a specific document, the thrust of your
15 statement here is to say that the hooding prohibition
16 itself was well known and well understood so this email
17 cannot have been referring to that. Against that
18 context, can we just look at a different email at
19 MOD016121? It may be, General, that as you were away
20 you may not have seen it, but this is one of the emails
21 passing information about Baha Mousa's death and the
22 circumstances of it the day before, when it seems you
23 were probably still away.

24 If one looks at paragraph 9, the information going
25 up, for example, was that:

1 "Subject was held for 36 hours in total, of which he
2 was hooded for 23 hours and 40 minutes."

3 Then this:

4 "There was a requirement for the hood as a part of
5 TQ conditioning and disorientation process. Note
6 subject attempted escape ...", and so on.

7 So do you see that the information going up to
8 division in your absence, far from the prohibition on
9 hooding being known, was that it was understood at
10 battlegroup level that there was a requirement for
11 hooding as part of a process of conditioning and
12 disorientation.

13 A. Yes, as we know now. The understanding I had at the
14 time and which I believed was the case was not shared
15 throughout the British elements of the force in Basra at
16 the time.

17 Q. If we go back -- thank you -- to paragraph 81, when one
18 sees there you saying, "It was known that hooding had
19 been banned in theatre ...", was it your understanding
20 that, for example, the main players at divisional
21 headquarters level, who you explained earlier in your
22 statement as being involved in prisoner handling
23 matters, would all have understood that hooding had been
24 the subject of a specific prohibition?

25 A. That was clearly my understanding and my expectation is,

1 if there was any difference of view between them, that
2 they should have reconciled it and, if necessary,
3 consulted me.

4 Q. It may be that you are now aware of evidence to the
5 Inquiry that would tend to suggest something different,
6 for example -- and we will hear from him next week --
7 that the GOC was not aware of the specific prohibition,
8 General Lamb, and Colonel Le Fevre has also already
9 given evidence to the Inquiry that he wasn't aware of
10 any specific prohibition on hooding. Does that surprise
11 you?

12 A. It does surprise me.

13 Q. Does that cause you to in any way alter the evidence or
14 change your view that you gave earlier about how that
15 prohibition on hooding should have been cascaded down or
16 the desirability of it to have been re-issued so that
17 everybody in Op Telic 2 knew it and understood it?

18 A. It doesn't because, at the time, in my own mind and, so
19 far as I was concerned, in the minds of my principal
20 staff, there was no doubt on this particular issue and
21 this particular issue had not achieved anything like the
22 prominence that it has subsequently and the staff effort
23 was focused mostly on the sorts of other issues we have
24 already discussed. So in the absence of it being drawn
25 to our attention that there was a difference of view or

1 a lack of clarity or a lack of understanding, then
2 I don't believe that we would have alighted on it in the
3 way that we now are.

4 Q. My final questions to you, please, General, then just
5 relate to a slightly later FRAGO that you address in
6 your statement. Could we look at FRAGO 54, please, at
7 MOD030398? It is another FRAGO of which you were one of
8 the signatories. If I can just give you a moment to get
9 your bearings on that on the screen, do you see that
10 that was a FRAGO which you had signed, together with
11 Major Richards, and which enclosed the new guidance in
12 SOI 390 after Baha Mousa's death?

13 A. Yes.

14 Q. What you say about that in your statement was that this
15 essentially was guidance which was reinforcing the
16 prisoner handling policy that was already in place. If
17 we look at paragraph 50 of your statement at BMI06233,
18 which prisoner handling policy were you referring to
19 there that was being reinforced?

20 A. My recollection is that the FRAGO you are now asking me
21 about reinforced the guidance that had been issued in
22 early September.

23 Q. Would you accept, though, without necessarily turning to
24 the detail of it, that in fact the annex to SOI 390 that
25 dealt with tactical questioning was the first time that

1 any detailed guidance had been given on tactical
2 questioning at all during Op Telic 2?

3 A. From the divisional headquarters that would be the case,
4 but, of course, the tactical questioners themselves
5 remained at all times subject to the training and
6 guidance that normally applies. So in terms of
7 reinforcement from the divisional headquarters, that
8 would be the case, yes.

9 Q. Likewise, that this was the first time that the
10 prohibition on hooding had been put into writing at any
11 time during Op Telic 2 in terms of a written order?

12 A. Absolutely, because by this time, for reasons that are
13 well known, it had assumed the prominence that it
14 rightly now has.

15 Q. Would it be going too far if I were to suggest that,
16 rather than simply reinforcing the prisoner handling
17 policy that was already in place, that perhaps SOI 390
18 was providing detailed guidance that it would have been
19 better if it had been provided all along?

20 A. Well, with the benefit of immaculate hindsight, yes.

21 Q. But you say that the need for reinforcement or those
22 matters to be specified had not been drawn to your
23 attention during Telic 2?

24 A. Up until that point, that's correct.

25 MR MOSS: Yes, thank you.

1 THE CHAIRMAN: Yes, you will be asked some questions by
2 other counsel now, General.

3 Questions by MR SINGH

4 MR SINGH: Sir, thank you.

5 General, there is just one topic I would like to ask
6 you about. It arises from paragraph 42 of your witness
7 statement. It is at the bottom of BMI06230 that it
8 begins. If you just want to remind yourself of what you
9 said there, and then perhaps just over the page. In the
10 middle of that paragraph, do you recall stating:

11 "I sat on the Detention and Internment Review
12 Committee (DIRC) and had delegated authority from the
13 GOC to make decisions in the first instance with regard
14 to the continued detention of individuals."

15 In that role as a member of the DIRC, General, was
16 it any part of your consideration of the information
17 that was placed before you to ask yourself how that
18 information might have been obtained?

19 A. I would need -- I just need to describe my role because
20 I can't answer the question, I think, without so doing.

21 Q. Please do.

22 A. My role in leading this committee was to examine the
23 status of those detainees who had been in detention for
24 a considerable period of time and to make a judgment
25 about their continued detention, usually on security or

1 intelligence grounds, and was there sufficient grounds
2 for continuing that detention. At no time in doing that
3 did I have cause to have any concern about how that
4 information or intelligence had been arrived at.

5 Q. Forgive me, if I am stating the obvious, General, but
6 that answer suggests that it was at least part of your
7 consideration to give thought to that question.

8 A. Absolutely.

9 MR SINGH: Thank you.

10 Sir, that was my question.

11 THE CHAIRMAN: Yes.

12 MR SINGH: Thank you.

13 THE CHAIRMAN: Mr Garnham?

14 Questions by MR GARNHAM

15 MR GARNHAM: You explained to Mr Moss, General, that it
16 would not have been appropriate to include reference to
17 the ban on hooding in the MND(SE) FRAGO 005 that he
18 showed you. If you had wanted to include a ban on
19 hooding in a coalition-wide directional order, what
20 would you have had to do?

21 A. Well, in advance of issuing an instruction to all the
22 constituent members of MND(SE), we would have to have
23 been clear that each of the troop-contributing nations
24 at national level was content with that instruction in
25 order to avoid a situation where you issue an

1 instruction which people then decide that they can't
2 comply with.

3 Q. So a common view amongst all the nations' contributing
4 troops would have had to have been reached presumably,
5 what, at capital level?

6 A. It would have been conducted at MoD-to-MoD level, yes.

7 Q. Finally, General, this: you have had, as we have heard,
8 a long and distinguished career. How did the challenges
9 of Op Telic 2 compare to the other work that you have
10 done?

11 A. The overall challenge faced by Multinational Division
12 (South-East) in the summer of 2003 was as difficult and
13 as dynamic and as frustrating as I can recall at any
14 time -- I think over six years of operational service
15 across 30 years of being in the army.

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

17 THE CHAIRMAN: Thank you.

18 Well, I do not have any questions for you, General,
19 either. Thank you very much indeed for coming to the
20 Inquiry. I am extremely grateful to you for answering
21 questions and giving evidence to the Inquiry and you are
22 now free to go with my thanks.

23 A. Thank you, Sir, very much.

24 THE CHAIRMAN: Thank you.

25 MR ELIAS: Sir, may I call Sir Joseph French please?

1 THE CHAIRMAN: By all means.

2 Sir Joseph, if you could remain standing for
3 a moment, I will ask that you take the oath.

4 JOSEPH CHARLES FRENCH (sworn)

5 THE CHAIRMAN: Thank you very much. Do sit down. If you
6 could station yourself as close to the microphone as you
7 reasonably can and speak into it, hopefully we will then
8 all hear you --

9 A. Thank you very much.

10 THE CHAIRMAN: -- which is, after all, the object of the
11 exercise.

12 Yes, Mr Elias.

13 Questions by MR ELIAS

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

16 A. Joseph Charles French.

17 Q. To your right hand you should find a folder and in it,
18 I hope, a copy of your statement to this Inquiry. Would
19 you turn, please, to the last page which you find at our
20 BMI08433? Could you there confirm that your signature
21 appears above the date of 25 May of this year?

22 A. It does.

23 Q. When you signed that statement, Sir Joseph, were you
24 attesting to the Inquiry that the contents of it were
25 true to the best of your knowledge and belief?

1 A. I was, yes.

2 Q. Thank you very much. If you put that aside, please.

3 Everyone has had the opportunity of reading that

4 statement and I think you know it forms part of your

5 evidence to this Inquiry. I don't propose, therefore,

6 to take you through it in anything like line-by-line

7 fashion.

8 A. I understand.

9 Q. Rather I am going to take you, if I may, just to certain

10 aspects -- really two issues essentially -- with which

11 the Inquiry thinks you may be able to assist us a little

12 further.

13 May I begin just by looking very briefly at your

14 career history? You tell us that you joined the Royal

15 Air Force in 1967 --

16 A. That's correct, yes.

17 Q. -- and I think you left the Royal Air Force almost

18 exactly 40 years later in 2007.

19 A. I did, yes.

20 Q. At what rank when you left?

21 A. Air chief marshal.

22 Q. You set out -- and I don't recount it -- in

23 paragraphs 2, 3 and 4 of your statement the various

24 postings that you have held, including postings in the

25 MoD, but you had two intelligence postings, which are

1 the relevant issues that this Inquiry wants to ask you
2 about.

3 Your first intelligence posting was as director
4 general intelligence collection, the DGIC --

5 A. Correct, yes.

6 Q. -- in the defence intelligence staff. You tell us that
7 you took that up in March 1998 through until November
8 2000.

9 A. Correct.

10 Q. In November 2000 you took up the post of chief of
11 defence intelligence, CDI, then promoted to the rank of
12 air marshal?

13 A. I did, yes.

14 Q. You left the post of CDI in approximately April 2003 --

15 A. Correct.

16 Q. -- taking up an appointment, then, as commander in chief
17 personnel and training command. You tell us that your
18 final posting before retirement from the RAF was as
19 commander in chief strike command.

20 A. Yes, it was.

21 Q. Can I just ask you a little about your training, lest it
22 be relevant to issues that we are concerned to ask you
23 about? Were you, in 1998 through to 2002, in the
24 intelligence posts that you held, aware of what has
25 sometimes been referred to as the "Heath ruling"?

1 A. I had got a general knowledge of the Heath ruling
2 through serving in Northern Ireland in the period 1971
3 to 1973 as a helicopter pilot, and certainly the major
4 operation, Operation Motorman, for internment, I had
5 carried several people in and around the province there,
6 particularly to Long Kesh and to Ballykelly.

7 Q. But perhaps in common with other RAF witnesses who have
8 given evidence to this Inquiry, you had not received
9 training specifically in the physical aspects of
10 prisoner handling, had you?

11 A. No, I had not.

12 Q. Had you received any training in conduct after capture?

13 A. No, I had not, but I was aware of the policy because it
14 was a staff issue when I was working at the Ministry of
15 Defence from 1992 to 1995.

