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Tuesday, 9 February 2010

(9.58 am)

THE CHAIRMAN: Yes. Good morning, ladies and gentlemen.

Now, Mr Elias.

MR ELIAS: Good morning, Sir. May I call Paul Vernon Davis, please?

THE CHAIRMAN: Yes. Would you be kind enough to stand up, please, Mr Davis, and I will ask that you take the oath.

PAUL VERNON DAVIS (sworn)

THE CHAIRMAN: Thank you. Please sit down.

If you would be kind enough, please, to speak into the microphone, then we will all be able to hear you. If there is any question that you are asked which you don't understand, I am sure you are quite capable of saying so. Thank you.

Yes.

Questions by MR ELIAS

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

A. Paul Vernon Davis.

Q. Are you still in the army?

A. No, I'm not.

Q. Mr Davis, when did you leave the army?

A. 2006, I believe.

Q. Would you have a look, please, in the folder to your

1 right, Mr Davis, in which you should find a statement?

2 If you go to the last page of it, our BMI03743, above

3 the date of 20 August of last year, do you find your

4 signature to that statement?

5 A. Yes, I do.

6 Q. When you signed that statement, were you attesting that

7 the contents of it were true to the best of your

8 knowledge and belief?

9 A. Yes.

10 Q. Thank you very much.

11 We have all read that statement so I am not going to

12 ask you questions about every part of it, but we will go

13 to certain aspects of your evidence.

14 May I begin just by asking you very briefly about

15 your army background and history. Did you join the army

16 in about 1990?

17 A. Yes.

18 Q. May I ask -- I don't want your date of birth -- how old

19 you would have been then?

20 A. About 22.

21 Q. You went to Sandhurst, commissioned there?

22 A. Yes.

23 Q. In 2003, I think you say in your statement, between May

24 and late August of 2003, you were deployed to Iraq as

25 the officer commanding Anzio Company.

1 A. Yes.

2 Q. Do you by chance remember the dates in August on which
3 you ceased?

4 A. 22 August, I think.

5 THE CHAIRMAN: Did that go for most of the people who
6 changed over at that time or were there odd days?

7 A. I think there were only a small number who changed at
8 that time.

9 MR ELIAS: I want to ask you just a little about your own
10 training in relation to certain aspects that the Inquiry
11 is particularly concerned with. Before going to Iraq,
12 I want to ask you about training you may have received
13 in the use of hoods, hooding prisoners. What training,
14 if any, had you received in that regard?

15 A. As we were going through our pre-tour training --

16 Q. Forgive me for interrupting you -- you may still give
17 the same answer, but my question is not merely confined
18 to pre-deployment training. It relates to any training
19 you may have received at any time in the army. Do you
20 follow?

21 A. Correct.

22 Q. Before Iraq.

23 A. Yes. So there is always the annual test and training on
24 law of armed conflict that you go through.

25 Q. You are just a little bit away from the microphone or

1 dropping your voice. Can I ask you to keep your voice
2 up? Thank you.

3 A. Sorry. There is the annual training on the law of armed
4 conflict, which I both received and delivered, and on
5 various courses throughout the army there was either
6 direct instruction on prisoner-handling or incidental
7 training, by which I mean, as you are going through the
8 exercise, there may have been occasion where you would
9 have come to handle prisoners as part of the exercise.

10 Q. That is prisoner-handling generally. I was asking
11 rather more specifically, but let us just deal with
12 prisoner-handling generally. Was there any particular
13 message, if you like, that you would have learnt from
14 your training as to the handling of prisoners?

15 A. Well, prisoners were always to be handled humanely and
16 well treated.

17 Q. From your training, did you understand that there was
18 any distinction to be drawn from the way prisoners of
19 war might be treated as opposed to civilian detainees
20 taken in times of what I might call the peace-keeping
21 role?

22 A. I do not recall any difference, no.

23 Q. Coming back to my question of specifics, what training,
24 if any, before going to Iraq, had you received in
25 relation to the use of hoods for prisoners?

1 A. I can't recall any specific training, but I know that it
2 was usual and a standard operating procedure that hoods
3 were used, to the extent that on one particular exercise
4 I myself was playing an enemy part and was hooded and
5 I felt this to be appropriate.

6 Q. So that we are clear about it, Mr Davis, you are telling
7 the Inquiry, are you, that by the time you went to Iraq,
8 your understanding was that the hooding of prisoners was
9 a standard operating procedure?

10 A. Yes.

11 Q. Would that have been hooding with sandbags?

12 A. Yes.

13 Q. And would your training prior to Iraq, from time to
14 time, have involved the use of sandbags for that
15 purpose?

16 A. Yes.

17 Q. And in relation to that training, two further matters:
18 were you given any training or instruction as to the
19 length of time during which it might be appropriate to
20 hood a prisoner?

21 A. I don't recall a length of time.

22 Q. And were you given any instruction in relation to any
23 risks that might accompany the hooding of detainees?

24 A. I don't recall any, no.

25 Q. For example, ensuring that they were able to breathe

1 freely?

2 A. Well, having experienced it myself, I know that you can
3 breathe freely inside one sandbag.

4 Q. Perhaps I should also cover this: did you receive any
5 training as to whether it was proper to hood with more
6 than one bag?

7 A. I didn't receive any particular training. We only used
8 one, as I recall.

9 Q. From the evidence you have just given, it's apparent you
10 yourself had had a bag on your head.

11 A. Yes, during a training exercise.

12 Q. Some witnesses have told this Inquiry that it's possible
13 to see through one bag. Is that correct?

14 A. Only vague shapes.

15 Q. The use of stress positions -- you know what I mean by
16 "stress positions"?

17 A. My understanding of "stress positions" is a position
18 that you place an individual in specifically to derive
19 some form of discomfort. There are a number of
20 positions that we place prisoners in for short periods
21 of time which I would not characterise as specific
22 stress positions.

23 Q. Just staying with pre-Iraq and training at any stage,
24 had you ever been subjected to or seen, in training,
25 stress positions used?

1 A. No, not specifically. I have been put in a stress
2 position during a gymnasium period.

3 Q. What, as a sort of punishment or something of that kind?

4 A. As a sort of training, strength training.

5 Q. You probably heard now, have you, if you haven't heard
6 of it before, what is sometimes describes as the "ski
7 position"?

8 A. Yes.

9 Q. Arms out in front, body semi-crouched, as it were, but
10 in an upright position?

11 A. Yes, I have heard of it.

12 Q. Was that a stress position of which you were aware
13 before you went to Iraq?

14 A. It was. I was aware of it before I went to Iraq, yes.

15 Q. So in your training before Iraq, were you given any
16 instruction as to the use of stress positions on
17 prisoners?

18 A. I don't recall any instruction, no.

19 Q. By that, I mean not only whether you were shown how it
20 might be used, but whether you were given any
21 instruction, for example, that it should not be used.

22 A. I don't recall any instruction that it should or should
23 not be used before deployment.

24 Q. Sorry, you are difficult --

25 A. Sorry, before deployment.

1 Q. Conditioning techniques, still on training pre-Iraq.
2 What is your understanding of the terms "conditioning"
3 or "conditioning techniques"?

4 A. I have only become aware of "conditioning techniques" as
5 a term reasonably recently, since the start of this
6 Inquiry and the court martial.

7 Q. So what does "conditioning" mean to you?

8 A. From what I understand, "conditioning" is something that
9 happens before some form of questioning that either
10 disorientates a prisoner or -- I'm not sure any more
11 than that.

12 Q. So its purpose is to disorientate a prisoner. What
13 forms do you understand conditioning would take? What
14 would actually be done to condition a prisoner?

15 A. I wouldn't be confident in answering that question
16 fully. I don't know.

17 Q. You just don't know?

18 A. That's right.

19 Q. Did it involve the use of hoods and stress positions?

20 A. It could do.

21 Q. Could it involve the use of deprivation of sleep?

22 A. Yes, it could.

23 Q. White noise?

24 A. Yes.

25 Q. Could it involve not providing any and/or sufficient

1 food or drink?

2 A. I believe so, yes.

3 Q. Where had you got the understanding -- that limited
4 understanding, if I may call it that? Where did you get
5 that from?

6 A. That comes from sort of background reading and
7 understanding -- I mean television programmes on the SAS
8 pre-training course will tell you about that.

9 Q. But you never received any training in conditioning or
10 the use of it?

11 A. No.

12 Q. As with the stress position question I asked you, did
13 you ever receive any instruction in training that
14 conditioning was or was not to be used?

15 A. Not that I recall, no.

16 Q. So just finally, to fully understand the position of
17 your taking up your post as officer commanding Anzio
18 Company in May 2003, hooding you believed could be used?

19 A. Yes.

20 Q. For what purpose?

21 A. The main purpose was that we were working under the
22 supposition that we weren't allowing any prisoners who
23 were high risk to see the inside of our camp for
24 security purposes.

25 Q. And your position on the use of stress positions, could

1 they be used?

2 A. Insofar as using a position to cause somebody pain, then
3 no. For putting them in a position to isolate them
4 maybe for short periods, kneeling down with their hands
5 on their heads or even standing up against a wall to be
6 searched, then, yes, but I would not constitute those as
7 stress positions. They were simply positions in which
8 people were put to be isolated and they were free to
9 move around.

10 Q. What we might call a very temporary security measure?

11 A. Indeed.

12 Q. Running for how long?

13 A. That very much depended on how long they were in camp
14 before they were moved on to Battlegroup Main -- any
15 time between ten minutes and an hour.

16 Q. Do you say ten minutes to one hour because that's your
17 sense of what would be appropriate or because that was
18 some learning that was given to you?

19 A. That's my sense of what was appropriate.

20 Q. I follow. Again, as OC A Company, what was your
21 appreciation of the part, if any, that conditioning
22 could play in any prisoners that your company might
23 take?

24 A. As OC of Anzio Company, we were not in the business of
25 conditioning any prisoners. Our job was simply to take

1 prisoners, to process them quickly and move them on to
2 battlegroup headquarters for any further questioning.

3 Q. You will have to forgive me, but your voice is slightly
4 fading away. I don't know whether others are finding it
5 difficult, but if you could come a little closer to the
6 microphone or pull it down. Thank you very much.

7 In paragraph 12 of your statement to this Inquiry --
8 we find it at BMI03735 -- you refer there to
9 pre-deployment training from Op Telic 2. You have it on
10 the screen, Mr Davis, if it is all right to use it from
11 that. You can read that all right?

12 A. Yes.

13 Q. You are referring there to pre-deployment training,
14 aren't you?

15 A. Yes.

16 Q. You say in the last two or three lines -- I just want
17 your help about this:

18 "I cannot recall receiving any training about how we
19 should detain prisoners ourselves, as this was not
20 something we ever expected to be doing."

21 Can we just understand what you meant by that when
22 you wrote it?

23 A. Yes. There were no facilities for Anzio Company to hold
24 prisoners for an extended period of time, so our
25 training was to do with capturing, holding, quickly

1 processing prisoners and moving them on to where the
2 facilities where, be that at Um Qasr, local police
3 stations or to Battlegroup Main headquarters.

4 Q. We know that you were based at Camp Stephen.

5 A. Yes.

6 Q. The Inquiry knows a little of that. There was no
7 facility there, what, for the longer-term holding of
8 detainees?

9 A. Correct, no cells or -- you know, no facilities
10 whatsoever, no toilets, no specific area. The only
11 areas there were were for platoons or company staff.

12 Q. Nonetheless, detainees were brought to Camp Stephen from
13 time to time, weren't they?

14 A. Yes, they were.

15 Q. The Inquiry has heard some evidence of them being kept
16 in what I might call a "courtyard area" --

17 A. Yes, that's right.

18 Q. -- with a rather rough floor.

19 A. There was a concrete floor and a marble floor, as
20 I recall.

21 Q. So when you say in that paragraph that you didn't have
22 the expectation that prisoners would be housed for any
23 period of time -- that's how you interpret it for us --
24 what sort of period of time were you envisaging that you
25 would be holding detainees?

1 A. One to two hours maximum.

2 Q. Your role as OC -- I don't want to go into any detail as
3 I think we have covered much of this ground with
4 others -- involved, did it, amongst other things, you
5 having responsibility for any detainees who may be
6 brought to Camp Stephen arrested by members of your
7 company?

8 A. Yes.

9 Q. And you having the responsibility for your soldiers
10 treating prisoners humanely?

11 A. Yes.

12 Q. In Iraq, whether at Camp Stephen or elsewhere, you did
13 see soldiers [sic] hooded, did you?

14 A. Detainees hooded?

15 Q. Detainees hooded, forgive me.

16 A. Yes.

17 Q. Was that something you saw on a regular basis?

18 A. Fairly regular, yes.

19 Q. Did you see it at Camp Stephen --

20 A. Yes.

21 Q. -- and at other places?

22 A. Yes.

23 Q. At BG Main?

24 A. Yes.

25 Q. Did you see detainees hooded out on patrol at point of

1 arrest, if you like?

2 A. Yes, I did.

3 Q. Was the position, Mr Davis, that from the beginning --

4 that is to say from May or thereabouts in 2003 --

5 detainees were routinely and regularly hooded on arrest?

6 A. There were different categories of detainee, I think.

7 It's best to explain that if you were out on a normal

8 vehicle checkpoint with a low level threat and a routine

9 operation and somebody had transgressed -- maybe they

10 had a weapon in the car that they weren't allowed to

11 have -- those sort of detainees, if you had cause to

12 take them back, would not normally be hooded.

13 If you were conducting a specific intelligence-led

14 operation, for instance a house raid, then we would

15 assume that those detainees that we captured after those

16 operations were of a higher risk and would routinely be

17 hooded.

18 Q. Who made the decision as to whether detainees arrested

19 were to be hooded or not?

20 A. I think ultimately that would have been delegated down

21 to the platoon commander, but ultimately I would have

22 responsibility as for whether they were or were not.

23 Q. Would the question as to whether they were or not to be

24 hooded be a matter that would normally be discussed at

25 the pre-operation briefings?

1 A. It's possible they were. I think it was more a standard
2 operating procedure that, when you were preparing for
3 a considered operation, a deliberate operation, that the
4 troops would naturally prepare themselves with sandbags
5 for any prisoners that they might take.

6 Q. So a standard operating procedure was to hood. For how
7 long?

8 A. I think that was left to the discretion of myself and
9 the other commanders. Certainly not long enough to
10 cause them distress. So if they were going to be in
11 there for an extended period of time, hours, then we
12 often took the decision to remove the hoods and they
13 were always given drink or water.