16 Q. Had you received training, instruction or -- perhaps
17 I can put it more broadly -- did you know in any detail
18 anything about the training that was given to tactical
19 questioners?

20 A. Not at that point, no.

21 Q. Just to look at your two roles in just a little more
22 detail, can we go to paragraph 6 of your statement,
23 please, at BMI08620? You set out at paragraph 6 and on
24 the role as director general intelligence collection in
25 the defence intelligence staff. You refer to that as

1 being one of two two-star deputies to the CDI, the role
2 that you were to have two years later.

3 You say in paragraph 7 that you were responsible to
4 the CDI for the management, coordination and collection
5 of multi-source and geographic resources. It involved,
6 in paragraph 8, you tell us, formulation of policy for
7 intelligence collection to support operations and
8 strategic tasks and responsibility for the creation of
9 intelligence architectures.

10 In paragraph 9 you tell us that as DGIC you were
11 also, as you put it, owner of DISC, the Defence
12 Intelligence and Security Centre at Chicksands, which
13 involved setting and monitoring agency key targets and
14 objectives and reporting annually and so on.

15 You were a member, you tell us in paragraph 10, of
16 the CDI's management board, and in paragraph 11,
17 day-to-day policy oversight for those areas that you
18 there set out.

19 You say in paragraph 11 that while you were DGIC,
20 the post of assistant director intelligence HUMINT was
21 held by latterly by Colonel Kett, a witness whom the
22 Inquiry heard from yesterday.

23 You say in paragraph 12:

24 "Although I had responsibility for oversight of
25 DISC, the HUMINT responsibilities of the centre were

1 reported to you through [the assistant director] ..."

2 Then if we go to paragraph 13, please, we see your
3 role here set out as CDI, now running from 2000 to 2003.
4 You took up the post, as you told us, in November 2000.

5 Your directive, you tell us in paragraph 14, was
6 issued by the chief of defence staff.

7 In paragraph 15, that the CDI is head of defence
8 intelligence staff and is functionally responsible for
9 intelligence matters in the Ministry of Defence and for
10 overseeing defence intelligence at a strategic level in
11 coordination with other UK intelligence agencies.

12 At the foot of the page, paragraph 16, towards the
13 end of it, you tell us, perhaps relevantly to the
14 matters I want to ask you about:

15 "CDI's [responsibilities] also included contributing
16 to the formulation of the Government's defence policy
17 and to the formulation of MOD and Government-wide
18 priorities for intelligence, taking into account the
19 needs of the JIC as well as coordinating policy for
20 intelligence training and the employment of all
21 intelligence reserve forces."

22 Between 1998, Sir Joe, and about 2003, I think it is
23 right to say -- and I am going to try to take this
24 shortly, if I may, and I think you will be aware of
25 it -- that perhaps two problems have been identified in

1 the course of evidence given to this Inquiry. I may
2 paraphrase them in this way: firstly, that there was
3 a paucity of or insufficient doctrinal guidance on
4 tactical questioning and intelligence through that
5 period, something that appears to have been perhaps
6 first raised in 1997 or thereabouts, but carried through
7 that period; for example, no specific ban on the use of
8 the techniques that the Heath ruling had ruled unlawful
9 in 1972, no explicit mention of those matters. But in
10 addition -- and I am only taking some examples -- no
11 clear guidance given on permissible methods of
12 questioning.

13 The Inquiry has heard different versions of what may
14 or may not be permitted by the use of the so-called
15 harsh technique of questioning -- do you follow?

16 A. I do, yes.

17 Q. -- detailed matters of that kind. So the Inquiry has
18 heard some evidence that there is a paucity, as some
19 have put it, or of insufficient doctrinal guidance
20 through that period in the area of tactical questioning
21 and intelligence. Secondly -- and it is the other
22 matter I want to ask you about -- the Inquiry has heard
23 that by the time of Op Telic, in any event, there was
24 a lack of capability perhaps in the provision of those
25 qualified, trained and instructed in tactical

1 questioning and interrogation.

2 Were you aware of either of -- may I call them
3 defects, if that is what the chairman ultimately finds
4 them to be -- were you aware of either of those defects
5 in the system, as it were, during your time in either of
6 these two roles?

7 A. Not in the terms you put them. If I could deal with the
8 first issue of the supposed paucity of doctrine. Having
9 obviously kept a reasonable close eye on what has gone
10 beforehand within this Inquiry, there is perhaps
11 sometimes a misunderstanding of what "doctrine" is.
12 "Doctrine", in the military sense, is teaching, and
13 earlier on today the Joint Warfare Publication 110 came
14 up, but that -- and I also, going back to 1996 and 1997,
15 was responsible for rewriting the British defence
16 doctrine, the second edition of that -- is it makes very
17 clear, both in that capstone document, British defence
18 doctrine, but also in the preface to Joint Warfare
19 Publication 1-10, that that is but part of a hierarchy
20 of documents and that it provides a framework and
21 doesn't purport to be totally prescriptive in what
22 should go on and provides guidance -- not least in
23 document 1-10, when you are looking at the way
24 a prisoner handling organisation should be set up, it
25 actually gives details of instructions that should be

1 given to those involved with tactical questioning and
2 also with interrogation.

3 Also, that if you have particular shortfalls that
4 were highlighted --and I was not, answering one of your
5 questions directly, told at any stage that there was
6 this paucity in the terms you have put it to me that
7 this existed -- but had it been brought to my attention,
8 either as DGIC or as CDI, then the wherewithal, again as
9 it makes very clear within the preface to JWP 1-10, is
10 that if there are lacunas, then you can come up with
11 a pamphlet that would actually address those sorts of
12 issues that you have alluded to.

13 But that provides the framework which is then
14 carried on through the system overall. When you are
15 talking of tactical questioning -- and particularly
16 interrogation -- you are talking about people who have
17 been trained and, having looked at the training syllabus
18 for those people, there are a significant number of
19 handouts that were given. You were talking of
20 experienced people who had had direction and would have
21 covered -- certainly that in terms of, whilst hooding
22 not directly, as you put it, I would have seen that very
23 much coming under the way that the Geneva Conventions
24 were actually taught within that teaching process.

25 Q. Perhaps that is the point, is it? JWP 1-10 was at

1 a relatively high level of generality, if you like,
2 citing Geneva Conventions, humane treatment, matters of
3 that kind, and you would assume, would you, that that
4 framework would be sufficient -- or you did assume that
5 that framework was sufficient -- for the soldiers on the
6 ground to operate by, as it were?

7 A. No, you have made a leap there from a publication -- and
8 again the publications are for guidance -- as it puts
9 again above the line very senior staff, particularly at
10 national component command headquarters, possibly at
11 divisional headquarters, and that there would, as the
12 publication says, be further advice that would go down
13 through the chain of command to get to the soldier as
14 you took it.

15 And as the training courses in tactical questioning
16 and also in interrogation make very clear, that in
17 articulating all of this you have to have the
18 commander's intent, and the commander's intent would --
19 as we have previously heard from previous witnesses,
20 from the MoD down through the CJO at Northwood to the
21 NCC in Qatar through the divisional commander all the
22 way down through the system. I do know that there was
23 a card given to each of the soldiers within the national
24 contingent that actually taught the humane treatment as
25 well, and the training which you take of law of armed

1 conflict which people have to do on a regular basis
2 again would cover these sorts of issues.

3 Q. I suppose you would agree, would you, that if, as the
4 Inquiry has been told by a number of soldiers, hooding
5 of prisoners was, to some anyway, a standard operating
6 procedure, to have something in writing that told them
7 that hooding was banned might have cured such
8 a practice?

9 A. Again, I think you are seeing it -- or the way you put
10 this -- is through the spotlight of what we know, what
11 the Inquiry is looking at. But I would put that in the
12 humane category in compliance with the
13 Geneva Conventions.

14 Q. That doesn't quite answer my question, does it? I agree
15 with you that I am putting it in the context of what is
16 known now, but even in that context, Sir Joseph, it is
17 right, isn't it, that it would have been better, if
18 indeed hooding were considered to be a standard
19 operating procedure, if there had been something in
20 black and white that told the soldier on the ground or
21 the unit commander at least that this was not permitted?

22 A. In the benefit of hindsight, with the emphasis on
23 hooding now, I can answer "yes", but I am not sure you
24 could ever either with a doctrinal document or in rules
25 that you gave to your personnel -- and indeed if you go

1 back to the JIC paper of 1972, it also makes clear that
2 the guidance is not exhaustive, so the thought you could
3 cover everything that may or may not go wrong within
4 operations, I don't accept that there was a shortfall in
5 that sense.

6 Q. But of course the 1972 doctrine, the ruling was at least
7 detailed in as far as it went as to when hoods could or
8 could not be used.

9 A. Yes, it was. But I think with the papers that you gave
10 me, in my first bundle of papers, I had a question mark
11 over whether that was extant policy from my time of
12 taking up both the DGIC and the CDI post.

13 Q. Whether Heath was extant?

14 A. Yes, because if you look at General Foley's minute in
15 July 1997, he refers to the guidance of the then
16 vice-chief of the general staff and says that that is
17 cancelled.

18 Q. In the 1997 directive it is part (ii) that is cancelled,
19 not the whole of the Heath ruling.

20 A. Well, that's your interpretation. I think it could be
21 interpreted in a different way.

22 Q. I follow. Well, be that as it may -- and obviously the
23 Inquiry will look at it -- perhaps it might be said all
24 the more reason, if indeed the Heath ruling were no
25 longer extant, why there should be put in place some

1 written doctrine, surely.

2 A. The guidance was given, if you then look at the annex of
3 the Foley paper, that lays down the framework for all
4 sorts of things we are talking about, and that was
5 compliance with Geneva Convention.

6 Q. And that's really what we come back to, isn't it,
7 compliance with the law --

8 A. Yes.

9 Q. -- in what I might call the high and general sense --
10 I do not seek to downgrade it, as it were -- but there
11 wasn't ever the detail, was there, of how that should be
12 seen through, and a clear ban on hooding, for example,
13 if that is what was thought appropriate?

14 A. It wasn't there in black and white, you are absolutely
15 right. But, again, you have got evidence in the papers
16 you have shown me that the teaching or doctrine, to use
17 another word, for the courses carried out at the DISC
18 that hooding wasn't taught.

19 Q. If it be the case -- and again the Inquiry has heard
20 some evidence about it, as you may be aware -- that
21 there were differing views as to how tactical
22 questioners could approach -- what has been referred to
23 as the "harsh technique" -- as to what was or was not
24 permissible, again it might have been preferable at
25 least, mightn't it, if there had been some written

1 manual indicating what at least was not acceptable?

2 A. I don't know without research what else was written.

3 The documents I have looked at with the bundle you have
4 given me is JWP 1-10.

5 Q. Yes.

6 A. I have had a chance to look at the course syllabi taught
7 at the DISC over that period, but I don't know what
8 handouts were given or what, indeed, the general advice
9 to the intelligence personnel and particularly the
10 staffs who were in J2 during the operation.

11 Q. I think it is right to say that the Inquiry has been
12 given what is available and what is believed to exist.
13 There doesn't appear to be anything which goes into the
14 sort of detail that I am putting to you and I am simply
15 asking you whether that would -- if it didn't exist,
16 whether it would have been desirable that it should have
17 done?

18 A. With the benefit of hindsight and with what has
19 happened, yes.

20 Q. Can we then just look at some documents going through
21 the time-span of your holding these two posts, just to
22 see what was being said about these issues and what you
23 may have known about it and what, if anything, if you
24 did know about it, you did about it. Can we look,
25 please, first of all at MOD028335? I think you will

1 have seen the document before in preparation for giving
2 evidence. Do you see it is dated 30 November 1999?

3 A. Yes.

4 Q. It is a loose minute, "Interrogation requirements
5 study -- preliminary results".

6 If we go over the page, please, to paragraph 3 --
7 perhaps I should just take you to the end to remind
8 you -- MOD028339 -- it is under the hand of S040.
9 I think you have a cipher list in front of you and you
10 know who that is.