14 Q. Leave aside the question of food and drink for the
15 moment. What is an "extended period of time"? How long
16 were detainees left hooded at Camp Stephen where you
17 were responsible?

18 A. From what I recall, no longer than -- no longer than an
19 hour.

20 Q. It might be thought somewhat illogical, Mr Davis, if the
21 purpose of hooding was security, that they should be
22 hooded for an hour if the hoods were only to be taken
23 off then so that presumably the prisoner could see
24 whatever there was to see.

25 A. That's true, but in some cases we made the decision that

1 the welfare of the detainee came above that. I can't
2 recall a specific incidence of how we might have managed
3 that so they saw less, but certainly we made the
4 decision to remove hoods at certain times during the
5 proceedings if it was causing discomfort.

6 Q. How would it be ascertained and by whom, if it was
7 causing discomfort, as you put it, to the prisoners?

8 A. I think it's quite clear when people are becoming
9 distressed by their positions and I remember on occasion
10 detainees would give the signal for water -- which is
11 raising their thumb to their mouths -- you know, that
12 they were thirsty, and on those occasions we would take
13 the hoods off and feed them water.

14 Q. Did you regard hooding for an hour as being humane?

15 A. I think the welfare of the detainees was at the
16 forefront of our minds and I believed that we kept them
17 hooded for the commensurate period of time to ensure
18 that, you know, they weren't mistreated, but that we had
19 the relevant security.

20 Q. Forgive me, that's to tie two strands together, isn't
21 it? I understand there may be security issues and it
22 may be -- I am certainly not putting it forward -- but
23 it may be suggested that sometimes one has to be
24 inhumane in order to maintain security. But my question
25 to you is whether you regarded hooding for one hour as

1 in itself being humane.

2 A. I regarded it as humane, yes.

3 Q. Not causing the individual any unnecessary suffering?

4 A. Correct.

5 Q. That was your position, was it?

6 A. Yes.

7 Q. The heat was an issue for soldiers, wasn't it?

8 A. Yes, it was.

9 Q. Was it for you?

10 A. Personally, yes.

11 Q. Did you consider whether it would be for detainees who

12 were hooded?

13 A. Yes.

14 Q. And you still thought, did you, that one hour's hooding

15 was not inhumane?

16 A. Well, if you are making comparisons with soldiers, then

17 we kept our helmets on for a lot longer than that. So

18 I did feel that the treatment that we gave the detainees

19 was humane, yes.

20 Q. You are not really comparing, are you, a soldier with

21 a helmet on and a detainee with a bag over his head?

22 A. The heat was similar for both us and the detainees.

23 I believe that they were treated humanely.

24 Q. All right.

25 Plasticuffs were used, were they, in Iraq?

1 A. Yes.

2 Q. Was there any requirement for them to be used tying
3 hands to the front or to the back of the prisoner?

4 A. I don't recall. I saw both.

5 Q. And prisoners who were hooded, would they also be
6 routinely plasticuffed?

7 A. Sometimes, yes.

8 Q. Did you ever see stress positions used in Iraq?

9 A. Again, I saw detainees put into positions that, were
10 they to be left there for a long period of time, would
11 have caused them pain and would, in my view, have been
12 called a "stress position". Otherwise, no.

13 Q. Did that include, at Camp Stephen, detainees who had
14 been brought in, kneeling on the ground, in a body more
15 or less upright position, hands on heads, fingers
16 interlocked?

17 A. Yes.

18 Q. Was that -- again forgive me using the word. When I say
19 "routinely", I mean regularly or fairly frequently --
20 was that something that you saw at Camp Stephen?

21 A. Yes.

22 Q. And was it your decision that detainees should be kept
23 in that way?

24 A. Yes.

25 Q. What was the purpose of that?

1 A. The purpose of placing them into a position where they
2 had restricted movement was to safeguard the security of
3 my soldiers, to not give them freedom of movement around
4 the camp. They were free to move from one position to
5 another, but the purpose was to isolate them and keep
6 them into one position so that they could be onward
7 processed.

8 Q. Why did kneeling make it easier to onward process them?

9 A. I don't think it did, specifically. I think we used
10 a lot of positions. Some were sitting cross-legged,
11 some knelt. There were a lot of different positions
12 used and they were free to move from one position to the
13 next as they were waiting for us to process them.

14 Q. When you say "free to move from one position to the
15 next", the detainee kneeling on the ground with body
16 upright and hands on head, fingers interlocked, was he
17 given any indication of what other position he might
18 take up?

19 A. I don't recall that.

20 Q. And were detainees kept in that sort of position that
21 I just described for periods of time?

22 A. Not so as to cause discomfort, no. They weren't forced
23 to adopt that position for long periods of time, no.

24 Q. So what was the longest that detainees brought into
25 Camp Stephen would be kneeling in that position?

1 A. I couldn't say.

2 Q. Give the Inquiry some idea. You must have witnessed it.

3 A. Minutes.

4 Q. Minutes. But it never became such that you thought it
5 was a stress position?

6 A. That's correct.

7 Q. So what you've described, hooding, detainees in the
8 positions that you've outlined, was that something that
9 you had seen regularly?

10 A. Yes.

11 Q. You tell the Inquiry in your statement that there came
12 a time when the SOP in relation to hooding seems to have
13 changed.

14 A. Yes.

15 Q. How did that come about?

16 A. From my recollection, there was a particular O Group
17 where Major Royce relayed to us that there was some
18 inconsistency between what brigade thought we should be
19 doing and what the battlegroup thought we should be
20 doing.

21 Q. Just pause if you will.

22 A. Sure.

23 Q. This is the CO's O Group?

24 A. Yes.

25 Q. So it was Major Royce, from your recollection, who

1 raised the concern?

2 A. Yes.

3 Q. Not his concern?

4 A. I do not recall the full details. What I took from the
5 O Group was that there was an inconsistency between what
6 brigade thought and what battlegroup thought should be
7 happening with regard to hooding.

8 Q. So what was the inconsistency, as you understood it?

9 A. There was a query whether we should or should not be
10 hooding detainees.

11 Q. So that was the query that Major Royce raised at the
12 O Group, was it?

13 A. That was the query I took away. I wasn't clear about
14 whether I should or should not be hooding at that stage,
15 but that there was a process going on between
16 battlegroup and brigade that would clarify that
17 situation in due course.

18 Q. So it wasn't a position that Major Royce was saying that
19 this or that should be done; he simply raised the fact
20 that there was this apparent possible divergence of
21 view.

22 A. That's my recollection.

23 Q. Is that what you are saying?

24 A. Yes.

25 Q. Who else spoke at this O Group meeting about that issue?

1 A. I don't recall.

2 Q. Did the CO say anything at all?

3 A. I really don't recall.

4 Q. So Major Royce was not saying, was he, "You may not hood
5 anymore"?

6 A. No, there was no definitive statement or order at that
7 stage.

8 Q. So what was he saying?

9 A. He was saying that the process of hooding and the
10 decision as to whether it was or wasn't appropriate was
11 currently being discussed.

12 Q. And did he give any sort of recommendation to the
13 meeting?

14 A. No, he didn't.

15 Q. So when you left that meeting, what did you do?

16 A. I went back to my headquarters and gave my company staff
17 the indication first of all that there was a discrepancy
18 and then my view -- although it wasn't a direct order --
19 my view was that we shouldn't hood until the situation
20 was cleared up.

21 Q. Do your knowledge, was the situation ever cleared up
22 before 22 August when you left?

23 A. No, and we had no occasion to hood anyone between me
24 giving that expression that we shouldn't be hooding --
25 there was no operation which would entail hooding at all

1 before I left on the 22nd. So if the clarification came
2 after that, I do not have a comment on that. I can't
3 comment.

4 Q. Does it follow from your last answer that this
5 discussion at O Group must have been very late in your
6 tour --

7 A. Yes, I believe it was.

8 Q. -- because you wouldn't have gone a month, would you,
9 for example, without having any detainees at all?

10 A. No, I don't think we went that long.

11 Q. So when you told your officers that they were not to
12 hood anymore -- is that what you told them?

13 A. Yes.

14 Q. -- was that an order or directive that was ever put in
15 writing?

16 A. Never put in writing, no.

17 Q. Was there any reason for that?

18 A. I think to have put it into writing would have required
19 clear direction. This was my instruction verbally not
20 to do it, which was subsequently never tested --

21 Q. It may never have been tested --

22 A. -- while I was in command.

23 Q. It may never have been tested, Mr Davis, but I don't
24 quite understand the difference between a "clear
25 instruction" and an "order". If it was a clear

1 instruction and intended to be followed, why wasn't such
2 a thing put in writing?

3 A. Well, it was routine for us to give verbal orders in
4 lieu of the follow-up written orders which would be more
5 detailed.

6 Q. But the follow-up written orders never came?

7 A. Not during my tour, no.

8 Q. I follow. So did you discuss this issue and the stance
9 that you were taking with the officers commanding the
10 other companies?

11 A. I don't recall doing so, no.

12 Q. Was there any reason for that?

13 A. Not that I recall.

14 Q. Turning that question on its head, were you aware of any
15 other officer commanding who took a different view to
16 you and said "We shall carry on until somebody tells us
17 otherwise"?

18 A. No, I wasn't.

19 Q. You had a direct line to the commanding officer; you saw
20 him frequently?

21 A. Yes.

22 Q. Did you ever raise this issue with him and ask him for
23 his advice on this?

24 A. No.

25 Q. Did he ever tender any advice on the issue?

1 A. Not that I recall, no.

2 Q. Can we look at paragraphs 16 and 17 of your statement to
3 this Inquiry, please, at BMI03737? You have the date of
4 the relevant meeting here as late June or early July.
5 Do you see that?

6 A. Yes.

7 Q. If you left on 22nd August, that's highly unlikely to be
8 an accurate date, isn't it, if indeed you never had
9 reason, as it were, to put your new order to the test?

10 A. That's true, but bearing in mind that in order to put
11 that to the test I would have had to conduct an
12 operation, as I described before, a deliberate operation
13 which required hooding, I may have taken detainees on
14 the lower level criminality that didn't require hooding
15 anyway.

16 Q. I understand. That's the way you were putting it when
17 you wrote this statement:
18 "... late June or early July ... we received an
19 indication that hoods should no longer be used on
20 prisoners. I recall that this message was delivered
21 verbally, presumably at an O Group meeting, which we
22 attended daily."

23 You didn't seem to be certain, in writing this
24 statement, that it was at an O Group meeting.

25 A. I'm not certain that it was an O Group meeting. I'm not

1 certain.

2 Q. But you were indicating to the Inquiry in August when
3 you wrote this statement, weren't you, that you received
4 an indication that hoods should no longer be used, not
5 that, as it were, it was an open matter still being
6 debated. You received an indication that hoods should
7 no longer be used. That's what it says.

8 A. Yes.

9 Q. Was that the indication?

10 A. I certainly came away from that O Group meeting with the
11 intention of telling my people that hoods should not be
12 used.

13 Q. All right. If we go down towards the middle of the
14 paragraph and just a little beyond it, perhaps that is
15 what you were saying here, was it?

16 "I do not know the precise reason why the issue of
17 hooding had come up at this time, but I recall that it
18 was not actually a concrete order or directive to cease
19 the practice, rather it was a suggestion along the lines
20 of: 'you might want to consider not using hoods
21 anymore'."

22 A. That's correct. I think that reflects the sort of
23 confusion at the O Group, which is why I have described
24 it as "not clear". But I took away from that O Group an
25 intention myself to stop hooding.

1 Q. So that came from Major Royce?

2 A. Yes.

3 Q. How clear are you about that?

4 A. Pretty clear.

5 Q. When you say "confusion at the O Group", as you said
6 a moment or so ago, do you mean confusion at the O Group
7 or that Major Royce was raising an issue as to some
8 confusion between brigade --

9 A. He was raising the fact that there was a discrepancy
10 between brigade and battlegroup.

11 Q. You say in this paragraph:

12 "I cannot recall whether we were specifically told
13 that this suggestion was made in order to help us in
14 trying to win the 'hearts and minds' of the Iraqis, but
15 that is the impression that I gained."

16 A. Yes. I mean, thinking about that statement now, that is
17 a reason why we might have been instructed by brigade to
18 stop hooding. In the same way as you change from
19 helmets to wearing berets, it's an indication that the
20 situation is getting less volatile and less dangerous.

21 Q. You then say in paragraph 17:

22 "I then cascaded this development to my platoon
23 commanders at our subsequent briefing, and we stopped
24 using sandbags from that point."

25 A. Yes.

1 Q. But the cascading down was not in any written form?

2 A. That's right.

3 Q. Did you, in fact, after that O Group meeting, if it were
4 then -- whenever you passed this order down -- did you,
5 in fact, yourself, see detainees, who were the
6 responsibility of other companies, hooded?

7 A. I don't recall that.

8 Q. You can't help us either way, can you?

9 A. I can't definitively say whether I did or didn't during
10 that period of time.

11 Q. Now I want you to help us a little, please, about
12 responsibility for detainees, chain of command and
13 so on. You tell us in your statement that the ultimate
14 responsibility rested with Colonel Mendonca, of course.

15 A. Yes.

16 Q. Your responsibility at Camp Stephen for detainees, you
17 have told us, but when the detainees were taken into the
18 temporary detention facility at Battlegroup Main, what
19 was your understanding then as to who had responsibility
20 for their physical detention?

21 A. From what I recall, once it was handed over to
22 Battlegroup Main, then the -- it was Major Royce who had
23 overview of the Regimental Police staff that took
24 control of them.

25 Q. What does "overview" mean?

1 A. Well, he would give an instruction on a day-to-day
2 basis, so he would be in command of them.

3 Q. What was the position of the RSM?

4 A. I don't recall.

5 Q. The RSM traditionally, if you like, would have
6 responsibility for the provost staff, wouldn't he?

7 A. Yes, that's right, yes.

8 Q. And did that remain the position?

9 A. I don't recall, actually.

10 Q. The post of BGIRO, Major Royce's post, was created, the
11 Inquiry knows. Were you present at any meeting where
12 the functions of the BGIRO were described or it was
13 indicated to you what his role would be?

14 A. I don't recall a specific meeting where that was
15 discussed, no.

16 Q. You don't ever recall being told specifically what his
17 role was, do you?

18 A. I'm assuming that I was told, since I knew that he would
19 be the central point in battlegroup headquarters
20 responsible for processing -- onward processing -- of
21 prisoners. I just can't recall the exact time and place
22 that I was told it.

23 Q. You don't ever recall being told specifically, do you,
24 that the RSM, Mr Briscoe, was, as it were, out of the
25 loop in terms of having any responsibility for the TDF?

1 A. No, I don't recall that at all.

2 Q. Did you yourself in fact have any direct dealings with
3 detainees in the TDF?

4 A. No. Once we dropped them off at Battlegroup Main,
5 I took no further part in the onward processing.

6 Q. Would soldiers from your company have, from time to
7 time, remained as the guard at the TDF?

8 A. Yes, they did.

9 Q. In that situation, what did you understand was the chain
10 of command that would operate?

11 A. They would operate to Major Royce and the battlegroup
12 headquarters staff, who'd instruct them on how and where
13 and how long they were going to do the guarding for.

14 Q. Now let me ask you a little, please, about detainees in
15 Iraq. Did you ever witness any ill-treatment of
16 detainees?

17 A. No.

18 Q. Did you ever have reported to you any incident of
19 ill-treatment?

20 A. No.

21 Q. Did you yourself ever assault any detainee?

22 A. No.

23 Q. You are aware, Mr Davis, of the evidence that
24 Captain MacFarlane has given to this Inquiry and of his
25 statements?

1 A. Yes, I am.

2 Q. Was there a detainee out in the open at Camp Stephen who
3 was pushed and pulled around by you?

4 A. No.

5 Q. Such an incident never occurred, did it?

6 A. No.

7 Q. A detainee about whom it was said then or subsequently
8 had broken his wrists or damaged his wrists?

9 A. I have read this statement. I don't recall any incident
10 like that happening in Camp Stephen.

11 Q. And if it had, it's something you must have remembered?

12 A. Must have.

13 Q. Do you have any recollection of Captain MacFarlane
14 coming to see you in your private room --

15 A. No, I don't.

16 Q. -- and of there being any blazing row when he sought to
17 raise with you your own conduct and/or the treatment of
18 a detainee?

19 A. No. I have absolutely no recollection of that meeting
20 ever happening -- certainly not of a blazing row.

21 Q. Again, Mr Davis, so the Inquiry understands, could you
22 have forgotten such an incident?

23 A. I find it very difficult to believe that I would have
24 forgotten such a thing happened.

25 Q. You are aware of Captain MacFarlane's description: not

1 so much of an interview, a meeting without any
2 formality.

3 A. Yes. I am aware of his statement.

4 Q. A blazing row where ultimately, when he sought to raise
5 these issues, you told him to "fuck off"?

6 A. I have read the statement. I do not recall that ever
7 happening.

8 Q. It goes further, as you know, because the suggestion is
9 that you effectively dismissed him from the base and got
10 Mr Maycock to remove him. Is that --

11 A. No, I don't recall issuing that instruction and, from
12 what I've read, he was only due to be in the camp for
13 a couple of days in any case.

14 Q. So what should the Inquiry understand from you? That
15 incident, that is to say any mistreatment or
16 ill-treatment by you, of the detainee did not happen?

17 A. That's correct.

18 Q. There could not have been any report to you by
19 Captain MacFarlane or you would have remembered it?

20 A. I definitely do not recall it.

21 Q. Well, without beating about the bush, he must be making
22 it up, must he?

23 A. I can state again, I do not recall ever having a blazing
24 row or meeting with MacFarlane where he reported
25 anything of that description to me.

1 Q. It wasn't the position, Mr Davis, was it, that casual
2 violence and harsh treatment of detainees was the norm?
3 A. No, that wasn't the norm.
4 Q. You dismissed his complaint because it was the norm;
5 that wouldn't be the truth?
6 A. That's not the truth.
7 Q. You know Captain Ingram?
8 A. Yes, I do.
9 Q. Can I just show you, please, a paragraph of
10 Captain Ingram's statement? We find it at BMI00177, his
11 statement to this Inquiry. You have probably seen this
12 before. Paragraph 27, Mr Davis.
13 A. Yes.
14 Q. "The use of a stress position was also the norm in Anzio
15 Company ... the detainees leaning with their backs
16 against the wall, legs bent and their hands out in front
17 of them resting on their knees. I do not recall seeing
18 any other positions used. I had seen it occurring and
19 it was a method used by various multiple commanders, and
20 both my OC's Major Davis and Englefield had not stopped
21 its use."
22 Is that true?
23 A. The first thing to say is -- I have already said that
24 many other positions were used. I was not aware that
25 that position was being used in my camp and, were I to

1 have been aware of it, I would have stopped it.

2 Q. You would have been tough, would you, with any soldier

3 who was ill-treating or mistreating detainees?

4 A. Yes, and I think I've referenced it in my statement

5 where, on one occasion when I did find out that there

6 was an altercation at the front gate, I adjusted my

7 soldier's attitude.

8 Q. You have told us about that. It's set out in detail in

9 your statement. That's the only incident that you

10 recall, is it, of any mistreatment of any kind?

11 A. That's right.

12 Q. You say in your statement that the CO's --

13 Colonel Mendonca's -- line was much the same as yours.

14 A. Yes.

15 Q. To set an example --

16 A. That's right.

17 Q. -- and was tough with any transgressions.

18 A. Yes, he was.

19 Q. In relation to the handling of detainees in particular,

20 may I ask you this please? If you look at paragraph 25

21 of your statement to this Inquiry, BM0I3740 -- you refer

22 to the incident which you just touched upon in your

23 evidence at paragraph 26, but at paragraph 25 you say:

24 "Colonel Mendonca was a CO who I would describe as

25 a 'hard-liner' when it came to maintaining discipline in

1 general, as well as in relation to the behaviour of his
2 men in terms of their interaction with and treatment of
3 detainees."

4 You go on to refer to the example of overhearing one
5 of your colour sergeants using abusive language and how
6 he dealt with that.

7 A. Yes.

8 Q. Would you look with me, please, at a draft statement
9 which I think you had prepared -- or was prepared for
10 you, perhaps I should say -- in relation to the court
11 martial proceedings for Colonel Mendonca. Can we look
12 at MOD007074 and MOD007075, please? Forgive me, this is
13 the statement that you made to the SIB on 10 March. It
14 is the wrong reference. We will look at this statement,
15 please. 10 March 2006, a statement that you made, do
16 you recall, to the SIB?

17 A. Yes.

18 Q. Can I take you please to the last paragraph on this
19 page:

20 "The CO's line and outlook on all Iraqi detainees,
21 was that each one would be treated fairly and that
22 during any subsequent arrests, only the minimum amount
23 of force was to be used."

24 A. That's right.

25 Q. Was that a line that he reiterated at O Group meetings?

1 A. Yes.

2 Q. "The CO on would ensure during the O Groups [the
3 statement goes on] that all company commanders were
4 aware of these procedures for detainees and that it was
5 to be passed down to their company personnel."
6 So the impression you are giving here was that the
7 CO, at O Group meetings, would leave no one in any doubt
8 as to how detainees were to be treated.

9 A. Yes. I think the overall impression that we got from
10 the CO, from his O Groups and from speaking to him
11 informally, was that he was very much of the mind that
12 detainees should be treated humanely at all times.

13 Q. It makes it, does it, all the more surprising that if it
14 were an O Group meeting at which this question of
15 hooding was raised, at which there was a query as to
16 whether it was proper or not, if I can put it in
17 shorthand -- all the more surprising that the CO didn't
18 intervene and come down, if you like, on one side or the
19 other? But you don't recall him doing so?

20 A. I don't recall him doing so, but I also know from
21 Colonel Mendonca that he believes in mission command and
22 that, in the absence of a direct instruction from him,
23 I was free to make my own instruction.

24 Q. The statement goes on:
25 "I cannot be specific with dates on when it was

1 mentioned or how regularly it was discussed. On
2 occasions he would personally check that this was
3 happening ..."

4 By "this", you mean prisoners were being treated
5 humanely?

6 A. Yes.

7 Q. "... and would deploy on to the ground on any specific
8 operation."

9 I just wondered if you could help with how he would
10 personally check that this was happening, that prisoners
11 were being treated humanely. What steps did he take?

12 A. I think each of our company commanders at one stage or
13 more than one stage would have the CO accompany us on
14 a company operation. During that time he would assess
15 us in our ability to give orders, our ability to conduct
16 the operation and how to conclude the operation and
17 process the prisoners. So as part of the holistic
18 review of each company commander's performance, he would
19 check that we were following his instructions.

20 Q. Did that involve dealing with a soldier on the ground to
21 see how specifically he, that soldier or a soldier, was
22 treating detainees?

23 A. He would have seen soldiers close up and the way that
24 they dealt with detainees, yes.

25 Q. And where would he have seen that?

1 A. He would have seen it in Camp Stephen and he would have
2 seen it on the ground during an operation. I can't give
3 any specific operations. I just can't recall them. But
4 I know that he accompanied us from start to finish,
5 which means leaving Camp Stephen, doing the operation
6 and returning.

7 Q. At any time that you were in Iraq, were you ever aware
8 of any instruction that the Garamsche tribe were to be
9 dealt with robustly or more robustly -- were to be
10 subjected to rough handling?

11 A. I haven't heard the name "Garamsche tribe" for a long
12 time now and I don't recall any specific instruction
13 that they were to be handled differently.

14 Q. Do you recall ever there being any instruction coming
15 down from the CO that any group of detainees --
16 civilians -- were to be treated in any way differently
17 to others?

18 A. Not that I recall, no.

19 Q. You were never aware of any incidents of violence
20 carried out by any of your soldiers from A Company
21 whilst out on patrol?

22 A. No, I wasn't.

23 Q. If such incidents had occurred and there had been
24 violence used on arrest operations, how would you have
25 expected to have learnt about it?

1 A. I would have expected to have it reported to me through
2 the chain of command. I would have expected the
3 corporal to report to the sergeant, the platoon
4 commander to report it or, indeed, for a report to come
5 to either the front gate or be reported by a civilian to
6 a member of the military and for me to be informed that
7 way.

8 Q. Were you aware that from time to time what might be
9 described as "trophy photographs" of detainees were
10 taken?

11 A. I was aware that photographs were taken, yes.

12 Q. What was your attitude to the taking of what I'm calling
13 "trophy photographs"?

14 A. I didn't encourage it and I can't remember any incident
15 where I thought what was happening was inappropriate or
16 that people were being posed to do something.

17 Q. Can we just understand what you mean by you "didn't
18 encourage it"? Perhaps it didn't need any
19 encouragement, did it? Mr Davis, let me ask you --

20 A. I don't remember it occurring that often for me to have
21 formed, you know, a specific opinion one way or the
22 other. I don't think it's necessarily appropriate
23 unless it's, you know, photographs of an ongoing
24 operation as it's happening. If you are staging
25 photographs for sort of military tourism purposes,

1 that's not appropriate.

2 Q. It follows from your last answer, does it, that you were

3 aware of photographs being taken from time to time?

4 A. Yes.

5 Q. You didn't put the block on it?

6 A. I didn't see any that were inappropriate. I didn't have

7 cause to observe a photograph being taken that I thought

8 was inappropriate.

9 Q. So you didn't put the block on it?

10 A. No.

11 Q. MOD049413, please. You recognise the location?

12 A. Yes.

13 Q. An appropriate photograph?

14 A. I'd say no.

15 Q. Because ...?

16 A. I think they are being posed.

17 Q. MOD049409, please. We have it in colour. If you want

18 to see it in colour, I will have the copy sent to you.

19 Perhaps I will ask if you would look at this in colour,

20 please. (Handed)

21 An appropriate photograph?

22 A. I think it depicts what was happening at the time and

23 I don't believe that it was posed.

24 Q. Is it appropriate to take such a photograph?

25 A. I would say not.

1 Q. Would that be, Mr Davis, the photographs that you have
2 looked at -- and take it from me there are only a small
3 handful of photographs QLR-wide anyway which exist which
4 this Inquiry has -- would these photographs, would you
5 say, demonstrate, to an extent, indiscipline on the part
6 of the soldiers who were taking them?

7 A. I think it would have demonstrated indiscipline if I had
8 stopped it and I must say at this stage I haven't seen
9 these photographs previously and if they had been
10 presented to me at the time, I would have put the block
11 on with hindsight.

12 Q. Was the position, Mr Davis, that you knew photographs
13 were being taken and you didn't put the block on that?

14 A. I knew photographs were being taken. I didn't examine
15 photographs for their appropriateness and, therefore,
16 I didn't put a blocker on it. With hindsight, I should
17 have checked the contents of some of these photographs
18 and, if they were inappropriate, I would have
19 stopped it.

20 Q. Having seen photographs being taken, it would have been
21 the easiest thing in the world for you -- not
22 necessarily directly -- to have ascertained, through
23 your subordinate officers, what the men were doing
24 taking photographs of this kind and to issue appropriate
25 instructions.

1 A. With hindsight, I think that's true.

2 Q. It might be said that in this respect you didn't have
3 a grip.

4 A. That might be an interpretation.

5 Q. It might be said that that perhaps flags up the fact
6 that you didn't have a grip on indiscipline and casual
7 violence in A Company with detainees more generally.

8 A. No, I think that's not the right intimation to take from
9 that. I did have a grip across the company.

10 Q. It is the case, is it, Mr Davis, that you have told us
11 the whole truth of what you know about the way that
12 detainees were treated?

13 A. Yes, it is.

14 MR ELIAS: Thank you.

15 THE CHAIRMAN: Yes. You are going to be probably asked some
16 questions by other counsel. Yes, Mr Friedman.

17 Questions by MR FRIEDMAN

18 MR FRIEDMAN: Thank you, Mr Davis. Can I start with
19 hooding? You described your own experience of being
20 hooded.

21 You said there was no effect on breathing during
22 that experience for you. How long were you hooded for?

23 A. 10 to 15 minutes.

24 Q. One can probably guess, but in what kind of weather
25 conditions?

1 A. That's very difficult to recall.

2 Q. Was it in England --

3 A. I don't recall it being particularly cold or
4 particularly stifling and hot. It was in the UK, yes.

5 Q. Now, given the heat and the potential greater length of
6 time -- up to an hour, you said -- in Iraq, did that
7 combination of factors make you queasy, personally?

8 A. No.

9 Q. Did you consider for yourself, in your exercise of
10 mission command, the adverse effect that that type of
11 technique might have on hearts and minds?

12 A. I think the subject of hearts and minds goes beyond
13 simply the subject of hooding and I think that the
14 measures that we took at the time, given the threat,
15 were appropriate.