11 Paragraphs 3 and 4, under the heading "Policy
12 documents":

13 "After extensive enquiry in DISC, MoD and PJHQ, the
14 only evidence found to date of the existence of any
15 policy or doctrine on interrogation is in the old and
16 familiar publications, namely: ..."

17 They are there set out at (a) to (d):

18 "(a) JSP 391 ...

19 "(b) STANAG 2044 ...

20 "(c) JSP 120(6) ...

21 "(d) STANAG 2033 ..."

22 Then under paragraph 4:

23 "It is fortunate that in the act of signing any NATO
24 STANAG the UK has by definition declared the contents of
25 it to be national policy. A further document, JWP 1-10,

1 is in its first study draft and is intended to replace
2 JSP 391 only."

3 Just skipping a line or two:

4 "Although JWP 1-10 details D int corps as the
5 provider of advice on interrogation and tactical
6 questioning techniques and the processing of captured
7 documents and equipment for intelligence purposes, it
8 otherwise deals with interrogation in an extremely
9 cursory and rather confused manner. There is as yet no
10 evidence of any intention to replace JSP 120 ..."

11 You tell the Inquiry, I think that this is
12 a document that you don't recall having seen.

13 A. I do not recall having seen it, no.

14 Q. Would you have known, if it be the case, what is said
15 here, that JWP 1-10 deals with interrogation in an
16 extremely cursory and rather confused manner?

17 A. I didn't know.

18 Q. That wasn't brought to your attention, was it?

19 A. It wasn't brought to my attention, no. When I look at
20 this -- you are talking here of lieutenant colonel
21 commander level or that level -- I would see this as the
22 staff round in something that might get to me at DGIC in
23 this particular year at some point. But it doesn't
24 surprise me that I didn't see something that would have
25 been part of the day-to-day staff process.

1 Q. If we go on, noting that that is 30 November 1999 -- all
2 right?

3 A. Yes.

4 Q. If we go on please to MOD028347, we have now gone
5 through to 13 April 2000, do you see at the top?

6 A. Yes.

7 Q. "Interrogation -- doctrine, assets, training and the way
8 ahead". The same author as the one we looked at
9 a little earlier.

10 A. Yes.

11 Q. You see the references at the top of the page are the
12 same, including JWP 1-10.

13 A. Yes.

14 Q. If we go over, please, to paragraphs 4 and 5, what is
15 being said at this stage under "Current doctrine":

16 "References A to D are the current national and NATO
17 publications ... They are somewhat dated, stemming from
18 the cold war and the in-built assumptions that conflict
19 would be more simplistic and at a higher level than is
20 currently the norm."

21 Was that sentiment ever brought to your attention in
22 2000?

23 A. No, it wasn't brought to my attention and obviously
24 I think behind your question is the time lapse between
25 the two documents. But if you are asking how the

1 process -- and you did as you were setting the scene for
2 this -- is that this is a document that is doing the
3 rounds within particularly the DISC. It mentions
4 director int corps and I would fully have expected
5 him -- and obviously we are talking of one and the same
6 person here; the commandant of the DISC and director int
7 corps were the same person -- that had it been brought
8 to his attention, then he was well within his rights,
9 and I would have fully expected, that in formulating the
10 doctrine, he would have played a full part.

11 Q. Without your attention, as it were, being drawn to the
12 suggested deficiency -- my word.

13 A. Well it wasn't brought to my attention and I would
14 expect within a staff round that him, with then the
15 policy responsibility for that, that -- if he was happy
16 with the way the process was going, then he would get on
17 and do his business as he saw fit.

18 Q. Without reference to you?

19 A. No reason why he would have to refer to me if he was
20 doing his job.

21 Q. If we move on to MOD028345 from the JSIO. We have just
22 moved into May of 2000, under "Interrogation --
23 doctrine, assets, training and the way ahead".

24 Can we go over the page to the summary, please, and
25 paragraphs 7 and 8, where it is said:

1 "It is evident that the interrogation function has
2 not been properly addressed for several years. It is
3 still regarded as a useful weapon in the HUMINT armoury,
4 enabling the discipline to span all types of operational
5 scenarios. Direction and firm policy need to be the
6 start point for any re-examination."

7 At 8:

8 "The issues requiring clarification are complex,
9 especially legal parameters; this is traditionally
10 a charter for procrastination but they should not be
11 allowed to slow the pace of change if this is what is
12 required."

13 A. Well, I don't have the benefit of knowing where that
14 document went after that, again, within the staffing
15 chain, and I would not have expected to see it at that
16 level.

17 Q. But if you didn't see the document, Sir Joseph, were you
18 made aware of the concern being expressed within it at
19 any stage?

20 A. No.

21 Q. Not only the concern that the interrogation function has
22 not been properly addressed for several years, but that
23 procrastination should not be permitted; that is "we
24 must get on with it"?

25 A. I was not told of the issue.

1 Q. Should you have been if it is being expressed in these
2 terms?

3 A. If it is being expressed in those terms, yes, but it
4 wasn't.

5 Q. How would you have expected to have learnt of
6 deficiencies of the kind there set out in this document?
7 How should they have been referred to you?

8 A. They could have probably come in one of two ways.
9 First, either with the regular meetings, management
10 meetings, with my subordinates that the brigadier would
11 have brought it to my attention or, had ADI HUMINT been
12 told in these terms that it was going on, then he might
13 have told me of the issue.

14 Q. He might have told you or you would have expected him to
15 do so?

16 A. Well, I would have expected him to do so at some point,
17 but he would have been probably at the same meetings
18 that the brigadier was as well.

19 Q. Would you then have expected yourself to have taken up
20 the matter if you had been made aware of the deficiency,
21 as I am putting it, expressed in this way?

22 A. Yes, probably in these terms of instructing the
23 commandant of DISC, the director of int corps, to come
24 up with a plan of action which probably, in doctrinal
25 terms, would have then involved the then JDCC in

1 actually resolving the issue.

2 Q. Commodore Munns has given evidence to this Inquiry and
3 he told the Inquiry that at the MoD you were the most
4 senior officer dealing with policy leads for tactical
5 questioning and interrogation. Would he be right about
6 that?

7 A. Yes.

8 Q. So if there were deficiencies of the kind that I am
9 seeking to outline to you, as other people have put them
10 forward, it might be thought that these were matters
11 that ought certainly have been addressed to you and with
12 you?

13 A. Yes. I can understand that comment, but I think it is
14 also important to state the breadth of the job --
15 particularly as chief of defence intelligence, which was
16 not just with my formal post of DGIC, but also with the
17 second deputy, which you have also mentioned as looking
18 at my own evidence statement -- but also the breadth of
19 activity, both operationally that was going on with
20 Afghanistan in particular and a whole range of other
21 potential operations that -- things were very busy --
22 and that with well over 4,000 personnel dealing with
23 a tremendous spectrum of intelligence-type activity,
24 then the system does rely on delegation and that people
25 will bring to your attention things they believe demand

1 your immediate attention.

2 Q. From what you say -- perhaps because there was this
3 spectrum of other matters that took your attention, no
4 doubt, much of the time -- would it be right to say that
5 perhaps TQ and interrogation policy did not receive the
6 priority that with hindsight it ought to have done?

7 A. In that broader context, there were many issues.
8 Perhaps linked to your second point about capability,
9 the other backcloth that has to be understood is that,
10 from the end of the cold war, that the armed forces and
11 obviously organisations with the MoD had gone through
12 a significant change with options for change, defence
13 cost studies, the strategic defence review, the
14 strategic defence review new chapter.

15 Indeed, all the way through my time as both DGIC and
16 chief of defence intelligence, I, as well as the three
17 armed services, were looking to make significant
18 resource savings, both in terms of money spent and also
19 the manpower that we had available for the tasks we were
20 given. So this was one of many issues that you could
21 say was under a certain element of pressure.

22 Q. And was then perhaps given a lower priority than
23 otherwise --

24 A. No. That is what you are saying. I am -- it was not
25 brought to my attention, so I did not have the chance to

1 prioritise it in the tidy way you put the question.

2 Q. Just moving on, then, a bit in time, please, can we look
3 at just one line from three documents which I think are
4 drafts of the same? It is at MOD042040. Just to pick
5 up the date at the top of the page, Sir Joseph, it is
6 17 June 2002.

7 A. Yes.

8 Q. If we go through to MOD042044 and paragraph 10, just to
9 pick out the first sentence there:

10 "There is no MoD-endorsed doctrine for
11 interrogation."

12 Do you see that?

13 A. I do, yes.

14 Q. That is 17 June 2002, so we have now come on two years
15 from the last document that we were looking at.

16 If we go on please --

17 A. Sorry, you are missing a point there, that if you are
18 saying there was no doctrine, then JWP 1-10 I think came
19 out in March 2001 and we talked about "doctrine" in the
20 wider sense before, so I don't actually accept that
21 comment as written.

22 Q. I hear what you say. But we go back to -- I don't want
23 to go back to the old ground -- the generality of
24 JWP 1-10, as opposed to the detail.

25 A. Yes.

1 Q. Yes.

2 A. But doctrine is a broader spectrum than just JWP 1-10.

3 Q. I understand. What would you have understood by

4 sentence at 10, "There is no MoD-endorsed doctrine for

5 interrogation"?

6 A. I do not agree with it.

7 Q. You don't agree with it. What would you have understood

8 it or what do you understand it to mean?

9 A. Well, I can understand the words as written, but as we

10 said just a moment or two ago, that JWP 1-10 -- and you

11 have your own views on its adequacy -- existed at the

12 time, and teaching, if we are looking at the doctrine in

13 the broader sense we are going over the same ground, did

14 exist.

15 Q. Did you, in fact, see this draft with that sentence in

16 it at paragraph 10?

17 A. I can't remember.

18 Q. Again, if that were a view that were being taken in

19 2002 -- whatever the rights and wrongs of it -- and

20 perhaps if we look, please, at MOD041742, we can see, as

21 it were, it was a view being persisted in. Another

22 draft of the same document. Do you see the date at the

23 top of the page now of 27 September 2002? Now

24 paragraph 11, "Interrogation":

25 "There is no MoD-endorsed doctrine for

1 interrogation."

2 Was that view brought to your attention?

3 A. No, it wasn't.

4 Q. Should it have been if that were the view being taken at
5 that time?

6 A. I couldn't answer that question on behalf of those in
7 the chain who could have brought it to my attention. So
8 I can't put words in their mouth, but if it was as bad
9 as that, yes I would have expected someone to have
10 alerted me.

11 Q. On the question of capability, may I just move on to
12 that, please, at MOD042671? We can see the date of
13 22 March 2003 in the top right-hand corner.

14 A. Yes.

15 Q. You tell us in your statement to the Inquiry that you
16 think you would have read this or a version of this
17 document at some point.

18 A. Yes, I would have read, if not this one, then a version
19 of it, correct.

20 Q. "Delivering a defence interrogation and TQ capability
21 (interrogation and to support to operations). (A paper
22 by the Defence HUMINT policy group)."

23 Can we look at paragraphs 5 and 6? We are now, just
24 to remind ourselves, coming to the very end of your
25 time, aren't we, in these roles?

1 A. Correct.

2 Q. Paragraph 5:

3 "The UK's interrogation organisation is a cold war
4 legacy."

5 As we can see, that is reflecting the tone of what
6 was being said in the early documents that we looked at,
7 isn't it?

8 "Recent deployments, requiring interrogation
9 capability, have received inadequate or ad hoc support.
10 The chain of command is poorly educated in the
11 complexities associated with handling of a prisoner of
12 war and the utility of interrogation.

13 "6. The JFIT is not the 'complete capability' but
14 just one small specialist element of a much larger PWHO
15 [prisoner of war handling organisation] which must be
16 provided from elsewhere."

17 Here it is said that:

18 "There is adequate doctrine (JWP 1-10) ..."

19 Which is to pick up the point that you have been
20 making, isn't it?

21 A. Yes.

22 Q. "... but the UK has not invested in the means to deliver
23 it."

24 As I say, this was towards the end of your time.
25 Were you aware, if that be correct, that questions of

1 capability of delivery of TQ and interrogation was
2 a matter that was of concern?
3 A. It was an issue, but using "concern", your own word,
4 then, as I said earlier, it was one of many issues that
5 we were grappling with at the time. If you want to take
6 it back to the background there, then the
7 responsibilities, certainly from the cold war through,
8 were very much, for this issue, an army responsibility
9 until the DISC came under the direct control of the
10 chief of defence intelligence in the middle of the 1990s
11 or around 1997 when they moved from Ashford to
12 Chicksands and that this was -- again with the
13 drawdowns, the reshaping of the armed forces and the
14 fact that this whole interrogation process was being
15 dealt with on a joint approach, ie all three services,
16 that it was to look at what was happening and to try and
17 come up with a construct which better served the armed
18 forces with the sorts of operations that were taking
19 place.

20 You link this, though, in your question, as if
21 Op Telic was the only thing going on at the time. As
22 with human intelligence, for signals intelligence and
23 a whole range of other activities that I had to cater
24 for from Afghanistan and a whole range of other
25 operations that were actually going on, it was no

1 surprise that we didn't have everything that we would
2 have wanted to actually meet the operational
3 requirements and there is always a prioritisation that
4 has to be done and a risk assessment, which I think also
5 Commodore Munns mentions in his evidence.

6 Q. But you are not saying, are you, that resources -- the
7 resources issue, if I can take that broadly -- was the
8 reason why TQers, for example, were not provided in
9 sufficient number for Op Telic?

10 A. The issue, as I know from the bundle you have given me,
11 was raised obviously to Colonel Kett. He was obviously
12 bringing that to the attention of DGIC. He was having
13 a regular liaison with Commodore Munns and, as I said,
14 with many other opportunities -- or among other aspects
15 of putting together the right force for deployment, then
16 we were necessarily having to look at what we had in the
17 locker as a whole. The mobilisation of reserves was
18 an issue not just for human intelligence, but for
19 a whole other range of activities.

20 Q. So were you aware of the apparent lack of TQers
21 available for Op Telic in Iraq?

22 A. I was aware of tensions in coming up with the right
23 people to deploy and not in the words you express.

24 Q. Were you aware, for example, that the very trainers were
25 being deployed because there was no one else, which

1 itself left, as it were, a deficiency in training of
2 those who were to follow into Op Telic 2 and so on?

3 A. I can't remember directly from that time, but my
4 experience would be that you probably would have to take
5 people from training establishments, and the whole
6 question of how you got the right people -- troops to
7 task -- is something that would have taken that into
8 account and a prioritisation exercise would have gone on
9 accordingly.

10 Q. If we look, please -- coming back to the document at
11 paragraph 8, I wonder whether you would agree with what
12 is written halfway through the paragraph:

13 "History suggests that, unless there are personnel
14 dedicated to the interrogation role, the function is
15 given secondary importance resulting in a lack of
16 preparedness. Whilst trained manpower could easily be
17 found from within the planned establishment of the DHU,
18 if the UK is to take this requirement seriously, it is
19 vital that personnel are dedicated to the task."

20 That was being written, if you recall, on
21 22 March 2003. Would you agree with the sentiment there
22 expressed?

23 A. Yes, but if you are trying to link that to overall
24 numbers, then we are back to prioritising the resources
25 you have at hand at a particular time.

1 Q. Well, that is something that you have to do in every
2 situation.

3 A. Absolutely.

4 Q. If we could just go back to a document we looked at
5 a little earlier for another purpose at MOD041725,
6 please? We are going back to 23 July 2002, do you see?

7 A. Yes.

8 Q. At paragraph 8, if we can go to that, at MOD041729,
9 please, just under the heading of "Consequences of
10 failing to maintain a TQ capability", there is reference
11 to Operation Jacana. I do not read out the detail of
12 it. At paragraph 8 the consequences of failing to
13 maintain an interrogation capability are there set out,
14 as it is suggested.

15 At paragraph 10, just to remind you, it is the same
16 theme again:

17 "There is no MoD-endorsed doctrine for
18 interrogation."

19 That is a point we have already dealt with.

20 Q. This was, wasn't it, on one view anyway, an early-ish
21 warning that there were what I might describe as
22 "capability issues" at least?

23 A. There are capability issues, but I think the key word,
24 if you go back to paragraph 8 -- if there is any
25 suggestion that there wasn't a capability, then I would

1 suggest the key word on that second line is "maintain",
2 that there was a capability. To what extent that was
3 I would not know without going back over the records
4 now.

5 Q. But you don't, in any event, do you, remember this issue
6 being brought, as it were, to your table?

7 A. No, not until this paper was actually being staffed up
8 through me.

9 Q. Did you take steps to deal with any perceived lack of
10 capability?

11 A. Directly, no, but I would argue that this paper going up
12 to the chiefs of staff was part of a process that was
13 addressing that.

14 Q. What, alerting them to the problem?

15 A. And looking for an increase in resources and
16 a restructuring to address the issues brought out in the
17 paper.

18 Q. Just a little earlier in 2002 -- may we have a look,
19 please, at a document we find at MOD037444, addressed to
20 the DGIC, dated 28 March 2002, as you can see. There is
21 a reference in paragraph 1 to:

22 "The developing operational situation in Afghanistan
23 brings the potential intelligence acquisition from
24 prisoners through timely and effective tactical
25 questioning into sharp relief. I have the impression

1 that the unit and formation capability which the army
2 maintained during the cold war, and utilised to
3 considerable effect during Op Corporate, has atrophied.
4 The army used to have personnel trained in PH&TQ
5 available to battlegroups. These played a vital role in
6 both timely acquisition and identifying prisoners who
7 may have been of longer-term interest to our
8 intelligence organisation."

9 Were you made aware of that sentiment in early 2002?

10 A. No, and I would also make the point here that the
11 army -- and this originated from an army department --
12 had it within its gift to solve some of these problems.

13 Q. At paragraph 3 it is said:

14 "The lack of PH&TQ trained personnel within deployed
15 force elements risks the loss of potentially accurate,
16 timely and life-saving information/intelligence during
17 war-fighting operations."

18 It obviously was a serious matter, wasn't it, if
19 there were this capability deficiency?

20 A. Well, you make the point of seriousness or not. It was
21 not brought to my attention.

22 Q. Paragraph 4:

23 "Within the army I believe we need to address the
24 capability requirement and mechanisms whereby we can
25 redevelop our ability to exploit the intelligence value

1 inherent in the capture of enemy personnel ...

2 "5. In the light of the current operational
3 commitments I think that plugging this capability gap is
4 urgent."

5 Over the page, you can see the author of the
6 document. These issues were simply not brought to your
7 attention?

8 A. This wasn't, and the minute is twofold, I would suggest.
9 One is a statement of intent, as I would expect from the
10 originator of that minute, to look at this problem and
11 that, in taking it forward, DMO would have been the one
12 who would look at resources and DGIC would have been the
13 provider of the training to overcome an issue that the
14 army had recognised and were getting on and trying to
15 solve.

16 Q. It may be said, Sir Joseph, in the context either of
17 doctrine, as I have been calling it, or capability --
18 the two aspects of the questions I have been seeking to
19 put to you -- that there had been procrastination and no
20 progress over a number of years and the years when you
21 were in the role that you have told us about. Isn't it
22 at the least surprising that these issues were not
23 brought to you?

24 A. I wouldn't use words as strong as you have in terms of
25 "procrastination". You have taken those from the

1 documents. Obviously there was an issue, but whether or
2 not -- well, it wasn't brought to my attention. I mean
3 that is the issue, period.

4 Q. Well it is the issue, period, as you put it. Didn't
5 your assistant director, Mr Kett, for example, who gave
6 evidence yesterday, ever bring these issues to your
7 table?

8 A. In terms of looking at the capability, "yes" has to be
9 the answer because a paper was being taken forward to
10 the chiefs of staff and I did see that.

11 Q. It was never the case, was it, that you felt that these
12 were issues which needed rather more urgent attention
13 than appear to have been given to them over these years?

14 A. No.

15 Q. At paragraph 2 -- the last point on the document,
16 please -- there is reference to service responsibilities
17 for PH&TQ policy appearing to be unclear.

18 May I ask you this? Having pointed that out in that
19 document -- can I take the two things quite
20 separately -- if the chairman were to find on the
21 evidence that there appears to have been no clear
22 written doctrine available in certain areas with which
23 this Inquiry is concerned, whose responsibility, so far
24 as TQ and interrogation, would it have been to produce
25 such clear guidance?

1 A. It would rest in several courts. Yes, I had
2 responsibility for the policy in its wider sense and
3 also providing the training wherewithal, which was at
4 the Defence Intelligence and Security Centre. In terms
5 of producing the correct numbers or force elements of
6 readiness, as they were described, each service had its
7 own responsibilities and the atrophying is obviously, as
8 I said earlier, the army talking of doing its bit.

9 But I would have expected from this -- I don't know
10 what the staff chain or the response was particularly on
11 the part of DGIC, whether it was a training capacity
12 issue -- we have already talked of the paper that was in
13 being to look more widely at the capability requirement
14 and so the issue was being taken forward.

15 Q. It was being taken forward, as I think we have seen
16 now -- I have taken it shortly, but you know the
17 documents -- it was being taken forward, wasn't it, if
18 it were being taken forward, at a snail's pace?

19 A. They are your words. The process with so much else
20 going on in the Ministry of Defence at that time -- many
21 things take what seems to be a long time, but there were
22 more than a few other things going on at this particular
23 stage.

24 Q. But years to produce -- indeed was it ever produced --
25 a "This is how you do it" manual in relation to tactical

1 questioning and interrogation, for example --

2 A. I don't accept what you are putting there. We have been
3 over this ground many times before. You are asking
4 about a document that captured every conceivable part of
5 tactical questioning and interrogation. I would suggest
6 that the starting point is JW 1-10 as the part of a more
7 broader spectrum of documents that address those issues.

8 Q. Well, I think we shall leave that, taking our differing
9 paths to it.

10 Does it follow then, Sir Joseph, that when you
11 handed over to your successor -- Mr Ridgway, I think --
12 you did not pass the concerns, either as to the paucity
13 of documents or indeed as to capability and capability
14 concerns, over to him?

15 A. The paper, whether it went from me directly, that had
16 either gone to the chiefs of staff -- and I don't know
17 its passage through, other than from the papers you have
18 given me -- that it was eventually cleared some time
19 later, I think in 2006. But that would have been
20 an issue which would have been passed on to him.

21 Answering your question directly, whether I told him
22 in terms of those two issues, I didn't see them in the
23 priority that you mentioned and I am not aware of
24 passing them on to him in those terms.

25 Q. So as you appear here today, from your perspective, no

1 fault attaches to you for any deficiencies in the two
2 areas that I have sought to outline to you?

3 A. I would, with my responsibilities, have to accept that
4 there was an element of corporate responsibility, but we
5 come back to the point of the breadth of what we were
6 having to cover in what was an incredibly busy
7 operational period with operations on more than one
8 front; then this was not something that was consuming my
9 time and I would expect that the staff would be getting
10 on with these sorts of issues.

11 MR ELIAS: Thank you very much.

12 THE CHAIRMAN: There may be other questions for you,

13 Sir Joseph.

14 Ms Hetherington?

15 Questions by MS HETHERINGTON

16 MS HETHERINGTON: Sir Joseph, dealing firstly with your role
17 as DGIC. While you were DGIC, a soldier who we know as
18 "S061" was ADI HUMINT and you say in your statement that
19 he reported to you on all HUMINT matters. Would that
20 have included tactical questioning and interrogation?
21 I ask because there is some suggestion from Colonel Kett
22 that ADI HUMINT only took responsibility for that some
23 time later in 2002.