16 Q. Can I just press on this a little bit --

17 A. Sure.

18 Q. -- to put it in this way. One could imagine hooding for
19 the person hooded being a degrading, insulting,
20 frightening experience, regardless of the purpose. Do
21 you accept that, first of all, the subjective experience
22 that someone might have of being hooded?

23 A. I can accept that somebody's subjective experience might
24 be described like that.

25 Q. Yes. In terms of how this plays out -- and we have all

1 seen totemic pictures of people being hooded around the
2 world -- it's not the kind of thing one would have
3 wanted to do in Northern Ireland, is it?

4 A. I can't comment on what might have been appropriate at
5 different stages of the Northern Ireland conflict.

6 Q. But you yourself were never told at any time to hood
7 someone or be prepared to hood someone during your time
8 in Northern Ireland?

9 A. I don't recall that.

10 Q. You have explained that the purpose was to prevent, in
11 effect, ad hoc reconnaissance inside the camp for
12 understandable security reasons.

13 A. Yes.

14 Q. Does it follow from that that it was unnecessary to hood
15 people inside a Saxon on the way to camp?

16 A. I think the standard operating procedure --
17 notwithstanding the reasons behind it, the standard
18 operating procedure was at the point of capture you
19 would put a hood on a detainee for their transit through
20 the military environment in which they were travelling.

21 Q. The military environment being, here, the occupied city
22 of Basra?

23 A. And the inside of a Saxon.

24 Q. Now, just in terms of the rules of engagement into
25 Iraq -- and I take the answers given -- no order for

1 some kind of extra robust treatment. But did you
2 consider during the course of the tour that, because of
3 the pressures of it, people were behaving in a robust
4 fashion in order to affect minimum force procedure?

5 A. I don't recall the pressures of the environment or the
6 different operations we were conducting to have had any
7 effect on our ability to apply minimum force. Minimum
8 force is minimum force. If we were coming up against
9 a particular high threat, there may have been occasions
10 to, you know, up the level of minimum force, whereas on
11 a VCP "minimum force" means taking somebody by the arm.

12 Q. If I can move away, then, from the sort of engagement in
13 a very high threat and just ask you this: was there any
14 discussion at any time that, because of Iraqis' past
15 experience of the other regime, they would only respect
16 or respond, in effect, to quite robust treatment because
17 anything else would be perceived as weakness?

18 A. No, I don't recall that being -- I don't recall that
19 being the case, no.

20 Q. Just on the MacFarlane incident and what he said, is
21 this the case: never mind you, but if your soldiers had
22 been pushing and pulling detainees, particularly if they
23 were hooded and handcuffed inside the base, you would
24 have taken that very seriously?

25 A. Yes.

1 Q. Would it go beyond the verbal altercation that you
2 described at paragraph 26 of your statement? In effect,
3 would you have taken that up the chain of command, that
4 kind of behaviour?

5 A. If there was any behaviour that was, as I referred to
6 before, against the CO's on-message theme, then that
7 would go up the chain of command, if I felt I couldn't
8 deal with it.

9 Q. Well that last clause is of an issue. Let's take the
10 type of allegation made by MacFarlane: pushing, pulling,
11 rough treatment, he understands as led to an injury to
12 a wrist. Never mind that you say it didn't happen,
13 would that go up the chain of command?

14 A. Any injury -- so pulling and pushing I believe I would
15 be able to deal with and I would stop that. Any injury
16 of the time that was described --

17 Q. Yes.

18 A. -- physical injury, I see no option but it going up the
19 chain of command.

20 Q. I see. Now, just in terms of what happened in O Group
21 and what you took away from Major Royce's discussion
22 about hooding, first of all this: in terms of detaining
23 people in Camp Stephen, was there a very early point in
24 the store where your quartermaster, Captain Maycock now,
25 was dealing with the prisoners?

1 A. Not exclusively, no.

2 Q. He says that perhaps not exclusively, but he did deal
3 with it a lot at the time and there came a point when he
4 was told that he would no longer be involved in dealing
5 with the prisoners at all when they came into
6 Camp Stephen. Do you recall that process and change?

7 A. No, I don't recall that.

8 Q. Just taking a very detailed account that we now have
9 from Major Royce, he is saying that in O Group and
10 beyond he instituted standing orders that involved
11 hooding and stress positions for conditioning reasons
12 that went beyond security and related to questioning.
13 You understand that's what Major Royce and others are
14 saying, yes?

15 A. Sure.

16 Q. Now I want to understand firstly how it could be that if
17 that is the case, you, as the officer commanding one of
18 the companies, did not know that?

19 A. What I can say to that is I don't recall that specific
20 instruction or that series of events that Major Royce
21 says happened. It was the case in Camp Stephen that we
22 didn't conduct any tactical questioning or any
23 questioning beyond name, rank, number or -- you know,
24 the very early form filling in and then we transitted
25 them to battlegroup headquarters. So it wasn't part of

1 Anzio Company's job to do any form of conditioning or
2 tactical questioning, so -- sorry.

3 THE CHAIRMAN: Sorry for interrupting. I am anxious to
4 remind Mr Friedman of the time.

5 MR FRIEDMAN: Lastly on this: taking into account concepts
6 of mission command, of course your boys were going to be
7 involved in guarding at Camp Stephen during that time
8 that those orders, according to Royce, were in play.
9 Should you, as an officer commanding, have known that
10 those type of standing orders would be going on while
11 they were guarding?

12 MR GARNHAM: Sir, I just wonder whether that question is
13 misleading and whether my friend means Camp Stephen --

14 MR FRIEDMAN: I meant BG Main and I understand.

15 BG Main, hooding, stress positions for conditioning,
16 your soldiers potentially involved, should you, as
17 commanding A Company, have known that those orders were
18 going to be going on?

19 A. It would have been suffice for me to know that once my
20 responsibilities for transitting prisoners to
21 Battlegroup Main -- they would come under a different
22 form of rules, regulations and procedures. I was not
23 involved in those so I didn't need to concern myself
24 about the detail.

25 Q. Yes. It may be that you are not going to accept this,

1 but the description you have given about rules of
2 engagement does not begin to --

3 THE CHAIRMAN: Well that, I suspect, is a comment and
4 a submission that you can make to me at a later stage.

5 MR FRIEDMAN: I understand. I will move on to the
6 Baha Mousa event, of course after you left.

7 THE CHAIRMAN: You have a very short time to deal with it,
8 Mr Friedman.

9 MR FRIEDMAN: I understand.

10 It is this: it is possible that members of your
11 company, three weeks after you left, might have been
12 involved in torturing detainees. Has that played on
13 your mind or is it something that you tried to ignore,
14 first of all?

15 A. I think the fact that my soldiers may or may not have
16 been involved in that is hugely regrettable, if it's
17 found to have occurred. Of course it plays on my mind.
18 I know the individuals involved.

19 Q. The last matter I am going to deal with. It's
20 a question in two parts --

21 THE CHAIRMAN: I am not sure that you finished, did you?
22 Did you want to add something further?

23 A. No, I think it is regrettable. He asked if it had
24 played on my mind and it does.

25 THE CHAIRMAN: It does, yes.

1 MR FRIEDMAN: The last matter I want to deal with flows from
2 that. It is a question in two parts --

3 THE CHAIRMAN: Just start with the first part.

4 MR FRIEDMAN: Yes. If it be the case that they were
5 involved, why do you think they did it?

6 MR GARNHAM: With respect, sir, that's a matter for you, not
7 for this witness.

8 THE CHAIRMAN: Well, I don't know that that's going to --
9 (a) is going to help me in any way. That's one of the
10 things I've got to decide.

11 MR FRIEDMAN: So we will park that question.

12 THE CHAIRMAN: What about the second leg of it?

13 MR FRIEDMAN: The second question: if it be the case that
14 they were involved, how do you think, from your
15 knowledge of them, that they would have thought they
16 would be in a position to get away with it?

17 A. I can't speculate on that.

18 THE CHAIRMAN: Mr Friedman, those are all questions that may
19 have to be resolved, but not by him.

20 MR FRIEDMAN: Well, then, the last way -- and I understand
21 the implication of the time -- just in terms of mission
22 command during that period, we well know about the
23 provost staff and the BGIRO having responsibility. Do
24 you accept that the multiple commander, especially if he
25 is spending at least some hours --

1 THE CHAIRMAN: Could you just ask the question?

2 MR FRIEDMAN: -- on the base, has a responsibility to keep
3 an eye on what's going on with his guarding soldiers?

4 A. The platoon commander has overall responsibility for the
5 operation that he is conducting, be it guarding, raiding
6 or anything.

7 Q. So if soldiers had been involved in stress positions, in
8 conditioning, is that something that he has to know
9 about?

10 A. If he had observed it or it was reported to him, he
11 should have taken action.

12 Q. Just in terms of --

13 THE CHAIRMAN: Now, Mr Friedman, you are trying my patience.

14 MR FRIEDMAN: I understand.

15 THE CHAIRMAN: This will be the very last point you make.

16 MR FRIEDMAN: I understand.

17 It is just about Mr Rodgers. Is the case that he
18 was there for several hours at BG Main and his own
19 soldiers are saying that beating is going on --

20 MR ELIAS: I don't think this witness was present --

21 A. I wasn't present and I can't comment.

22 MR FRIEDMAN: I understand, but in terms of your knowledge
23 of him, does it surprise you?

24 THE CHAIRMAN: Mr Friedman, if I may say so, there is
25 a point lurking around there in that rather convoluting

1 question, if you will allow me to say so.

2 MR FRIEDMAN: Indeed.

3 THE CHAIRMAN: Would you allow me to ...?

4 MR FRIEDMAN: Indeed, Sir.

5 THE CHAIRMAN: Would you expect Mr Rodgers, as the multiple
6 and platoon commander -- ought he to have known what was
7 going on in the TDF as that commander?

8 A. He ought to have known.

9 THE CHAIRMAN: Is that what you wanted?

10 MR FRIEDMAN: I am grateful. Those are my questions. Thank
11 you.

12 THE CHAIRMAN: Well we just have time, I think, for
13 Ms Dobbin before we have a break.

14 Questions by MS DOBBIN

15 MS DOBBIN: Can I just ask, in terms of the training
16 that you both received and gave in terms
17 of prisoner-handling, can I assume that was along
18 orthodox prisoner of war lines --

19 A. Yes.

20 Q. -- in terms of moving prisoners of war down the line to
21 a point of collection, for example?

22 A. That's right, yes.

23 Q. And that you would not have been trained and nor indeed
24 would you have given any training in guarding detainees?

25 A. Not specifically, no.

1 Q. Can I also take it that if any of your soldiers had been
2 involved in guarding detainees on any sort of long-term
3 basis or if they had been instructed to use conditioning
4 techniques, for example, that you simply wouldn't have
5 regarded them as being adequately trained to do that?
6 A. They weren't specifically trained to be detainee guards,
7 no, that's true.
8 Q. In terms of your recollection of the meeting at which
9 Major Royce spoke about hooding, can I just check what
10 your recollection is as to the date of that? Is it your
11 recollection at the moment that it was likely late June
12 or early July?
13 A. That was the statement that I made and that's the best
14 of my recollection. It was certainly some time before
15 I left.
16 Q. Does this help? Can you recollect if he was the BGIRO
17 officer at that time?
18 A. I can't honestly recollect that, no.
19 Q. That's not a problem. But can I just understand what
20 you're saying? Your basic recollection of that meeting
21 was that Major Royce was communicating that there was
22 some sort of conflict in the advice which he had
23 received about hooding?
24 A. That's right.
25 Q. Thank you. May I just ask you this then: as regards

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Questions by MR SUMMERS

MR SUMMERS: Thank you, Sir. Mr Davis, you were referred briefly to paragraph 25 of your statement to this Inquiry about the incident concerning, I think, Colour Sergeant Hollender, when he had been overheard making remarks and had been dressed down, as it were, by the CO.

A. Yes.

Q. Do you recall that incident?

A. Yes, I do.

Q. You were asked questions about it at the court martial. I do not need to take you to it necessarily because it may be that we can agree this. The effect of it was that the CO was threatening to send Colour Sergeant Hollender home on the next plane?

A. Yes, that's right. Yes, he was.

Q. And it took your intervention to sort of pull him back from that position so that Colour Sergeant Hollender could remain on tour?

A. He asked my opinion and I counselled him that that was not necessarily appropriate, so, yes.

Q. At the end of it, you were clear about two things: one, that the colonel would not tolerate anyone -- and these were your words at the court martial -- and you used the phrase "who was not on message", which meant exactly

1 that in the way that he required people to treat Iraqi
2 civilians.

3 A. That's correct.

4 Q. So you came away with that. Secondly -- and I think
5 this is referred to in your statement -- that if you
6 engaged in any racism or mistreatment, then you, too,
7 would be on the next plane home.

8 A. Yes, I would.

9 Q. Can I ask this, not because I necessarily suggest it,
10 but it may be that it is a thought that occurs to
11 others: is there any question that you did not report
12 incidents of mistreatment within Anzio to
13 Colonel Mendonca because you feared that, in reporting
14 them, he may find you culpable for any mistreatment and
15 that you would indeed be on the next plane home?

16 A. Had I any recall of such an incident happening, then
17 I would have reported it to Colonel Mendonca.

18 Q. Whatever the consequences may have been?

19 A. Whatever the consequences.

20 Q. Do you recall an occasion when Colonel Mendonca raised
21 with you concerns which had come from Brigadier Moore
22 about a search and whether the search had been conducted
23 in an overly robust manner?

24 A. Yes, I remember the incident.

25 Q. Without going into the details of it because it perhaps

1 doesn't matter, but again, in terms of the outcome of
2 that discussion, was it the case that you explained to
3 Colonel Mendonca why the search had to be conducted in
4 that particular way?

5 A. Yes. Just in terms of the terminology, the operation to
6 which you refer was three separate platoon raid
7 operations, not search operations. Searches are very
8 controlled, surrounding of an objective and allowing a
9 search team to do its task. The incident to which you
10 are referring was a raid, working on intelligence from
11 brigade, and soldiers going in there primarily to
12 arrest, you know, people, rather than conduct a search.
13 The search was instigated by me when we came across
14 a particular locked cabinet or item and I asked the
15 search team to come in. So that is just the first point
16 in terminology.

17 The state of the place after we conducted the
18 operation was then photographed and presented back to
19 me, and Colonel Mendonca was clear that we should take
20 less -- less a robust approach in these houses from now
21 on.

22 Q. So you were clear that it was an issue he was concerned
23 with --

24 A. Yes.

25 Q. -- and that he wanted you to bear it in mind and take

1 a grip of it?