24 A. I draw exactly the same conclusions from the document.

25 I was not aware of that issue at the time but, having

1 obviously read the papers that have been given to me,
2 then I also deduce that there was a transfer of
3 responsibility from the DISC to him on the date you
4 said.

5 Q. But it wasn't something you were aware of at the time?

6 A. It would have been a re-organisation within DGIC's own
7 area.

8 Q. In terms of the vexed question of doctrine and guidance,
9 you have explained that your understanding of this is
10 that it includes training. You said earlier in your
11 evidence --

12 THE CHAIRMAN: "Doctrine" I think you say is training --

13 A. Teaching.

14 THE CHAIRMAN: Sorry, teaching, yes.

15 MS HETHERINGTON: You said earlier in your evidence that
16 tactical questioners and particularly interrogators are
17 trained and experienced individuals. Were you at the
18 time that you were either DGIC or CDI that tactical
19 questioners just did a five-day training course?

20 A. No, I didn't know the length of the course.

21 Q. Were you aware that the interrogators were mostly
22 reservists with no regular operational experience?

23 A. I probably was aware, but that's not a surprise as
24 reserves covered a whole range of activity throughout
25 the armed forces.

1 Q. Were you aware that in both tactical questioning and the
2 interrogation -- at the time that you were in charge --
3 there was no requirement for a refresher training of any
4 nature?

5 A. I wasn't aware.

6 Q. Bearing in mind those matters, you talked about handouts
7 and general advice in theatre and I think you accepted
8 with hindsight that there should have been some written
9 guidance on what was appropriate in terms of the limits
10 of methods of tactical questioning and interrogation.

11 We have heard what you say about having one single
12 manual setting everything out exhaustively, but isn't it
13 the case that, even without hindsight, there clearly
14 should have been, at some level, fairly detailed written
15 guidance setting out the parameters of acceptable
16 approaches for these techniques?

17 A. I didn't accept in the terms you mentioned in the
18 question. What I don't know -- if you follow the
19 doctrine through -- is exactly what orders were given
20 from the national contingent commander through the
21 division to the brigade to the battalion groups that
22 were on the ground. I do know a card went to each
23 individual person within the NCC and that, at least in
24 two places, talked of the humane treatment of anyone
25 taken prisoner.

1 Q. But beyond the broad requirement of humane treatment --
2 I am talking about the limits of, for example, the harsh
3 approach, the nature of any insults that may be used or
4 threats that may or may not be used -- would you expect
5 that kind of matter to have been dealt with in writing
6 at some level, whether it be a training handout or
7 a directive in theatre?

8 A. Yes. Without seeing the training handouts I don't know
9 what was said of that, but certainly I can infer it from
10 JWP 1-10, from Geneva Conventions and indeed going
11 through the training courses and syllabi of the DISC at
12 the time.

13 Q. Were you aware during your time as DGIC or CDI of any
14 legal or policy requirement that interrogation methods
15 should be routinely reviewed?

16 A. Sorry, could I hear the question again?

17 Q. Yes. Were you were aware whilst you were either DGIC or
18 CDI of any legal or policy requirement that
19 interrogation methods be routinely reviewed?

20 A. No.

21 Q. Would you have regarded that, in any event, as a matter
22 of best practice?

23 A. It would have been a matter of best practice and again,
24 as with all of these things, something such as a joint
25 warfare publication would have been on a regular review,

1 as are most training syllabi, statements of training
2 requirement needs, et cetera, et cetera.

3 Q. Would your assumption have been that that review would
4 include legal advice?

5 A. We would not go about something such as that publication
6 in the context we are talking about without taking
7 advice from the legal authorities to make sure that you
8 have got the correct framework for the advice.

9 Q. Thank you. Lastly this: you explain in your statement
10 that prior to becoming DGIC you had no intelligence
11 training and we heard also from Commodore Munns that,
12 before he became ACOS J2 at PJHQ, he had no intelligence
13 background. He gave some commentary on that, but
14 can I ask, was that normal within the framework for
15 someone in the role of DGIC not to have any previous
16 intelligence experience?

17 A. It wasn't unusual and that -- as with many generalist
18 appointments at that level, I had, certainly in the
19 appointment before taking up DGIC, responsibilities --
20 and the nuclear policy, I was and had been for many
21 years using an awful lot of intelligence, so knew
22 obviously the activities on many parts.

23 But training, if you put it in the sense of doing
24 a dedicated course tailored to the job, is not how they
25 are handed over. When I took up the post of DGIC,

1 I would have received written briefs on roughly what
2 each part of the organisation did, what it saw as the
3 main issues taxing them at the time, and then you go on
4 a series of visits to the units, again to actually get
5 to meet the personnel under your command and equally to
6 find out the issues that they are dealing with on
7 a day-to-day, month-to-month basis.

8 Q. Would you accept that, therefore, it meant that you were
9 more reliant than you might otherwise have been on the
10 information that you were provided by those beneath you?

11 A. I was no more reliant in that job than I was in other
12 jobs as I went through my career in the Royal Air Force,
13 and people in other appointments.

14 Q. Thank you. General Ridgway, whom we will be hearing
15 from on Monday, explains in his statement that, prior to
16 becoming CDI, he underwent a sort of crash course or
17 shortened version of the courses provided by DISC. Did
18 you do anything like that before you became CDI?

19 A. No, I didn't, but he ended up -- because of the timing
20 of the operation in Iraq, he was scheduled to take over
21 from me two or three months earlier than the April 2003.
22 It didn't seem, on the chief of defence staff's part, it
23 was right for me to leave at that stage, therefore he
24 ended up with time on his hands that he could actually
25 undertake that sort of activity.

1 MS HETHERINGTON: Thank you, Sir.

2 THE CHAIRMAN: Ms Dobbin?

3 MS DOBBIN: Nothing from me.

4 THE CHAIRMAN: Mr Evans.

5 MR EVANS: Nothing from me, Sir, thank you.

6 THE CHAIRMAN: Mr Elias?

7 Further questions by MR ELIAS

8 MR ELIAS: Could we go back in the [draft] transcript at
9 page 184, line 10. Do you see the question that you
10 were asked a moment or so ago, Sir Joseph, at line 10?

11 A. Yes.

12 Q. "But beyond the broad requirement of humane treatment --
13 I am talking about the limits of, for example, the harsh
14 approach, the nature of any insults that may be used or
15 threats that may or may not be used -- would you expect
16 that kind of matter to have been dealt with in writing
17 at some level, whether it be a training handout or
18 a directive in theatre?

19 "Answer: Yes. Without seeing the training handouts
20 I don't know what was said of that, but certainly I can
21 infer it from JWP 1-10, from Geneva Conventions and
22 indeed going through the training courses and syllabi of
23 the DISC at the time."

24 What did you mean by that? What was the answer to
25 the question? Would you expect that kind of matter to

1 have been dealt with in writing at some level? What was
2 the answer to the question, please?

3 A. The answer is yes, I would have expected it to be in
4 some of the handouts that were given on the courses that
5 were conducted at the DISC.

6 Q. And only in the handouts?

7 A. I would say -- we have been over this point before --
8 that without actually seeing every other guidance note
9 that was either in the intelligence corps -- but I would
10 have expected in broader terms that the law of armed
11 conflict that that would have touched on Geneva
12 Convention with the annual training that would have been
13 the cycle for most soldiers that these issues would have
14 been touched on.

15 Q. But JWP 1-10 was not going to help with the sort of
16 detail that that question was addressing?

17 A. No, we come back to the same point we have been round
18 many times before, that that actually is one of the
19 capstones that provides the framework for that broader
20 activity that would go on beyond it.

21 Q. I suppose the simple question comes down to this,
22 doesn't it: would it not have been desirable and simpler
23 if we had had a manual that dealt with this in the
24 detail that was being put to you just a few minutes ago?

25 A. I can't make that judgment from the prism of the

1 question, which was 2003. If we are talking of doctrine
2 and its application that lessons learned -- and it has
3 been agreed that we ought to put it in more explicit
4 terms, then that has been followed through. But that is
5 part of the doctrinal process.

6 Q. You don't have a view about that either, do you?

7 A. Sorry?

8 Q. You don't have a view about that even today?

9 A. I have a view in the sense that we have learned lessons
10 and, to actually cover a specific, then that area is
11 covered. If -- and if I have or I have given any sort
12 of doubt, I would not envisage that you could ever come
13 up with a doctrine or guidance notes that would not at
14 some stage potentially lead to something going wrong
15 either on an operation or elsewhere --

16 Q. Forgive me, that would probably apply to every field of
17 human activity, wouldn't it?

18 A. We are agreeing on that, yes.

19 Q. It doesn't prevent, does it, the introduction of
20 a handbook that might give some basic ground rules?

21 A. We had a doctrine at the time. That doctrine has been
22 changed as per the doctrinal process through lessons
23 learned.

24 MR ELIAS: Thank you very much.

25 THE CHAIRMAN: Before you go, one or two odd questions

1 I would like to ask you if I may, please, Sir Joseph.

2 Questions by THE CHAIRMAN

3 THE CHAIRMAN: Forget about terms such as "doctrine" and the
4 like and help me about an idiot's guide to TQ'ing. Is
5 there now such a document which gives a short guide to
6 those who TQ and anybody who wishes to know what TQ'ing
7 is?

8 A. I don't know is the answer because I obviously left that
9 post in 2003. I would be very surprised, with all that
10 has happened --

11 THE CHAIRMAN: If there wasn't?

12 A. -- if there wasn't one at the moment.

13 THE CHAIRMAN: Was there one before you left?

14 A. I don't know. Again, as I said earlier, without
15 actually going through the documents -- in particular
16 I would be looking at the handouts that were given out
17 on courses --

18 THE CHAIRMAN: I would be very grateful for your view as to
19 whether you think such a document would be a sensible
20 thing to produce now if it isn't there.

21 A. You would have to do it now, yes.

22 THE CHAIRMAN: Yes. I imagine you would.

23 There is one other matter I want to ask you about
24 and that is this: I have heard from two sources -- again
25 forget about the nitty-gritty of tactical questioning --

1 that over a period of years there was an anxiety about
2 capability and the end result appears to have been that,
3 when it came to the Queen's Lancashire Regiment, which
4 went out in Op Telic 2, there was not sufficient
5 resource available to train TQers who could go to 1 QLR,
6 which may or may not -- depending on my findings -- have
7 an effect on what happened in the Queen's Lancashire
8 Regiment.

9 The reason, as I understand it, was because most of
10 those who were trainers at the JSIO had actually had to
11 go out to run JFITs and the like in Iraq so there was
12 nobody to train. Do you regard that as a satisfactory
13 situation?

14 A. I don't in the terms you have expressed it, but I would
15 want to know who had perhaps left the colours in recent
16 times, what mobilisation process had gone through, but
17 also what was the training period for the particular
18 battalion group you are talking about, whether the
19 people from JSIO were actually in theatre all the time
20 or whether some of them had actually served their time
21 to go back.

22 THE CHAIRMAN: Just take my premise -- it may or may not be
23 right and I shall have to make my mind up about it --
24 but that is that there was nobody to train -- or not
25 sufficient numbers to train -- at JSIO because they had

1 all had to go to run the JFIT and other things. If that
2 is right, would you regard that as satisfactory or not?

3 A. No, not in those terms.

4 THE CHAIRMAN: Would you regard that as, if it is right,
5 a consequence of a lack of capacity and capability?

6 A. It was a limited capability, but obviously there had
7 been a path chosen to actually deploy the people from
8 the JSIO.

9 THE CHAIRMAN: Going on from there, what I heard from both
10 these two sources is that they had been, to use,
11 I think, somebody's terms, jumping up and down seeking
12 capability and saying, "There's not much point in
13 getting the doctrine straight because there is nobody to
14 actually put it all into practice". Did none of that
15 come to your attention?