2 A. Yes.

3 Q. Lastly, in relation to how accessible -- to use
4 a word -- he was as CO for you, his company commanders,
5 if there had been concerns which perhaps wouldn't have
6 been appropriate to report formally in the sense of an
7 O Group meeting, did you have any difficulty raising
8 those with Colonel Mendonca in an informal way?

9 A. No. I think we had a very strong bond of trust between
10 us and I could have spoken to him about anything
11 formally or informally.

12 MR SUMMERS: Thank you.

13 THE CHAIRMAN: Mr Garnham?

14 Questions by MR GARNHAM

15 MR GARNHAM: Thank you, Sir. Five matters, please,
16 Mr Davis.

17 First, you told Mr Elias that you have only become
18 aware of "conditioning techniques" since the court
19 martial. That's what you said earlier. My question to
20 you is this: did you know, in 2003, what the expression
21 "conditioning" meant in relation to prisoner-handling?

22 A. I probably did through, you know, residual reading that
23 I have done.

24 Q. You anticipate my next question. From what source did
25 you become aware of that? You say residual reading.

1 A. Well, from a variety of readings -- you know, I have
2 read military books before, accounts, films.

3 Q. Anything from official army line?

4 A. Not that I can recall.

5 Q. Thank you.

6 Second, you described what Mr Elias characterised as
7 "temporary security measure positions". You described,
8 in particular, one involving kneeling down. Were those
9 subjected to that temporary security measure able to
10 move within the position they were put in?

11 A. Yes, so they weren't forced to be straight all the time.
12 They could sit back on their haunches. Some of them
13 chose to squat or sit.

14 Q. Was that particular measure, that temporary security
15 measure, enforced in any way and, if so, how?

16 A. The guarding soldiers on the veranda in these instances
17 would insist that they stayed in one position. They
18 would not intervene if they moved from position to
19 position, say from sitting to squatting, but if they
20 attempted to get up and move around, they might be put
21 back into position, you know, using a grip of the arm.

22 Q. Thank you. You were asked about your direction to your
23 company to cease hooding.

24 A. Yes.

25 Q. Was hooding a particularly pressing issue between

1 company commanders in August 2003? Was it the subject
2 of frequent debate?

3 A. No, it wasn't.

4 Q. Was it the subject of frequent debate within your
5 company?

6 A. No. As I say, it was a standard operating procedure,
7 and with all standard operating procedures, they are
8 there so that you can conduct them as a matter of course
9 and not have them raised as particular issues.

10 Q. Thank you. Lastly this issue: you were taken by
11 Mr Elias to the witness statement of Captain Ingram.

12 A. Yes.

13 Q. You were not taken to his evidence to this Inquiry where
14 he said that he assumed that you knew the ski position
15 was being used, but that he didn't know for certain
16 whether you were aware of that. So there's no doubt,
17 were you aware the ski position was being used in your
18 company, if it was?

19 A. No, and if I did find out, I would have stopped it.

20 MR GARNHAM: Thank you very much.

21 THE CHAIRMAN: I counted four, but -- you haven't missed
22 anything?

23 MR GARNHAM: I have not missed anything, Sir, and you have
24 not missed anything, I am sure. I think maybe point two
25 was divided into two parts.

1 THE CHAIRMAN: I just miscounted.

2 Mr Elias?

3 MR ELIAS: I have no further questions. Thank you.

4 THE CHAIRMAN: Very well. That's all the questions that the
5 Inquiry has for you. I am very grateful to you for
6 coming today to give your evidence and you are now free
7 to go, Mr Davis.

8 A. Thank you, Sir.

9 THE CHAIRMAN: Thank you very much. Of course you may
10 attend again if you want to. It is entirely up to you.
11 Yes?

12 MR MOSS: Major Lighten, sir.

13 THE CHAIRMAN: Yes, Major Lighten.
14 If you would be kind enough, please, to stand up,
15 Mr Lighten, I will ask that you take the oath.

16 JOHN GARTH LIGHTEN (sworn)

17 THE CHAIRMAN: Thank you very much. If you would sit down
18 now, please.

19 A. Thank you.

20 Q. If you would be kind enough to speak into the
21 microphone, then we will all hopefully hear you. If
22 there's any question that you don't understand, I am
23 sure you will say so straightaway.

24 A. Yes, sir.

25 THE CHAIRMAN: Thank you. Yes, Mr Moss.

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Questions by MR MOSS

MR MOSS: Mr Lighten, would you start by giving the Inquiry your full name, please?

A. John Garth Lighten.

Q. If you look in the folder to your right, I think you will find a hard copy of your witness statement to this Inquiry.

A. Yes.

Q. Turn up the final page with me please, which we have at our BMI05982. Do you have the final page there?

A. Yes.

Q. Did you sign that statement on 17 November of last year?

A. Yes.

Q. When you signed that statement, were you telling the Inquiry that the contents of the statement were true to the best of your knowledge and belief?

A. Yes.

Q. As you may have heard Mr Elias say with the previous witness, everybody here has had an opportunity to read your statement, so I am not going to go through every part of it, but to draw on certain topics that arise from it. Do you understand?

A. Yes.

Q. May we start, please, just briefly, with a few matters about your military background? You tell us -- is this

1 right -- that you joined the Territorial Army back in
2 1984 when you were still a sixth-former?

3 A. Correct.

4 Q. That you joined the regular army in 1990, being
5 commissioned into 1 QLR in 1991?

6 A. Correct.

7 Q. You served, I think, on several tours, both in Northern
8 Ireland and in Bosnia.

9 A. Correct.

10 Q. You were promoted through the officer ranks, reaching
11 the rank of major back in 1997?

12 A. Correct.

13 Q. Apart from courses at Staff College and extended study
14 periods that you have undertaken at various times in
15 your career, is it right that you were with QLR
16 throughout the duration of your military career?

17 A. I did a secondment with the 8th Battalion the Royal
18 Irish Regiment from December 1997 to November 1998.

19 Q. But with that exception, it was with QLR, was it?

20 A. Correct, yes.

21 Q. Thank you. You tell us that you retired from the
22 regular forces in 2006, but subsequently rejoined the
23 Territorial Army in 2007; is that right?

24 A. Correct, yes.

25 Q. What is your rank in the TA at the moment, sir?

1 A. Still the same.

2 Q. Thank you. I would like to ask you some questions about
3 your training and your understanding about matters such
4 as hooding and stress positions and so on.

5 You deal with this -- and this isn't a criticism --
6 at various different places in your statement. I would
7 like to take it, if I may, in chronological order. Can
8 we try and stick to that? What I would like to ask you
9 about is the training you had earlier in your career
10 first and then pre-deployment training for Iraq.

11 A. Mm-hm.

12 Q. Then look at the recce, the continuing pre-deployment
13 training, the handover, and then on deployment in
14 theatre. Can we take it in chronological order through
15 those stages so we are clear what you understood at
16 different stages of your training? Do you follow?

17 A. Correct, yes I do.

18 Q. May I start then, please, with training in the early
19 parts of your career? You tell us that, during your
20 training at Sandhurst, you would have received training,
21 is this right, in the law of armed conflict and indeed
22 in the Geneva Conventions?

23 A. Yes.

24 Q. Of an academic nature, largely?

25 A. Largely, but it's also an individual training directive,

1 so each soldier has to do that yearly.

2 Q. That's the annual training once you pass out?

3 A. Correct, yes, you do both.

4 Q. All right. Just sticking with the Sandhurst training

5 for the moment, what message did you derive from that as

6 to how prisoners should be treated?

7 A. In accordance with the Convention, humanely.

8 Q. What did you understand "humanely" to mean in practice?

9 A. Well, I would say in accordance with the Geneva

10 Convention. So you treat people fairly, you look after

11 their health, as far as you can you look after their

12 welfare and you would do nothing untoward toward them.

13 Q. Just sticking with the Sandhurst training -- and

14 I appreciate that it was quite some time ago -- do you

15 remember whether you received any training about hooding

16 or stress positions at Sandhurst?

17 A. My recollection is we would have been told in academic

18 study that those things were wrong, unlawful and

19 inappropriate in the context of Northern Ireland.

20 Q. You say "wrong and unlawful in the context of Northern

21 Ireland". Do you mean both hooding and stress

22 positions?

23 A. Yes, that would be my recollection.

24 Q. But limited to Northern Ireland?

25 A. Specifically.

1 Q. Did you have an understanding -- again just stick with
2 the Sandhurst training for the moment -- as to whether
3 there was anything wrong with hooding or stress
4 positions outside of the Northern Ireland troubles?

5 A. I don't remember considering them outside of that
6 context.

7 Q. I will come back to your annual training. You tell us
8 in your statement, if I can take it briefly, that on the
9 platoon commander's course and subsequently on the
10 captain's course, prisoner-handling was touched upon.
11 But if I have understood your statement, is this right,
12 that that was more to do with the logistics and admin
13 side, moving prisoners up the chain and so on? Is that
14 right?

15 A. That is absolutely correct.

16 Q. Did that training descend into details about whether
17 prisoners could be hooded or placed in stress positions?

18 A. No.

19 Q. Not one way or the other, it didn't deal with it?

20 A. No, it was bigger picture stuff.

21 Q. Your voice is just dropping slightly at times. Just
22 keep your voice up, if you would.

23 A. Sorry, it was bigger picture stuff yes.

24 Q. When, though, it got to the sub-unit commanders'
25 course -- that's the course on promotion to major, would

1 that be?

2 A. Almost certainly, but it's always a precursor to

3 assuming sub-unit command.

4 Q. You tell us you did that course in Aug 2002 and you tell

5 us in your statement that you did some theoretical

6 exercises. What would they have included on the

7 sub-unit commanders' course?

8 A. The focus is on -- the course is called the "combined

9 arms tactics course". The focus is very much on that:

10 to prepare artillery, cavalry, infantry, engineer, army

11 air corps and signals officers to conduct tactics at the

12 battlegroup sub-unit and also to discuss brigade tactics

13 as well.

14 Q. But when it came to the "TEWT", if that is how it's

15 pronounced, the tactical exercise without troops, you

16 refer in your statement to considering in those

17 theoretical exercises, table-top exercises, the manner

18 in which prisoners were to be handled and moved. What

19 did you learn, if anything, in those exercises about the

20 physical aspects about hooding and stress positions?

21 Were they mentioned at all?

22 A. No.

23 Q. You tell us in your statement that on those exercises

24 you were not taught, so far as the deprivation of sight

25 was concerned, whether it was right or wrong.

1 A. We wouldn't have touched on that subject as a matter of
2 course on those TEWTs or that specific issue that you
3 are talking about.

4 Q. You say at that stage in that exercise the course did
5 consider whether the movement of prisoners needs to be
6 secure and whether they should temporarily be deprived
7 of sight.

8 A. We would talk about the security aspect of moving
9 prisoners --

10 Q. Yes.

11 A. -- which requires troops to task, places to put
12 vehicles, water, rest, possibly medicine, et cetera,
13 et cetera. Implicit in that is that you must consider
14 one of the factors to be security. It would be
15 a consideration in that when you did an estimate to
16 conduct that. But that aspect of the training for field
17 officers is largely -- well, I would use the word
18 "shallow" when you benchmark it against the emphasis on
19 the course, which is the tactics, which is in depth,
20 because administration, when you are in the field, is
21 conducted by the warrant officer's chain of command.

22 Q. So did it touch upon the need to consider the level of
23 security that was required, but without going into
24 detail about the practical means by which that would
25 actually be achieved?

1 A. Yes, you would do that.

2 Q. Does it follow from that that through your various
3 courses on promotions, as you moved up the officer
4 ranks, that you hadn't had any more training about
5 whether hooding or stress positions were permitted
6 outside of the Northern Ireland context?

7 A. That's correct.

8 Q. So far as annual training is concerned, the Inquiry is
9 well familiar now with a LOAC video, slightly out of
10 date, that was shown most years. Do you recall that?

11 A. Vaguely.

12 Q. What do you recall took place by way of annual training
13 in terms of the law of armed conflict?

14 A. Soldiers would be shown that video --

15 Q. Yes.

16 A. -- and, where possible, would undertake lecture
17 training, usually given by officers.

18 Q. So far as you can remember, in the years when you
19 received it or possibly gave it, did the lectures that
20 followed the video touch upon hooding or the use of
21 stress positions or can you not remember?

22 A. Not that I can recall.

23 Q. Just this: you say in your statement, as regards annual
24 training, that the training can only give general
25 guiding principles. Do you remember referring to that

1 in your witness statement?

2 A. Mm-hm, yes.

3 Q. It is right, is it, then, that on any view such training
4 couldn't go into every conceivable scenario as to what
5 to do in every single arrest situation?

6 A. That's correct, yes, because you would be looking at the
7 bigger picture stuff, the principles of right and wrong.

8 Q. You are not suggesting, are you, that there was any
9 reason why military annual training in the law of armed
10 conflict shouldn't have given some guidance on whether
11 hooding was permitted and appropriate?

12 A. No, no.

13 Q. So before we come to your pre-deployment training for
14 Iraq, I just deal with this: had you, in fact, seen
15 hooding at any time prior to your pre-deployment
16 training?

17 A. No.

18 Q. I will just perhaps invite you to consider one paragraph
19 in your statement. Can we just have a look at
20 paragraph 49 at BMI05966? Thank you. Could that just
21 be enlarged? Thank you very much. You did say that:
22 "Prior to Op Telic 2 I have only a vague
23 recollection of seeing someone hooded with a sandbag
24 during a fighting in urban areas demonstration in Berlin
25 in the early 1990s."

1 Is that right?

2 A. It would be very vague, yes.

3 Q. So you think you may have seen hooding on that occasion?

4 A. Possibly.

5 Q. Okay. That can be taken from the screen. Thank you.

6 Outside of the Northern Ireland context, therefore,

7 before you undertook your pre-deployment training for

8 Iraq, what was your understanding about whether or not

9 hoods could be used when soldiers took prisoners on

10 operations?

11 A. I had not conducted any preparation for war-fighting

12 training and, looking back, with hindsight, I would have

13 expected that to be included on that. It had never come

14 up in training for Bosnia nor in my experience there.

15 Q. Are you saying that it was something that you didn't

16 have very much experience of, but you wouldn't have

17 been --

18 A. Yes.

19 Q. Thank you. And, what, you wouldn't have been sure

20 whether it was legitimate and you would have looked for

21 training on it?

22 A. Yes.

23 Q. What about stress positions, again outside of the

24 Northern Ireland context because I think you are saying

25 that you knew they were prohibited in the Northern

1 Ireland context. Is that right?

2 A. That's correct, yes.

3 Q. Did you have an understanding, prior to your
4 pre-deployment training for Iraq, as to whether stress
5 positions were legitimate or not on operations?