16 A. No, and again I am surprised, if the issues were felt
17 that strongly, that then they hadn't come up through the
18 chain of command.

19 THE CHAIRMAN: I got the impression they were felt really
20 quite strongly indeed. There it is. It did not come to
21 your attention.

22 A. No.

23 THE CHAIRMAN: Very well. Thank you very much for coming to
24 the Inquiry and answering questions and giving your
25 evidence. I am extremely grateful to you for sparing

1 the time to do so and you are now free to go and we will
2 have a ten-minute break.

3 A. Thank you, Sir.

4 (3.39 pm)

5 (A short break)

6 (3.50 pm)

7 THE CHAIRMAN: Yes, Mr Moss.

8 MR MOSS: Thank you, Sir. I call Sean Martin, please.

9 THE CHAIRMAN: Yes, Mr Martin, would you be kind enough to
10 stand up and I will ask that you take the oath please.

11 SEAN EDWARD MARTIN (sworn)

12 THE CHAIRMAN: Thank you very much. Do sit down. May I ask
13 you please to get as close as you can to that
14 microphone? I am afraid it may be a little
15 uncomfortable being that close, but if you speak into
16 it, then we will all be able to hear you. Thank you
17 very much. Yes, Mr Moss.

18 Questions by MR MOSS

19 MR MOSS: Could you start by give your full name, please,
20 Mr Martin?

21 A. Sean Edward Martin.

22 Q. I hope you have on the desk in front of you a copy of
23 your statement to the Inquiry. Could we look at the
24 final page of it together? We have it at BMI08369,
25 please. Do we see there that that is a statement you

1 provided to the Inquiry on 24 May of this year?

2 A. Yes.

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

6 A. Yes.

7 Q. So far as your evidence is concerned, Mr Martin, the two
8 main topics that I want to ask you questions about are
9 firstly your knowledge and involvement in hooding and,
10 secondly and more specifically, the change that you made
11 to the text for some ministerial correspondence. Before
12 I turn to those two topics matters, can I deal with a
13 few introductory matters please?

14 Can we start with your career history just to put
15 the matters in context. I think you tell us that you
16 qualified as a solicitor back in 1990; is that right?

17 A. That is right, yes.

18 Q. That you joined the Government Legal Service in 1993?

19 A. Yes.

20 Q. Your background initially was working in commercial
21 arbitration and then I think in immigration matters?

22 A. Yes.

23 Q. You worked in the prison service, judicial review and
24 looking at contempt of court matters and breach of
25 confidence issues?

1 A. Yes.

2 Q. Did you then, in October 2001, transfer to MODLA, the
3 MoD legal advisers?

4 A. I did, yes.

5 Q. By the sounds of your statement, it would have been
6 quite a change in the nature of the work that you were
7 involved with.

8 A. It was a change, yes.

9 Q. Is there anything particularly unusual in the Government
10 Legal Service in having that rather drastic change of
11 role?

12 A. No.

13 Q. Would that have been part of the usual job rotation
14 process involved for Government lawyers?

15 A. It was fairly typical of the job rotation process.

16 Q. I think, having worked for MODLA, you left MODLA in
17 March 2004 for the DTI; is that right?

18 A. That's right.

19 Q. And you left the GLS altogether and joined the FSA?

20 A. Yes.

21 Q. Thank you.

22 Could I deal very briefly then, still with
23 introductory matters, with your role in MODLA and your
24 reporting lines. You tell us in brief that MODLA
25 consisted of three teams, of which you were a grade 6

1 lawyer in the general team; is that right?

2 A. Yes, it is.

3 Q. And that your grade 5, to whom you reported in MODLA,
4 was Vivien Rose, from whom the Inquiry has heard.

5 A. Initially it was Frances Nash, but subsequently it was
6 Vivien Rose.

7 Q. Thank you. One gets the impression -- correct me if
8 I am wrong -- from your statement that, as far as your
9 ordinary work was concerned before Operation Telic, you
10 didn't have much involvement with operational law
11 matters.

12 A. That's right. The only exception to that was in
13 relation to the potential use of nuclear weapons, where
14 I had advised in -- had assisted in advising in 2002.

15 Q. Please make an effort to keep your voice up.
16 So some involvement with nuclear issues, but
17 otherwise not involved in operational law matters?

18 A. That's right.

19 Q. You tell us that the lead on operational law matters, as
20 you saw it, was with Mr Hemming, the head of MODLA, and
21 with Vivien Rose and with Rachel Quick, who was at PJHQ;
22 is that right?

23 A. Yes, it is.

24 Q. In the latter half of 2002, though, I think as
25 Operation Telic planning went forward, there came to be

1 realisation that there might be a need within MODLA for
2 more people to work on operational law matters. Is that
3 right?

4 A. It is, yes.

5 Q. As a result of that, did you become more involved,
6 familiarising yourself with PJHQ and its staff and going
7 on a course in San Remo?

8 A. Yes.

9 Q. Thank you. Turning then briefly to training, obviously
10 you were a civilian lawyer, rather than from the Army
11 Legal Service.

12 A. Yes.

13 Q. You tell us that you were not aware of the Heath ruling.

14 A. That's correct.

15 Q. Not aware of the 1972 Directive prohibiting the five
16 techniques?

17 A. Correct.

18 Q. Can I ask you just a little bit about Ireland v UK? Had
19 you come across that at all in your previous work?

20 A. I do not think so. It is possible that I came across it
21 while doing immigration judicial review, but I don't
22 remember doing so.

23 Q. But other than as a general, as it were, Article 3
24 authority, it is not a case that particularly stood out
25 for you?

1 A. No.

2 Q. The course that I briefly mentioned in San Remo, I think
3 that was a course that you did in November 2002,
4 a two-week course.

5 A. Yes.

6 Q. Your statement suggests that you found it a good course.

7 A. Yes.

8 Q. It had a section, did it not, on prisoners of war?

9 A. It did, yes.

10 Q. But that did not descend into detail on matters such as
11 blindfolding or hooding or anything like that?

12 A. No.

13 Q. You tell us, though, that you did understand,
14 particularly from that course, that so far as treatment
15 of prisoners of war was concerned, that there was
16 a clear message of the importance of treating prisoners
17 humanely.

18 A. That's right.

19 Q. Can we just look next, please -- once you became
20 involved in operational law matters and were involved in
21 Op Telic matters in the planning phase -- about the sort
22 of work with which you were involved yourself in
23 prisoners of war just at a general level. Again, would
24 you correct me if I have this wrong, but it looks from
25 your statement as though, almost by accident, you ended

1 up taking some issues and your colleague, Linda Dann,
2 concentrated on others and that you kept some areas of
3 responsibility for certain issues, the two of you; is
4 that right?

5 A. That's right. I think it is -- the overlap in terms of
6 responsibility was probably more with me and Vivien Rose
7 in terms of who was dealing with what.

8 Q. You suggest in your statement that you dealt with
9 certain prisoner of war matters, whereas Ms Dann tended
10 to concentrate on war crimes matters; is that right?

11 A. Yes, that's right.

12 Q. Could we look just briefly, please, at paragraph 29 of
13 your statement? You list there in helpful detail -- if
14 one looks at paragraph 29 at BMI08358 -- and over the
15 page a whole host of emails that you were asked to
16 comment on by the Inquiry. Without taking you to the
17 detail of any of those, they seem to show your
18 involvement in issues such as the transfer of prisoners
19 between coalition forces. Is that something which rings
20 a bell as an issue with which you were involved?

21 A. Yes, it was.

22 THE CHAIRMAN: Mr Moss, we are all very conscious that it is
23 Friday afternoon and it is getting late, but you are
24 going very fast.

25 MR MOSS: I will slow down. It is my fault.

1 And the memorandum of understanding arising out of
2 that about the transfer of prisoners?
3 A. That was something I didn't lead on, but I was aware of
4 the development of the MOU.
5 Q. Thank you. Prisoners of war possibly needing to come to
6 Britain, I think an issue in which you were involved?
7 A. Yes.
8 Q. And in particular the possible need for them to have
9 medical treatment in certain circumstances?
10 A. Yes.
11 Q. Again, without going into the detail, issues such as the
12 use of a naval ship for treatment of prisoners during
13 the operation --
14 A. That's correct, yes.
15 Q. -- something which caused particular controversy.
16 I think also the emails show your involvement in
17 discipline of prisoners of war and the status of
18 prisoners of war and the regulations that governed both
19 of those two issues. Would that be right?
20 A. That is right.
21 Q. In general terms, one of the issues -- at that time the
22 regulations that dealt with discipline and status of
23 prisoners of war were really quite antiquated?
24 A. Yes, I think they dated from 1948 in one case.
25 Q. Yes. Within that context, certainly, consideration of

1 the European Convention on Human Rights and whether that
2 might apply to those issues; would that be fair?

3 A. That is fair.

4 Q. So does that summarise the sort of issues in which you
5 were involved in the very many emails to which you refer
6 helpfully in your witness statement?

7 A. It does, yes.

8 Q. Can I just move on very briefly to that issue of the
9 European Convention of Human Rights? Others may have
10 more questions. I only want to ask you two. Can I ask
11 you what your own understanding was as to whether
12 Article 3 of the European Convention and its prohibition
13 on inhumane treatment and torture -- whether Article 3
14 applied to prisoners of war who were detained in Iraq by
15 British forces?

16 A. My understanding was that the Convention applied insofar
17 as we had effective control of territory and that would
18 apply just as much to Article 3 as it would do to any
19 other article.

20 Q. So would that apply in the situation where British
21 forces had taken custody and detention of a prisoner in
22 a British prisoner facility?

23 A. It might well do.

24 Q. The only other sub-aspect on that is this: were you ever
25 aware of any debate or discussion about the

1 applicability of the ECHR affecting the question of what
2 standards for the physical treatment of prisoners ought
3 to apply?

4 A. No.

5 Q. Having dealt with those preliminary matters, can we
6 turn, then, to the first of the more major topics? That
7 is the issue of hooding and your knowledge of it and
8 involvement in it.

9 Could we start, please, with your general
10 recollection? Do you, as you sit there now, have any
11 recollection of advising or giving input on the
12 appropriateness or otherwise of the use of hoods?

13 A. I don't have any recollection of that, no.

14 Q. Do you go so far as to say that you don't think you were
15 involved or is it possible that you were involved and
16 you have forgotten about it?

17 A. I don't think I gave any advice. I am fairly sure about
18 that. I think it's possible that I would have heard
19 conversations about the use of hooding, but I certainly
20 don't recall being asked to advise or comment on the use
21 of hooding.

22 Q. Can we just look at it, then, in chronological order in
23 the run-up to Op Telic 2, looking at a number of
24 documents? Can I ask you, please, about the stage prior
25 to the war-fighting phase? Without going into any

1 detail, you will be aware, Mr Martin, from the
2 documents, that there were a number of meetings of
3 lawyers and those who were going to be divisional leads
4 on prisoners of war, some of which you attended, didn't
5 you, in the run-up to the war-fighting stage?

6 A. I certainly attended a meeting at PJHQ in January 2003.

7 Q. Now, whether at that meeting or others that you attended
8 with lawyers, do you have any recollection at all of
9 sight deprivation of prisoners being an issue that was
10 current prior to the war-fighting or was discussed prior
11 to the war-fighting phase?

12 A. No.

13 Q. Can I ask you, if sight deprivation had been discussed
14 at a meeting prior to the war-fighting phase, whether
15 that's the sort of thing you think you would now
16 remember?

17 A. I think it is the sort of thing I would have remembered,
18 but it would have depended on the context and exactly
19 what was meant by "sight deprivation" and the
20 circumstances in which that was taking place.

21 Q. Thank you. Can we move on just a little bit in the
22 chronology, then, to the early stages of the
23 war-fighting phase and to look at some issues relating
24 to the International Committee of the Red Cross?

25 Now, I would be grateful if you would avoid using

1 his name, but I think it is right, isn't it, that you
2 did have some direct contact with a British Red Cross
3 lawyer on certain issues?

4 A. Yes, it is.

5 Q. Are you able to confirm, for example, that you had an
6 involvement and an engagement in considering the
7 possibility -- perhaps we don't need to go into
8 details -- of whether the Red Cross might be willing to
9 act as the protecting power in the conflict?

10 A. I was involved in those discussions.

11 Q. Again, without, please, giving names or perhaps going
12 into unnecessary detail, did you therefore have a line
13 of communication at least to the British Red Cross?

14 A. Yes, I did.

15 Q. Did you have a line of communication to the
16 International Committee of the Red Cross separate from
17 your contacts with the British Red Cross?

18 A. No, not as far as I can recall.

19 Q. Now, the Inquiry has heard quite a lot of evidence, as
20 you may be aware, that in the last weeks and days of
21 March 2003 and in early April 2003, issues arose in
22 theatre relating to the use of hessian hoods and plastic
23 hoods at the JFIT and Red Cross concerns about that
24 practice, Red Cross concerns about prisoners being left
25 in the sun and a number of senior officers --

1 Colonel Mercer and Colonel Vernon to name but two -- who
2 also had concerns about hooding and to some extent about
3 stress positions as well. So far as that time-frame is
4 concerned -- late March/early April -- were you made
5 aware of those issues having arisen in theatre?

6 A. Issues as to the concern about the use of hoods?

7 Q. Concerns of the Red Cross about the use of hoods or
8 stress positions or concerns of senior officers.

9 A. No, I don't believe so.

10 Q. Would you not in your role have received feedback on
11 visits by the Red Cross to British or joint coalition
12 detention facilities?

13 A. No, not necessarily. My role was mostly Whitehall
14 facing, so the likelihood is that I would have been
15 asked for advice from MoD colleagues based in or around
16 Whitehall, rather than being fed information necessarily
17 from theatre.

18 Q. Can I ask you this then? You say that you were not
19 aware of this having arisen at the time; you were not
20 aware contemporaneously. How confident of that are you?

21 A. I am fairly confident of that.

22 Q. Can we move on then, please, to MOD053239? Mr Martin,
23 we may well come back to this to look at the change in
24 the drafting. For present purposes, can we just note
25 the date of this, 23 April 2003. I think if we see the

1 top email, we can see your email, which was "LAll" and
2 then the "S" afterwards.

3 A. Yes, that's right.

4 Q. And "Sean" there, presumably you?

5 A. Yes.

6 Q. Just to get the context, this was, was it not, some
7 input that you were given on a piece of text to be
8 inserted into some ministerial correspondence?

9 A. Yes.

10 Q. May we just look at the correspondence -- it is over the
11 page at MOD053240 -- or I should say the text for
12 insertion. You would presumably, at least from seeing
13 this text, have been made aware at this stage, as the
14 original text suggested, that there were a couple of
15 occasions at the start of the conflict where prisoners
16 were hooded for short periods; would that be right?

17 A. That's right. It may even be that I was aware of the
18 use of hoods before I received this draft text, but
19 I can't be sure of that.

20 Q. You say it is possible. Do you know how it may have
21 been that you had become aware of the use of hoods
22 before this?

23 A. I think it is possible that there were discussions
24 within MoD legal advisers about the use of hoods.
25 I expect you will come on to this, Mr Moss, but looking

1 at the change that I made to the text and trying to
2 understand why I would have made those changes, I think
3 it must be that I understood that the use of hoods had
4 been used in the past for security purposes.

5 Q. So -- and we will come back to it -- you infer, would
6 this be fair, that you would not have made the changes
7 that you did to this text without some prior knowledge
8 of the use of hoods, what they had been used for --

9 A. I think either some prior knowledge or some knowledge at
10 the time as a result of conversations that took place
11 then.

12 Q. Thank you. But looking, as it were, at what your
13 minimum knowledge must have been from this, you accept
14 knowledge of a couple of occasions when prisoners were
15 hooded -- that is what the text said; the practice had
16 now been stopped, so you would have been aware of
17 that --

18 A. Yes.

19 Q. -- that assertion.

20 At the "Background" section, you would have been
21 aware from that, would you not, that command in theatre
22 had expressed concern about the use of hoods --

23 A. Yes.

24 Q. -- because that was part of the background text that you
25 were looking at?

1 A. Yes.

2 Q. And without, for the moment, delving into the change
3 that was made, the original suggestion in the text was
4 that it was involved in a process of detaining and
5 disorientating prisoners of war. So you would have been
6 aware of that as a suggestion at least?

7 A. Yes, I would. I may not have appreciated the
8 significance of that text given my lack of involvement
9 in hooding issues prior to that.

10 Q. Thank you. One sees that there is a reference -- not,
11 I think, in something that you had inserted -- to
12 a briefing from S034. Please do not use her name, but
13 you know who that is a reference to now, I hope?

14 A. I do because the name is in front of me, but otherwise
15 I would not know that name.

16 Q. It wasn't someone that you were in contact with?

17 A. No.

18 Q. Thank you. You had never yourself received a briefing
19 directly from her or information on the telephone or by
20 other means from her?

21 A. Not as far as I can remember.

22 Q. Thank you. At this time, leaving aside changes that
23 were made to this, would this information coming to you
24 in this text for the ministerial correspondence have
25 caused you concern about the use of hoods and concerns

1 having been raised in theatre?

2 A. I don't remember being concerned about the text.

3 I think that was probably because it referred to
4 something which had happened in the past and was no
5 longer continuing. I think also, looking at the changes
6 that I made, particularly the change in "disorientate"
7 to "control", it must have been my understanding that
8 hoods were being used for the purposes of control and
9 not for the purposes of disorientating.

10 Q. Thank you. Can we just move on in the chronology, then,
11 picking out the more relevant of the documents in which
12 you seem to have had an involvement? Could we move on
13 to 2 May 2003 and look please at MOD053216?

14 Mr Martin, if I have understood this correctly, when
15 one looks towards the bottom of the page here, looking
16 at late April 2003, you were one of those who was being
17 invited to contribute towards headline briefing notes
18 for the Secretary of State's appearance before the House
19 of Commons Defence Committee; is that right?

20 A. Yes, that is right.

21 Q. Thank you. We see, don't we, at the bottom of the page,
22 that one of your colleagues was giving a list of bullet
23 points that might be covered in the briefing. That's
24 the email at the bottom and going over the page. Do you
25 see that there?

1 A. Yes.

2 Q. Now, without going through those for the moment, if you
3 take it from me that it doesn't include the use of
4 hooding, if we go to your reply back on MOD053216,
5 please, the response and the input that you appear to
6 have given, Mr Martin, was saying that the list of
7 topics might be too UK focused. You made reference to
8 some points that might be legitimate that had been in
9 your colleague's list. You went on to say:

10 "... I think it is fair [to] say that none of these
11 three issues has been central to the conflict or to the
12 handling of PWs detained by coalition forces."

13 You went on to say that:

14 "I would expect the [committee] ... to be more
15 interested in ..."

16 And then you list:

17 "the classification of PWs and whether PW status has
18 been afforded ...

19 "who has been responsible for housing and feeding
20 the PWs.

21 "the arrangements with the US and Australia to
22 ensure that PWs ... could not [be] transferred outside
23 Iraq without UK consent.

24 "the plans for the release and repatriation of PWs
25 (already underway)."

1 Were you there trying to set out additional points
2 that you thought might have been more at the heart of
3 the committee's interest in prisoner of war matters?

4 A. Yes, I was.

5 Q. What one does not see there listed as being one of the
6 points that might be of interest or a point of lessons
7 learnt at all is that issue of hooding which had arisen
8 in the ministerial correspondence a week or so earlier.
9 Was there any reason for that?

10 A. I would not have appreciated, I think, at that time that
11 hooding was a serious or real issue in terms of the
12 handling of prisoners of war.

13 Q. You tell us that you were not aware of it
14 contemporaneously when it had happened in late
15 March/early April. By this stage, late April/early May,
16 were you not, by this time, aware that the Red Cross had
17 raised concerns in theatre as well as the concerns of
18 senior officers in theatre, as was referred to in the
19 ministerial correspondence?

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

21 Q. It is my fault. I'm sorry. By this stage were you not
22 aware of the fact that the Red Cross had raised concerns
23 about hooding in theatre?

24 A. Beyond what was said in the draft lines to take,
25 I wasn't -- I had no further information relating to

1 concerns raised in theatre.

2 Q. You weren't aware that there had been some debate in
3 theatre and a difference of legal view taken between
4 different lawyers about --

5 A. No.

6 Q. -- whether or not hooding was legitimate?

7 A. No.

8 Q. If you had known about that -- and I appreciate it is
9 a theoretical question -- do you think that is something
10 that you might then have thought about including in the
11 briefing?

12 A. I think it may well have been, yes.

13 Q. Again others may wish to take you to other emails, but
14 I would like to move on, if we may, in the chronology
15 next to 30 May and to look at the Amnesty International
16 report that appears to have been sent to you.

17 May we have a look first, please, at MOD053295? The
18 reason for my showing you an outwardly mundane fax cover
19 sheet is just if you could confirm that it is the case
20 that the Amnesty International report was faxed
21 personally to you, Mr Martin, and it appears to be on
22 30 May. Would that be right?

23 A. Yes, it was.

24 Q. Thank you. If we go over a few pages, please, to
25 MOD053298, without going through details about each of

1 the cases, in looking at this material -- perhaps in
2 preparation for today -- are you at least now aware of
3 the fact that each of the four cases which Amnesty were
4 raising under "Allegations" -- and of course they were
5 allegations -- that each of the four cases that were
6 being raised under "Allegations", 1 to 4, involved
7 allegations of prisoners having been hooded by British
8 forces?

9 A. Yes, I saw that on re-reading the Amnesty note. I think
10 at the time, though, I would have been more concerned
11 about the nature of the other allegations in the note,
12 particularly the beatings.

13 Q. You had, though, by this stage, obviously from the
14 ministerial correspondence that we looked at earlier,
15 been told that the practice of hooding had been stopped.

16 A. Yes.

17 Q. Yet, here were each of four allegations all involving
18 hooding, obviously with more serious allegations as well
19 of beating going on. Did you notice that at the time?

20 A. Did I notice the allegations of hooding --

21 Q. Yes.

22 A. -- in particular? I think I would have been -- well,
23 I obviously was very concerned about the treatment in
24 general, which is what prompted me to pass it to my
25 colleague, Linda Dann, who was dealing with war crimes

1 issues, because I clearly felt that it needed further
2 investigation.

3 Q. Again, it may be that in the time available for this
4 Inquiry one looks at these things in more detail, but
5 had you noticed that so far as cases 2, 3 and 4 were
6 concerned, the hooding appeared to involve -- or might
7 be taken to have involved -- hooding at a detention
8 centre rather than at the point of capture?

9 A. I don't recall thinking about that at the time, other
10 than in terms of the generality of the conduct.

11 Q. If one looks at MOD053291, do we see that on the same
12 day as you had received this, a few hours later, after
13 you had received it, you were saying that it was
14 something that you were going to pass to your colleague,
15 Ms Dann?

16 A. Yes.

17 Q. The reason you gave there was that she was looking at
18 war crimes issues more generally; would that be right?

19 A. That's right.

20 Q. The final case that was mentioned within the Amnesty
21 report, may we just look at MOD053301? The Inquiry
22 knows -- without using his name -- I think you raise in
23 your statement an issue about not knowing whether
24 something later on was Baha Mousa or not, if you
25 remember that from your witness statement.