6 A. Yes, and my understanding at that point was that they
7 would have been not legitimate.

8 Q. So that we understand, why not legitimate?

9 A. Because it was my understanding at that time that they
10 had been outlawed in Northern Ireland, so I would have
11 assumed there was a carryover.

12 Q. If it matters, why would there be a carryover for stress
13 positions and not for hooding or did you not consider
14 that?

15 A. No, I didn't consider that.

16 Q. That takes us -- thank you -- then, I think, to your
17 pre-deployment training. You have told us that you had
18 been deployed operationally several times before to
19 Bosnia and Northern Ireland and so on. How did the
20 pre-deployment training for Op Telic 2 compare to your
21 previous experience of pre-deployment training for other
22 operations?

23 A. Northern Ireland training was well organised, well
24 delivered, thorough; Bosnia I went as an individual
25 twice -- less so to all of the above; and pre-deployment

1 training for Iraq was hasty, informed partly by our
2 reconnaissance, informed partly by information from
3 OPTAG, given the prevalent circumstances in theatre,
4 under-resourced, unable to get the right weapons systems
5 to train with and I think probably cobbled together.

6 Q. Now, I don't want to speculate -- I don't say this in
7 a derogatory way -- beyond your pay grade, but from your
8 own knowledge and experience, where did the
9 responsibilities for that lie? The training that you
10 expected to receive and you were not getting, where were
11 the problems with that at your level?

12 A. I think the problem really was the timescale for the
13 deployment, actually. It was too short to be able to
14 get into great depth with anything.

15 Q. The Inquiry has some evidence that there had been an
16 expectation or least a possibility of QLR being deployed
17 on Op Telic 1 --

18 A. Correct, yes.

19 Q. -- and that the training in 2002 in Canada and so on was
20 partly with that in mind. You maintain, do you, that
21 notwithstanding that, it was all too time-limited?

22 A. Yes, absolutely, because we were conducting two -- well,
23 the expectation was, for that, that would have been
24 conventional war fighting. The expectation when we were
25 told we were deploying on Op Telic 2 was that it was

1 likely to be different -- likely to be different. If we
2 had gone on Op Telic 1 at that point, before Mr Hulme(?)
3 went to Turkey, it was my understanding that that would
4 have been an attack from Turkey, through the mountains,
5 in a completely different context, and the training
6 would therefore be organised with a different emphasis.

7 Q. Just two further matters if I may. Firstly this: as
8 a company commander at that stage, did you make any
9 concerns known about how hurried and cobbled together
10 the training was as you perceived it?

11 A. During pre-deployment training?

12 Q. Yes.

13 A. No.

14 Q. So far as you were aware, was any feedback being given,
15 if you like, from QLR as a battlegroup up to brigade
16 about quite how rushed things were?

17 A. I have a vague recollection that Major Bostock had
18 issues with getting space, instructors, weapons systems,
19 information to put it together.

20 Q. One of the matters that you address in your statement,
21 so far as pre-deployment is concerned, was a lack of
22 clarity about the rules of engagement. Do you remember
23 raising that in your witness statement?

24 A. Yes, I do.

25 Q. I don't want you to go into what the individual rules of

1 engagement were about shooting and so on because those
2 are not matters for this Inquiry. Can I just ask you
3 this? In terms of prisoner-handling, did it make any
4 difference whether you were on war-fighting or
5 peace-enforcement or counter-insurgency-type rules of
6 engagement?

7 A. In terms of prisoner-handling, did you say?

8 Q. Yes.

9 A. No, I would expect you to treat prisoners in the same
10 equitable way because a prisoner is a prisoner on
11 whichever operation you are conducting.

12 Q. So the difficulties arising out of uncertainty about the
13 rules of engagement, those related to, what, a number of
14 matters other than prisoner-handling, did they?

15 A. They would do. You say you don't want to go into all
16 the different rules of engagement, but one would be the
17 circumstances in which you can fire a weapon --

18 Q. Yes.

19 A. -- and so on. That is clearly very important because,
20 as a company commander, you would be very concerned that
21 your men implicitly, intuitively, understand where they
22 stand.

23 Q. They need to know when they can open fire?

24 A. Correct.

25 Q. It is a pretty basic thing for them to know before they

1 get deployed.

2 A. Yes, it is.

3 Q. Would that be fair?

4 A. Yes, it is.

5 Q. Now, dealing then with the prisoner-handling aspects of

6 the pre-deployment training, can we just have a look at

7 BMI05961, paragraph 33. You refer to your earlier

8 statement, which I know you have been able to look at

9 recently, and say that:

10 "... I stated that the interpretation from

11 pre-deployment training was that those arrested for

12 looting would have their hands restrained with

13 plasticuffs whereas those arrested during house searches

14 and suspected of being terrorists would be both

15 plasticuffed and have sandbags placed over their heads."

16 You say that:

17 "I do not recall this specific distinction now, but

18 I have no reason to doubt it."

19 Do you follow? Does that remain your evidence?

20 A. Mm-hm, yes, it does.

21 Q. When you say there "the interpretation from

22 pre-deployment training" and then you deal with the

23 distinction, whose interpretation were you talking

24 about? Was it yours or somebody else's?

25 A. The interpretation would be the one that I assumed after

1 it, but that would be informed by theatre and OPTAG and
2 current doctrine therefrom.

3 Q. Now you have already told us that other than that very
4 vague recollection, dating back to Berlin many years
5 ago, hooding was not something that you had come across.

6 A. Mm-hm.

7 Q. So what was, if you can remember, the first source of
8 thinking that hooding would be acceptable, at least for
9 suspected insurgents, so far as how your troops would
10 deal with prisoners?

11 A. Our reconnaissance trip to Iraq and seeing people
12 hooded.

13 Q. You tell us in your statement -- is this right -- that
14 you were part of that advanced recce --

15 A. Yes.

16 Q. -- in May 2003? So in any training before the recce to
17 the Black Watch and to Basra, hooding had not crossed
18 your desk, had it?

19 A. That's my recollection.

20 Q. So what do you recall as regards that recce in May 2003
21 about hooding and the Black Watch?

22 A. That it was a practice that they used.

23 Q. You tell us that -- and we will come to it later on --
24 that the handover you had was understandably with your
25 counterpart company commander from the Black Watch. On

1 this recce in May before the handover, can you remember
2 who it was who you were with when you saw hooding going
3 on?

4 A. My recollection would be we travelled most of the time
5 as a group together, hosted by their commanding officer,
6 so I would be with the other company commanders and the
7 commanding officer most of the time. Towards the end of
8 it, I then spent some individual time with a company
9 commander from the Black Watch, but I'm fairly sure that
10 it was while we were in a group that I saw that.

11 Q. It follows, doesn't it, that with your Northern Ireland
12 tours and Bosnia and so on, with the possible exception
13 of Berlin, many, many, years ago, that was the first
14 time you had seen hooding?

15 A. Yes.

16 Q. Did you question it at the time? I don't necessarily
17 mean you personally, but the group of you doing the
18 recce, did you say "Why are they being hooded?" or
19 anything like that?

20 A. Not that I recall, specifically.

21 Q. You would have known, would you not, from your knowledge
22 of the prohibition in Northern Ireland, that it was at
23 least something that might be questionable, the use of
24 hoods in Iraq?

25 A. Yes, I would. I would have assumed that that was

1 entirely different circumstances where the Black Watch
2 had literally just finished combat operations and were
3 trying to establish some semblance of order in the city.

4 Q. All right. Well, you fairly say that that would have
5 been an assumption on your part.

6 A. Yes.

7 Q. So far as you are aware, did anybody else raise the
8 question as to why hooding was going on or was it
9 everybody assuming, so far as you know, that it was
10 permitted?

11 A. I would -- with hindsight, I would look back and go for
12 the latter. I don't recall specifically anybody
13 bringing that up.

14 Q. Was there anything else, so far as that recce is
15 concerned, in relation to the handling of prisoners that
16 you witnessed? Stress positions? Anything like that?

17 A. Not that I can recall.

18 Q. Just in terms of the robustness of the physical
19 treatment, was it minimum force, rough handling?

20 A. I would have said "firm and fair". The former, from
21 what I saw.

22 Q. So you returned from the recce to continue with
23 pre-deployment training, is that right?

24 A. I don't really recall doing any pre-deployment training
25 before we did a recce, actually.

1 Q. Right. I understand. But having returned, you then
2 would have set about, if that's the case, the
3 pre-deployment training; is that right?

4 A. Yes, absolutely.

5 Q. You tell us in your witness statement that, following
6 the recce, the next time you saw a person with a sandbag
7 other their head was at Catterick, during the
8 pre-deployment training, and a training exercise at
9 Whinny Hill. Does that ring a bell?

10 A. Yes, it does.

11 Q. Can you remember what the circumstances of that training
12 was? Who was giving it?

13 A. It was one of the two platoons because Burma Company had
14 two platoons, as opposed to the other three companies
15 that had three, and it was a raid operation on
16 a suspected terrorist's house or that was the scenario.

17 Q. So this was company level training in other words?

18 A. Yes, it was.

19 Q. The training being given internally by, what, platoon
20 commanders or sergeants --

21 A. And sergeants, yes.

22 Q. And the use of hooding and the sandbags placed over
23 their head, why was that then being used during the
24 training at Whinny Hill?

25 A. Because that's what we had witnessed, seen or been told

1 in Iraq and, whilst we were training at Whinny Hill and
2 when we deployed, we were told that we would still use
3 the same rules of engagement for people, and, therefore,
4 it all fell in to a jigsaw and was done in that way.

5 Q. Did you have any involvement in any kind of decision
6 that was positively made that your company would adopt
7 the Black Watch practices?

8 A. Looking back, I wouldn't be able to give you a clear
9 answer on that. That would have been decided by
10 Major Bostock and Colonel Mendonca from the
11 reconnaissance where they would have said, "Right, that
12 is their modus operandi, that is the context, that is
13 how it stands at present, therefore we will prepare for
14 that. If it changes, we need to prepare for plan B".

15 Q. If we just look at paragraph 54 of your statement
16 briefly if we may. It is at BMI05967. It should come
17 up on screen if it is easier for you. Just the first
18 two sentences. You said:

19 "I had no involvement in the decision to train our
20 troops to use hoods. As far as I understand it we
21 simply trained our [I think that should be] troops to
22 continue operating as the Black Watch had operated."

23 Is that right?

24 A. Yes, because the context was still the same.

25 Q. But you think, do you, that Major Bostock and

1 Colonel Mendonca might have had a role in making
2 a positive decision that that was the MO at present in
3 theatre and it should continue, at least to start off
4 with, for QLR?

5 A. Yes, you would have to do that in that position.

6 Q. Whether or not with the benefit of hindsight, might it
7 have been appropriate for you, at that stage, to ask
8 more questions about why hoods were being used and
9 whether it was right that your troops should be trained
10 to use them?

11 A. Can you state that again, please?

12 Q. Yes. Whether or not with the benefit of hindsight,
13 might it have been appropriate for you at this stage to
14 ask more questions about why hoods were being used or
15 whether it was right for B Company troops to be trained
16 to use hoods?

17 A. Even with hindsight I would say "no". The reason
18 I would say "no" is because at that point, having
19 conducted a reconnaissance (inaudible), the commanding
20 officer -- having spoken to the commanding officer,
21 spoken to the brigade commander, spoken to the brigade
22 staff in theatre and then back in Catterick, they will
23 define the parameters under which you train for the unit
24 within brigade context and therefore you take that on
25 trust.

1 So I would, at that point -- even now, with
2 everything I've read and know, I don't think I could go
3 back and put my hand on my heart and say I would have
4 changed that in March -- sorry May -- 2003.

5 THE CHAIRMAN: That is quite a mouthful for the shorthand
6 writers to get down at the speed that you dictate.

7 A. Sorry. My apologies.

8 THE CHAIRMAN: If you could slow down a bit. I appreciate
9 that you said what you wanted to, but if you just slow
10 down.

11 MR MOSS: It was a convoluted question and it was a long
12 answer, but we do have to take a note --

13 A. Understood. My apologies.

14 Q. In sum though, therefore, if I have understood you
15 correctly, you say you were entitled to take on trust
16 the fact that the training officer, Major Bostock, and
17 the CO had considered those matters; is that right?

18 A. I would expect them to have done so, yes.

19 Q. Before we come to when you deployed first to Kuwait and
20 then to Iraq, I just want to ask you about two slightly
21 different but allied matters, the shock of capture and
22 conditioning. Before you actually went to Iraq, what
23 did you understand about the shock of capture and what
24 that meant?

25 A. I don't actually recall considering it in any depth

1 before I went to Iraq.

2 Q. Say if you don't know -- I don't want you to guess --

3 but would you have had, prior to Iraq, a working

4 understanding of what the "shock of capture" meant?

5 A. Barely.

6 Q. What about conditioning? Again, before you went to

7 Iraq, would you have understood what "conditioning"

8 meant before --

9 A. No.

10 Q. -- Iraq?

11 Now, is this right: you would have undergone

12 a period of acclimatisation in Kuwait --

13 A. Yes, we did, yes.

14 Q. -- before crossing the border.

15 A. Yes.

16 Q. Do you remember receiving any training in relation to

17 prisoner-handling or LOAC when you were at Camp Eagle?

18 A. No.

19 Q. There has been some evidence, for example, of a talk by

20 a legal officer at that stage. Do you have any

21 recollection of that, at divisional or brigade level?

22 A. No, I don't, actually, no.

23 Q. Once you went to Basra, of course you had a period of

24 handover then from the Black Watch, is that right?

25 A. That's correct.

1 Actually, if you go back to your last question, the
2 officers commanding their reconnaissance groups left
3 before the acclimatisation training was complete.

4 Q. So you were a sort of advance party going into --

5 A. Yes, exactly.

6 Q. I follow. This, then, would have been the second time
7 you had seen the Black Watch in theatre?

8 A. Correct, yes.

9 Q. You had been on the recce. Did you, during that
10 handover period, see prisoner-handling by the
11 Black Watch on the ground?

12 A. The only thing I can recall at that stage is that they
13 had apprehended someone they thought was a murderer, who
14 was hooded and plasticuffed, is my recollection.

15 Q. Let's just take a look, if we may, at your paragraph 50
16 at BMI05966 and deal with that. In your paragraph 50 --
17 correct it if it is wrong -- I had understood you to say
18 that the arrested person who was suspected of being
19 a murderer, who had a sandbag over his head, was what
20 you saw during the recce rather than in the handover or
21 are you not now sure?