1 A. Yes.

2 Q. Can I just make clear that it was not Baha Mousa's name
3 that is redacted but the name of this gentleman, who the
4 Inquiry knows died while in the custody of the
5 Black Watch. The only thing that I want to ask you
6 about that is, prior to 16 September, whether at any
7 stage before then you became aware that a gentleman who
8 had been arrested by the Black Watch had been hooded
9 when he was taken into custody?

10 A. Aware other than in terms of what was in the Amnesty
11 report?

12 Q. Yes. I do not think it is in the Amnesty report that he
13 was hooded.

14 A. No, I do not think so.

15 Q. That didn't come to your attention?

16 A. No, I don't believe so.

17 Q. Very well. Leaving that matter aside, then, and if we
18 could just have that taken from the screen.

19 In terms of any discussions that you may have had
20 with MODLA colleagues, the ministerial correspondence
21 that you were involved in and with this Amnesty report,
22 did you at that time, as it were, join the dots together
23 and think that hooding was something that you ought to
24 perhaps ask more questions about or look into?

25 A. No, I hadn't understood that hooding was an issue in the

1 way that it has obviously become since.

2 Q. When you look at these materials now, can I simply ask
3 you the question of whether you think, even with the
4 benefit of hindsight, that perhaps you ought to have
5 asked more questions about hooding based on the
6 materials you have now been able to reflect upon?

7 A. When you say that, Mr Moss, in the light of what I knew
8 at the time?

9 Q. Yes.

10 A. I don't think reasonably I could have concluded that
11 hooding was a widespread issue within the armed forces
12 on the basis of what I had seen from the Amnesty report
13 and the draft lines to take.

14 Q. Just this then, generally: you say that you would have
15 had an understanding that it must have been used for
16 control. Did you form a view on whether the use of
17 hooding was humane treatment of prisoners?

18 A. I don't recall forming that view. I think I would have
19 been -- I would certainly have been troubled had
20 I understood that hooding was being used for
21 interrogation purposes. And insofar as I can recall the
22 reasons for my change, I think it must be that
23 I understood hooding to have been used for a different
24 purpose.

25 Q. Thank you. Could we go back, then, please, to the

1 ministerial correspondence point to look more closely at
2 the issue of the change that you made? Can we go back
3 please to MOD053239?

4 In terms of the personalities, this appears, doesn't
5 it, to be an email from Mr Gibson, "Ian G". Does that
6 ring a bell?

7 A. Yes.

8 Q. He is the Iraq Secretary. It is going to "David" -- is
9 that David Lester at the POLOPS side at PJHQ?

10 A. I am not sure, but I think so.

11 Q. As one sees, the email in the two-line, the bottom
12 email, is also being sent to you, "LAll", which we saw
13 earlier was your email.

14 A. Yes.

15 Q. What was the purpose of MODLA lawyers such as yourself
16 being copied into PQs or texts for ministerial
17 correspondence? Why are lawyers involved in it at all?

18 A. I think the normal basis of seeking legal advice as to
19 the content of the proposed response.

20 Q. If the content was not dealing with a legal matter, but
21 dealing with factually what had been going on in
22 a theatre, would it be usual for you to make comment on
23 those factual issues of what had been happening in
24 theatre?

25 A. If I believed the facts stated in the proposed response

1 were wrong, then, yes.

2 Q. But not otherwise?

3 A. If I understood them to be correct, then I can't see any
4 reason why I would comment.

5 Q. You accept, I think -- if we go over the page and look
6 at the changes -- that what appears in the track changes
7 on this page appear to be your changes.

8 A. That's right.

9 Q. Some of them are obviously stylistic -- you will forgive
10 me making the observation -- the lawyer's change from
11 "we felt" to "we considered" and that sort of point.
12 But in the "Background" section, there is that change
13 from "disorientate" to "control". So that we have it,
14 you do accept, don't you, that that is a change that you
15 made?

16 A. Yes, I do.

17 Q. Would you accept that that is a substantive change in
18 that it alters quite significantly the account that is
19 being given of the purpose for which hoods were being
20 used?

21 A. I do accept that. I think I may not have appreciated
22 the significance of the change at the time and I can't
23 recall my reasons for making the change. All I can do
24 now is to think why I might have made the change.

25 Q. I appreciate you say that you can't remember the reason

1 for making the change, so in a sense you are
2 reconstructing or trying to work out why you would have
3 done it and I will come on to that. But the first part
4 of your answer there, that you may not have appreciated
5 at the time the significance of the change, forgive me
6 for putting it this way, but how can that be right
7 because a change in the natural language from "detain
8 and disorientate" to "detain and control" is
9 a significant change to the plain meaning of the text,
10 is it not?

11 A. I think it must have been the case that I understood
12 hoods to have been used for the purposes of detention
13 and control or maintaining security. When I say I did
14 not appreciate the significance of it, I did not
15 appreciate that hooding had been an issue and the
16 purposes for which hooding had been used was quite so
17 controversial.

18 Q. It may be said that if this was the draft that was
19 coming either from the Iraq Secretariat or from the
20 POLOPS side of PJHQ and they were saying that hoods had
21 been used, albeit only at the early stage of the
22 conflict, to detain and to disorientate, that it wasn't
23 really for you as a lawyer to change that wording at
24 all.

25 A. I am reconstructing, as you say, Mr Moss, because

1 I don't recall the circumstances or justification at the
2 time. I can only think that I made the change in the
3 honest belief that "control" was a more accurate
4 description of the purpose for which hoods had been used
5 previously.

6 Q. You are sure that you have no recollection of the actual
7 circumstances in which you came to make this change or
8 why you made it?

9 A. Quite sure, yes.

10 Q. It is not the case, is it, that you would have made the
11 change simply because you appreciated that, from a legal
12 point of view, an acceptance that it had been done to
13 disorientate would have been an acceptance that
14 something had been done that was unlawful?

15 A. No, absolutely not.

16 Q. So the thrust of your account that you give to the
17 Inquiry is this: you must have been given some factual
18 information previously or upon asking questions about
19 this which was to the effect that the actual reason for
20 the use of hoods had been to control rather than to
21 disorientate?

22 A. I think that must be right, but I am speculating.

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

24 THE CHAIRMAN: If you just wait there for a moment,
25 I suspect there will be one or two other questions.

1 Yes, Ms Hetherington.

2 Questions by MS HETHERINGTON

3 MS HETHERINGTON: Mr Martin, just one topic I want to put to
4 you. You explained that in dealing with the reasons why
5 you may have made that change to the draft text, you are
6 having to reconstruct. You say that, in reconstructing,
7 you believe that you may have asked some questions of
8 someone who knew more about the subject; is that right?

9 A. No, I don't think I did say that. I don't know that
10 I would have asked questions about it, but it may be
11 that I had received that information by one means or
12 another. I don't know.

13 Q. So by one means or another you think that you may have
14 had some further information within your own knowledge
15 about this incident that enabled you to correct what you
16 thought was a misinterpretation of the facts?

17 A. I think that's possible, yes.

18 Q. Given that by the time you were commenting on the HCDC
19 briefing for the Secretary of State, you have explained
20 to Mr Moss that you weren't aware then that the ICRC had
21 expressed any concerns or that there had been any legal
22 debate about hooding, does it strike you as surprising
23 that, if you had further knowledge about the incident
24 that was the subject of the ministerial correspondence,
25 you didn't know those two rather salient features of it;

1 A. Very much so.

2 Q. How would you know if you were expected to provide
3 advice in response or if you were being simply copied in
4 for information?

5 A. If I was being asked for advice, I would expect the
6 email to be addressed to me and for it to be made clear
7 in the body of the text that my advice was being sought.

8 Q. Would you always read emails that you were simply cc'd
9 into?

10 A. As far as possible I would try to understand the
11 substance of the email, but not necessarily all of the
12 detail.

13 Q. So you might skim them?

14 A. Yes.

15 Q. If you had learned of the use of hooding but not been
16 asked to advise on hooding, what steps would it have
17 been open to you to take, given what you have explained
18 was the role of a lawyer inside the MoD?

19 A. I think if I had understood that hooding was being used
20 for unlawful purposes, which would probably mean
21 interrogation purposes, then I would have queried that
22 with MoD colleagues and possibly escalated it to
23 Vivien Rose.

24 Q. Lastly this: you have offered one explanation for the
25 change of the text in that document where we see the

1 track changes. The other possibility is that you had
2 changed the text in order, dishonestly, to improve your
3 client's position. Would you ever contemplate such
4 a thing?

5 A. No, absolutely not.

6 MR GARNHAM: Thank you.

7 Questions by THE CHAIRMAN

8 THE CHAIRMAN: Can we have it back a moment if we could?

9 Just reading it through as it had originally been:

10 "Handcuffs and hoods were used by UK forces at
11 an early stage of the conflict to detain and
12 disorientate ..."

13 Do you think the word "disorientate" would have had
14 any connotation for you at all as something that was to
15 ring alarm bells? To be frank, I can't see why you
16 would want to change it -- it is someone else's
17 document -- unless you thought there was something odd
18 about the word.

19 A. I think it may be that I did not understand the word.

20 Q. That I appreciate. But you must have given some thought
21 to "disorientate" otherwise you would not have changed
22 it.

23 A. I think that must be right. I must have made
24 a conscious decision to change the wording.

25 THE CHAIRMAN: I don't think there can be any doubt about

1 that.

2 A. It must have been that I thought "control" was a more
3 accurate description of what I understood to have been
4 the practice, partly, as you suggest, because I may not
5 have understood what "disorientation" --

6 THE CHAIRMAN: I am not suggesting that. I simply want to
7 know why you would have thought it sensible to change.

8 A. Unfortunately --

9 THE CHAIRMAN: You can't remember?

10 A. -- I struggle to remember.

11 THE CHAIRMAN: No, it is not that you would have thought,
12 well, it doesn't look too good, "disorientate"?

13 A. No.

14 THE CHAIRMAN: You certainly didn't think that?

15 A. No, absolutely not.

16 THE CHAIRMAN: All right. Thank you very much.

17 MR GARNHAM: Can I just ask one more question arising out of
18 that?

19 THE CHAIRMAN: Yes, do.

20 Further questions by MR GARNHAM

21 MR GARNHAM: The chairman read that sentence to you and
22 I just want to ask this about it:

23 "Handcuffs and hoods were used to detain and
24 disorientate ..." was how it first read.

25 Omitting the word "hoods" for the moment, how would

1 handcuffs have affected disorientation?

2 A. It is difficult to see how they would have done.

3 Q. Do you have any recollection of whether you went on to
4 think whether hoods might disorientate and, if so, how?

5 A. I can't really remember more than I have suggested.

6 THE CHAIRMAN: It is largely comment, but I can quite see
7 how handcuffs and hoods would disorientate because you
8 can't reach out to find something. But never mind.

9 I am not saying your question does not add anything, it
10 does, but I don't think it to a huge extent helps.

11 There you are. Thank up very much for coming along.

12 I suspect you have been waiting rather a long time, have
13 you?

14 A. Not too long.

15 THE CHAIRMAN: If you had been used to litigation, that
16 would be normal, but over here we like to think it is
17 not and I'm sorry that you have had that wait. Thank
18 you very much for coming and you are now free to go.

19 A. Thank you.

20 THE CHAIRMAN: Yes, now, there is a phalanx of Counsel to
21 the Inquiry. What do you want to say?

22 MR MOSS: So far as Monday is concerned, Sir, Generals Fry,
23 Ridgway and Jackson and Lord Walker, still in that
24 order.

25 So far as General Sir Michael Jackson is concerned,

1 questioning from Counsel to the Inquiry, for reasons
2 that are known to core participants, is going to be
3 restricted to the one issue of the acceptability or
4 legitimacy of hooding.

5 THE CHAIRMAN: Yes. Very well. Good.

6 I mean good that we have now finished.

7 10 o'clock Monday morning then please. Thank you
8 all very much.

9 (4.37 pm)

10 (The Inquiry adjourned until 10.00 am, Monday 7 June 2010)

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