22 A. I am not now sure, actually.

23 Q. The other part, while we have it over the page, what you
24 do say about hooding, as far as the handover period is
25 concerned, is that you saw some suspected looters with

1 sandbags over their heads when you were undertaking the
2 handover exercise with Major Hay, the OC of the
3 Black Watch, that your company was taking over from. Is
4 that right?

5 A. I am unsure about when that was now actually.

6 Q. All right. Either way, whether it was the suspected
7 murderer or the looters on the recce or in the handover,
8 are you confident that you saw a detainee -- or at least
9 one detainee -- who was hooded during the handover or
10 might that all have been on the recce?

11 A. It might all have been on the recce.

12 THE CHAIRMAN: I don't think it really matters, does it,
13 when it was?

14 MR MOSS: It may not do, Sir.

15 But you do recall, do you -- again whether it is on
16 the recce or the handover -- that the Black Watch were
17 hooding suspected looters?

18 A. That would be my recollection, yes.

19 Q. Can I just ask you this then? Although you say that you
20 don't have a particular recollection about it now, you
21 have told the Inquiry in your witness statement -- and
22 you said to the SIB at the time or closer to the time --
23 that the pre-deployment training in B Company was to
24 draw that distinction --

25 A. Yes.

1 Q. -- between criminal detainees suspected of theft and the
2 like, the looting side, and from suspected terrorists,
3 and it was only the latter that would be hooded. You
4 appear to be saying that you were carrying on the MO of
5 the Black Watch. Is that in fact right, if you had seen
6 the Black Watch hooding those who were -- I will put it
7 in inverted commas -- "only" looters?

8 A. What I expected going forward was that we would deal
9 with criminals through whatever system there was -- and
10 that will include looters -- and that was going to be
11 through a police system, whether it was Military Police
12 or Iraqi, and that we would deal with suspected
13 terrorists in a different way.

14 Q. And that different way was ...?

15 A. Well, you would look at hooding them.

16 Q. Anything else?

17 A. I would expect them to be plasticuffed.

18 Q. During the handover, did you come across the concept of
19 conditioning?

20 A. I don't recall when I first came across that.
21 I would -- if you want me to guess, I would say "no".

22 THE CHAIRMAN: I am afraid, I don't understand "yes", you
23 would say "no". You will have to translate for me.
24 I don't know that it is terribly important --

25 A. I don't recollect exactly when, Sir, I would have come

1 across that first.

2 THE CHAIRMAN: Okay. That is fine.

3 MR MOSS: Let us look at paragraph 47 if we may at BMI05965.

4 You said in your statement of November of last year that
5 you were aware that people were being TQ'd and
6 conditioned on Op Telic. We will come back to that in
7 due course. You then said this:

8 "I heard about it in general conversations; on
9 handover from the Black Watch, from people on the OPTAG
10 training who had been in Iraq and from members of QLR
11 whilst in Iraq."

12 Can you help us with those general conversations on
13 handover from the Black Watch? What did that involve?

14 A. People would be recounting what had occurred during the
15 war-fighting phase of Op Telic 1.

16 Q. The Inquiry may be keen to understand, though, what it
17 was that was being recounted by the Black Watch about
18 how they had conditioned prisoners. Can you help us
19 with that?

20 A. "Barely" would be the answer because they conducted
21 a war-fighting operation. They would -- if I recall --
22 capture people and they would seek, if possible, to gain
23 intelligence from them to conduct their forthcoming
24 operations.

25 Q. I follow. In the general conversations, did you

1 understand how they went about that?

2 A. Not in detail, nor in terms of technique.

3 Q. Try in general.

4 A. The principle that I have just outlined, that they would

5 capture prisoners, seek to gain information from

6 prisoners, which would mean questioning, which would

7 mean analysing the information and then using it to

8 govern their next set of tasks or drive their next set

9 of tasks.

10 Q. You are telling the Inquiry the full story and giving us

11 the full truth, are you, when you say you had a general

12 understanding of that, but the techniques weren't

13 discussed?

14 A. No, I don't recall doing that -- talking about specifics

15 of how to deal with people, no, I don't recall doing

16 that.

17 Q. So some process prior to questioning --

18 A. Yes.

19 Q. -- but no specifics discussed. Is that what you are

20 saying?

21 A. Yes.

22 Q. Help us with this: can you recall whether, during the

23 handover, there was any discussion about one or more

24 deaths in custody which had occurred during the

25 Black Watch's tour?

1 A. Now you have mentioned that, I would have a vague
2 recollection of something being mentioned about that.

3 Q. Again, I don't want you to guess, but can you help us
4 with what the vague recollection is?

5 A. No, I can't, actually.

6 Q. Had there been any reference -- again please don't
7 guess -- to the fact that one of those who had died,
8 perhaps from a heart attack, might have been hooded when
9 he first arrived at the Black Watch camp?

10 A. I would have to guess at that answer.

11 THE CHAIRMAN: Well, I don't want you to guess. Tell me
12 what you remember. If you don't remember, just say so.

13 A. Understood, sir. I don't remember that.

14 MR MOSS: Just before we leave this topic, having heard what
15 you say was general conversation about some process of
16 conditioning, detailed techniques not discussed, did you
17 not ask questions about that at this stage in terms of
18 what would be expected of your soldiers?

19 A. I don't recall doing that specifically.

20 Q. If the process of conditioning -- whatever it
21 involved -- was going to continue, you would need to
22 know about it, wouldn't you, so that you could instruct
23 your soldiers on what to do or perhaps what the limits
24 were and not to go over the proper limits?

25 A. Yes, you would. That's a correct assumption. At that

1 time I would recall that it was viewed that the emphasis
2 of the operation would change dramatically when we
3 deployed and it would be stabilisation, so, therefore,
4 you would probably consider in extremis what you have
5 just outlined. But the driving thought behind the
6 philosophy which would employ would be stabilisation,
7 therefore you would be far less likely to need to do
8 anything like that.

9 Q. Are you saying that for that reason that you have just
10 outlined, you didn't ask any more at that stage about
11 what this process of conditioning actually meant in
12 reality?

13 A. Yes, I'm saying that. I don't recall specifically doing
14 that at that time.

15 Q. Actually during Telic 2, then, moving on from the
16 handover, do you remember some prisoner-handling
17 training being organised once you were in Basra within
18 QLR?

19 A. Not in detail, but yes.

20 Q. Who gave that training, so far as you can remember?

21 A. So far as I can remember, it would have been done --
22 organised at the behest of Major Royce and my company
23 sergeant major would have been involved somehow and so
24 would the three platoon sergeants because, by that time,
25 we had a third platoon.

1 Q. Would that be something that Major Royce was giving only
2 to B Company or --

3 A. No.

4 Q. -- to the other companies as well?

5 A. No, that would have been benchmarked across the
6 battlegroup.

7 Q. If we have a look at paragraph 38 of your statement at
8 BMI05963 where you deal with this aspect, you say:
9 "... there was some training on prisoner handling
10 organised by the intelligence cell and the BGIRO. I do
11 not know what its content was as I did not attend the
12 training."

13 Is that right?

14 A. Yes.

15 Q. Was it training in conditioning, as far as you know, or
16 can you not say?

17 A. I couldn't say with any accuracy.

18 Q. Can you help us at all with the general areas that the
19 training covered?

20 A. I would expect and assume it to have covered its
21 relation to law of armed conflict, the Geneva Convention
22 as the benchmarks behind it and then practical delivery
23 in conjunction with the extant rules of engagement.

24 Q. Why would the BGIRO be involved in that?

25 A. Because his specific task became -- and I would be

1 unclear as to when he was given exactly -- I suppose you
2 would call it the parameters, terms of reference,
3 because he would have deployed in his in-barracks role,
4 if you like, which is the battlegroup warfare officer,
5 and that morphed into something different, and that was
6 internment review officer, when there became a
7 requirement because the operation tipped from
8 stabilisation into -- or toward the point where there
9 was a greater emphasis on counter-terrorism.

10 Q. All right. I am going to stop you there because we will
11 come back to the different roles and the change in the
12 BGIRO role and so on.

13 Can I just move on, then, to your experiences of
14 some prisoner-handling matters generally? It is right,
15 isn't it, that hooding was, in fact, a practice which
16 continued within B Company once you had deployed?

17 A. Yes, it did do if we lifted people who were suspected of
18 being terrorists.

19 Q. So that distinction that you had had in the training, if
20 it was looters and suspected thieves and so on, you say
21 not hooded; is that right?

22 A. Correct, yes.

23 Q. During the course of the deployment before Baha Mousa's
24 death, did there ever come a time when you questioned
25 whether hooding was really appropriate even for

1 suspected insurgents?

2 A. There was a point during the tour where it was not
3 clarified because we had been told -- and asked as
4 a battlegroup time and time again for clarification on
5 the war-fighting rules of engagement, which we were
6 being told time and time again were still extant.

7 Q. I follow what you say about seeking clarification on the
8 rules of engagement. Are you saying that, as well as
9 seeking general clarification on the rules of
10 engagement, there was some sort of request for
11 clarification about whether hooding could be used?

12 A. I didn't recall that until I listened to Major Davis's
13 evidence.

14 Q. There is no reason why you shouldn't have been, but when
15 you listened, then, to that evidence, did that start to
16 ring a bell to you?

17 A. It does ring a bell.

18 Q. Just sticking with your own recollections, how do you
19 recall that arising?

20 A. I didn't, actually, until I listened to that.

21 Q. But was it something that you raised, that somebody else
22 raised, that there was a confusion or an issue requiring
23 clarification about this?

24 THE CHAIRMAN: Just pause a moment, Mr Moss.

25 I think you are asking him something different. You

1 had no recollection until you heard this morning what
2 Major Davis was saying, is that correct?

3 A. That is absolutely correct, sir. I did not recall that
4 until then.

5 THE CHAIRMAN: Have you any independent recollection now,
6 apart from what you heard Major Davis say?

7 A. I would say, yes, vaguely, but prompted by that.

8 THE CHAIRMAN: Well, in short summary, give us the "yes,
9 vaguely".

10 A. In short summary, can I recall that? I have
11 a recollection about discussion, about whether it was
12 appropriate or not and that question being passed
13 upwards for clarification, which I don't recall ever
14 being defined.

15 MR MOSS: When you say "passed upwards", do you mean passed
16 upwards to the CO or to brigade or what?

17 A. It would have gone from battlegroup -- because that
18 would have been a battlegroup, if you like, policy issue
19 which would be in the domain of the BGIRO, because he
20 would be responsible for benchmarking that -- and that
21 would have gone up to, I think, the G2 branch and
22 probably the legal branch at 19 Brigade.

23 Q. There is a lot of evidence, obviously, available to the
24 Inquiry, but after Baha Mousa's death there were all
25 sorts of discussions between QLR and brigade about

1 hooding and whether it should continue and the
2 prohibition on hooding and so on. Are you confident
3 that this is something that happened before Baha Mousa's
4 death?

5 A. The discussion?

6 Q. Yes, and the seeking of clarification.

7 A. I wouldn't say I was confident, no.

8 THE CHAIRMAN: Do you think it was or was not before his
9 death?

10 A. Sir, I would have to go back and say I have a vague
11 recollection.

12 THE CHAIRMAN: All right. Well I don't think we should
13 press it any further.

14 MR MOSS: Thank you.

15 You tell us that, as far as hooding is concerned, in
16 your statement you would see sometimes five or six
17 detainees in the camp, on average around once a week,
18 who would be hooded. Did you ever see or become aware
19 that sometimes prisoners were being hooded with more
20 than one sandbag?

21 A. I have a vague recollection of that as a rarity.

22 Q. You say "as a rarity". What would be the circumstances
23 in which more than one sandbag might be used?

24 A. If someone could see because the sandbag was not
25 sufficient.

1 Q. Was that something that you think from time to time
2 B Company did, use more than one sandbag?

3 A. I couldn't put my hand on my heart and say that they did
4 not do it, but it would be a particularly extraordinary
5 circumstance because normally there would be no need.

6 Q. Heat injury was something which you, as an officer
7 commander, had to guard against for the soldiers under
8 your command, wasn't it?

9 A. Yes, and prisoners.

10 Q. Did it not concern you if prisoners were being hooded
11 and perhaps, in particular, with two sandbags in the
12 climate at that stage in Iraq?

13 A. If that had been common practice and I had have known
14 about that, yes, it probably would have done, but I have
15 no recollection of knowing that that was a prevalent
16 circumstance.

17 Q. What about the duration of hooding? Was any limit put
18 on how long a prisoner might have, let's say, with even
19 just a single sandbag on their head?

20 A. Not that I can specifically recall.

21 Q. Are you able to help us from your experience of how long
22 a prisoner might have been at B Company lines or at
23 BG Main with a hood on their head?

24 A. The former not the latter because our guarding
25 principle, when apprehending or arresting a person, was

1 to process them through the system as quickly as
2 practically possible. So, ideally, almost as soon as
3 you came back to B Company lines, which were 500 metres
4 from battlegroup headquarters, the detainees would be
5 processed, taken and handed over.

6 Q. All right. So from point of capture when they might be
7 hooded to being passed on to battlegroup headquarters --
8 that was the process -- what sort of length of time are
9 we talking about?

10 A. There would be a couple of other factors to consider in
11 that: the distance from our location to the company area
12 of operations, which was 2 or 3 kilometres, and the
13 operation you were conducting, whether you had finished
14 it or not --

15 Q. I am going to interrupt you because I think we would all
16 understand that there would be variables and you can't
17 give a specific period, but are we talking about a
18 maximum of ten minutes or 15 minutes or could it be as
19 much as an hour or two hours sometimes, depending on the
20 circumstances?

21 A. Yes it would depend on the circumstances because --
22 ideally minutes, but I can't say that was always the
23 case because it would depend. If you are doing
24 a battlegroup operation and Anzio and Corunna had
25 brought people back, they would all have to be processed

1 in the same place.

2 Q. So might it have been on occasions that once you allow
3 for the point of capture, the transport back to
4 B Company lines, any initial processing at B Company
5 lines and then taking them over to BG Main --
6 appreciating that wasn't very long -- that some
7 prisoners might be hooded for, say, an hour or two
8 hours?

9 A. That's possible, yes.

10 Q. Did that not cause you concern?

11 A. No.

12 Q. Again, whether with or without the benefit of hindsight,
13 do you think now that that is something which you
14 should, at the time, have asked more questions about?

15 A. No, not if the people were being supervised and there
16 was provision for them either to be in shade, if it was
17 going to be extended, or to be given water if it was
18 necessary.

19 Q. Thank you.

20 So far as stress positions are concerned, did you
21 ever see a prisoner in a stress position?

22 A. Not that I can recall, no.

23 Q. I think you tell us in your statement that you would
24 draw a distinction between a stress position to inflict
25 pain and discomfort and a temporary search position. Is

1 that right?

2 A. Yes, I would actually, yes.

3 Q. Did you ever see prisoners in a kind of temporary search

4 position?

5 A. Yes, I did, with their hands up against a wall.

6 Q. When you saw that, for what duration would that have

7 been maintained?

8 A. As quickly as it's needed to search someone and then, if

9 necessary, I suppose you would say, pacify them so that

10 they are no longer a threat to the patrol or multiple

11 and then you can search the next person.

12 Q. If we just have a look at BMI00470? Thank you.

13 If you take it from me for the moment that this

14 depicts BG Main and not the B Company location, those

15 prisoners that you see there on the kerb-side, hooded

16 and in the positions that you see depicted in that

17 photograph, did you ever see that sort of thing?

18 A. Are they squatting?

19 Q. Perhaps we can go on to the next paragraph.

20 THE CHAIRMAN: Could you speak into the microphone?

21 A. Sorry, Sir. I asked if they were squatting.

22 MR MOSS: If we go to the next photograph again, I think it

23 is a slightly better one. Can you just enlarge it for

24 the witness? Does that help you to see a bit better?

25 A. Yes, it does. I do not recall seeing people sat exactly

1 like that.

2 Q. Had you seen that, what would your reaction have been?

3 A. I would have wondered why because they could be easily
4 sat on the kerb-side.

5 Q. That would have caused you to ask questions, would it?

6 A. Yes.

7 Q. Thank you. That can be taken from the screen. Thank
8 you.

9 Now I would like to move on to ask you some more
10 general questions, if I may, about the chain of command
11 and your role in theatre. Obviously, as a company
12 commander, your company would have been undertaking
13 security of the camp, planned operations, patrolling as
14 well as training the police, all of those matters. Is
15 that right?

16 A. That's correct.

17 Q. You tell us in your statement -- we have had evidence
18 about it -- that your role meant having oversight of all
19 of those matters, but you couldn't personally deliver
20 them all. Would that be right? You weren't involved in
21 the personal delivery of them?

22 A. Yes, that's exactly right. You know, you have been
23 through the chain of command, concurrent activity is the
24 guiding theme.

25 Q. So far as prisoner-handling is concerned, was it part of

1 your job to know what B Company soldiers were doing, how
2 they were handling prisoners?

3 A. It would be my job to ensure, through my subordinates,
4 that they were doing it in accordance with guidance
5 given to them and appropriately.

6 Q. Understanding that, who would you have been looking to
7 inform you of what was going on on the ground?

8 A. With regard specifically to prisoner of war handling?
9 Is that what you are asking me?

10 Q. Yes.

11 A. I would have expected all six of my multiple commanders,
12 Sergeant Major Leigh and John Harker all to have an
13 input into that.

14 Q. He was your 2IC, is that right?

15 A. That's correct, yes.

16 Q. Your company 2IC.

17 A. Yes.

18 Q. Did you get out on the ground and see things with your
19 own eyes as well?

20 A. Most days.

21 Q. The Inquiry knows, of course, about the death of your
22 company sergeant major.

23 A. Mm-hm.

24 Q. Presumably he was somebody that you would have worked
25 particularly closely with?

1 A. Yes, my right-hand man, really.

2 Q. Yes. When you were out and about, did you see any
3 mistreatment that you can recall?

4 A. The only incident which you may describe as
5 "mistreatment" or not is the one I referred to in my
6 statement, where I saw one of the soldiers lose his
7 temper because he had been provoked and that is it.

8 Q. We will come back to that. Above you in the chain of
9 command, of course, you reported, is this right,
10 directly to Colonel Mendonca?

11 A. Correct.

12 Q. May we just have a look, please, at MOD048644? This is
13 a draft statement, not signed, for the purposes of the
14 court martial, which was taken from
15 Major Suss-Francksen. Can we just have the paragraph
16 that refers to you, Major Lighten? It says that you are
17 presently on resettlement. We don't need to worry about
18 that. But Major Suss-Francksen was saying that he
19 understood that the CO had put you and Burma Company in
20 the same camp as him so that the CO could keep an eye on
21 you and, if necessary, give you a metaphorical kick into
22 action.

23 A. Mm-hm.

24 Q. Do you know what that may be referring to?

25 A. I think that is perfectly logical. Do you want me to

1 explain why?

2 Q. Yes.

3 A. This is a long answer. The first thing I start with is
4 the composition of the company was only two platoons
5 prior to any training. When we did pre-deployment
6 training, we were given an extra platoon, an unknown
7 quantity. Burma Company, over the preceding year, had
8 been split upon brigade training in Canada, because
9 there was no company commander, a different company
10 sergeant major. Sergeant Major Leigh and I had not
11 both -- well, I had come into post in September/October
12 time. He came in January/February time. New team.

13 Mr Riley was new. Mr Peel had only been there since
14 August before. The two sergeants were experienced. The
15 TA guys were an unknown component. We had had some
16 training on a TESEX for a week in January, but the other
17 two companies, Corunna and Anzio, had both been with
18 their OCs, Major Davis and Major Kenyon, to Canada.

19 Major Davis had been in post longest and was
20 probably the most experienced. Mark Kenyon got a better
21 grade at Staff College than me, so he would have been
22 looked on as a better long-term candidate for promotion.
23 And Burma Company, I think, finally, I would say, had
24 been put or split up -- because they had been in Canada
25 split up -- been split up on the fire strikes, which

1 carried on until March of that year in Liverpool and
2 where the men had been given to the two different
3 companies because there had been no command structure
4 back in September when they had come back from Canada
5 and started that --

6 THE CHAIRMAN: I think I am getting the general picture as
7 to why you say it was justified for someone to keep an
8 eye on you.

9 A. The simply thing is, Sir -- well, ask Colonel Mendonca.
10 If he had rated the three rifle companies, he would have
11 said probably Corunna, Anzio, Burma in that order.

12 THE CHAIRMAN: All right. I have now got it.

13 MR MOSS: While we have got, to save jumping around later
14 on, could we just go over two pages and look at
15 MOD048646, please, where Major Suss-Francksen was
16 dealing with rumours of treatment of Iraqis generally.
17 Just to give you the context, he is talking about before
18 he rejoined QLR.

19 "When I first arrived on tour I had heard rumours
20 about over robustness by British soldiers towards Iraqi
21 civilians ... I had not heard anything in regard to QLR
22 specifically. I was aware of the allegations relating
23 to Camp Breadbasket and also the Irish Guards incident.
24 I had become aware of these incidents whilst working at
25 PJHQ [so you have the context] ... I think I discussed

1 these rumours in passing with Major John Lighten, OC of
2 Burma and WO2 Darren Leigh."

3 Do you have any recollection of that?

4 A. No.

5 Q. So far as the 2IC is concerned, what role did he have,
6 if any, in relation to prisoner-handling? Did you
7 understand that?

8 A. Yes, I do -- yes, I did, and his role would have been
9 limited because he was there to deputise, obviously, for
10 the commanding officer. Major Suss-Francksen commanded
11 when Colonel Jorge went on his leave and conducted
12 operations and he would have overseen the battlegroup
13 internment review officer as one of his other oversight
14 responsibilities.

15 Q. Might we just, in the light of that, look at
16 paragraph 10 of your witness statement at BMI05955,
17 where you see:

18 "The 2IC to Lieutenant Colonel Mendonca had a number
19 of staff officers reporting to him including the ...
20 BGIRO ..."

21 Was that, in fact, your understanding, that the
22 BGIRO reported via the 2IC or would you like to clarify
23 that?

24 A. I am unsure.

25 Q. What was it that led you to put that in your statement?

1 A. The reason I say I am unsure is because that is the
2 paper answer to the question. What blurs my answer to
3 you is the fact that I know Colonel Mendonca holds
4 Major Bostock or Colonel Bostock and Major Royce in
5 particular high regard. And as his confidence grew in
6 Major Royce to do that job, he would allow him to
7 just -- instead of channel everything, to report to him,
8 give him the policy and get on with it, as is the
9 mission command kind of way of doing things. So that
10 is, if you like, the structure. If you laid it down as
11 a wire diagram, that is how that should occur. But as
12 confidence grows in processes, people and so on, things
13 become a little different.

14 Q. Would it be fair to say that your evidence on this
15 aspect is based more on how you think things worked
16 generally, rather than specific recollections about how
17 this part of the tour was being run, prisoner-handling
18 and so on?

19 A. Yes, it would, yes.

20 Q. Just this then: the regimental sergeant major, once in
21 Iraq on the tour, what was his responsibility in
22 relation to prisoners?

23 A. I didn't think he had a relationship once in Iraq in
24 terms of oversight of the detention facility. That was
25 then left to the BGIRO. My understanding was that

1 Mr Briscoe spent his time, then, with the commanding
2 officer, managing, leading and observing the battalion.

3 Q. Let's just look at that. How did that come to be your
4 understanding? Can you help us?

5 A. One way that would become my understanding is whenever
6 the commanding officer came to see me and my men out on
7 the ground, he would have always had Mr Briscoe with
8 him.

9 Q. I follow that, but is it not the case that the pressures
10 of the tour were such that lots of people, especially
11 officers, had to be effectively multi-hatted, do several
12 tasks?

13 A. Yes.

14 Q. So the fact that the RSM may have been in the CO's TAC
15 didn't mean that he was not responsible for what was
16 going on at the TDF, did it?

17 A. It wouldn't necessarily, no.

18 Q. Do you yourself have any recollection of any meeting,
19 for example, where this was formally discussed and there
20 was some redistribution of responsibilities?

21 A. No, I don't have any recollection of that.

22 Q. So far as you understood it, who was the line manager,
23 if I can use that term, for the provost staff at
24 battlegroup headquarters?

25 A. It would have been the battlegroup internment review

1 officer.

2 Q. So that had changed too, had it?

3 A. Yes, because that wouldn't be the case back in barracks
4 and the battlegroup internment review officer was an
5 operationally specific task.

6 Q. Again, you will forgive me for putting it in this way,
7 but other than seeing -- and I will use surnames --
8 Briscoe with Mendonca, is there any basis for why you
9 say that that was the case?

10 A. Not that I can recall.

11 Q. Are you saying that that was the position under
12 Major Royce and Major Peebles or might it have been
13 different?

14 A. I don't remember it being any different under either.

15 Q. I am going to turn next, then, if I may, to questions of
16 discipline and a few particular events. I have touched
17 already on Warrant Officer Leigh. What was your
18 impression of him in terms of how he sought about
19 maintaining discipline within the company?

20 A. As a character, he was a very forceful direct man, which
21 is exactly what you want as a rifle company sergeant
22 major. In addition to that, he was experienced,
23 considered and thoughtful, and he went about it in
24 a very thorough way. And I would -- I think if you
25 asked Potter, Wilding, Lamb, et cetera, the same

1 question, they would say they were perfectly clear about
2 what he expected from them.

3 Q. You say that in general there was very little
4 ill-discipline, but when it did occur, your CSM got to
5 know about it and dealt with it swiftly and firmly.
6 Does that remain your evidence?

7 A. Yes, it would remain my evidence. I think that
8 a particular strength of his was his relationship with
9 his sergeants, and they had confidence in him and trust
10 in him, so they would go to him with things.

11 Q. When you say in general that there was very little
12 ill-discipline, it must be right that, in fact, what you
13 are saying is that, so far as you know and so far as
14 came to your ears, there was very little ill-discipline.
15 Would that be right?

16 A. Yes, that's correct.

17 Q. The incident of which you spoke earlier on and I halted
18 you at that stage, the one incident that you do
19 remember, did that involve a civilian who was resisting
20 arrest?

21 A. Yes, that would be my recollection, yes.

22 Q. And who had, in your words, headbutted the arresting
23 soldier and spat in his face. Is that the incident?

24 A. Yes.

25 Q. What did the soldier do, the arresting soldier?

1 A. If I recall, I think he tried to hit the civilian.

2 Q. Did he try to hit him or did he actually succeed in
3 hitting him, if it matters?

4 A. I'm unsure.

5 Q. And did anybody take any action as a result of seeing
6 that incident?

7 A. Yes, Sergeant Major Leigh and the platoon sergeant.

8 Q. And a platoon sergeant, did you say?

9 A. Yes.

10 Q. What did the platoon sergeant do?

11 A. I suspect -- I do not know -- but I think he gave the
12 soldier a dig.

13 Q. He thumped him?

14 A. I suspect so.

15 Q. Is there any doubt about it?

16 A. Yes, my recollection.

17 Q. Again, if it matters, do you know who the platoon
18 sergeant was?

19 A. Not specifically, but at that stage it would have been
20 one of two people, probably.

21 Q. The two people being ...?

22 A. Potter and Wilding.

23 Q. Did it concern you that the reaction of a platoon
24 sergeant had been to thump -- if thump it was -- the
25 soldier who had been misconducting himself?

1 A. It did in the respect that I would not want that to be
2 a regular occurrence nor find that acceptable as
3 a regular occurrence. In the circumstances at that
4 time, I was content that that sent a signal that that
5 sort of thing was not to be tolerated and, therefore, by
6 coincidence, it served a purpose.

7 Q. All right. Just so that we have the flavour of it, that
8 having been the reaction on the ground, would the
9 soldier who had struck back or tried to strike back at
10 the civilian -- would that soldier have been disciplined
11 or would that have been an end to it?

12 A. That was the end to it in that case.

13 Q. You go on to say that there was at least one instance
14 where you did report issues or concerns about
15 prisoner-handling up the chain of command. Is that
16 right?

17 A. Yes.

18 Q. The Inquiry has had some evidence about this already --
19 you deal with it in your statement -- that this was
20 relating to matters raised with you by Sergeant Potter
21 and Colour Sergeant Lamb. Is that right?

22 A. That's correct.

23 Q. Just help us with this first of all then: what is it
24 that you remember that they raised with you as the
25 concern?

1 A. Well the first thing I will say is I did not recollect
2 that until I read Sergeant Potter's submissions and
3 evidence. Now I think I recall the two of them coming
4 to talk to me and saying they had seen Smith. Smith had
5 related the occurrences, his concerns, to them. They
6 came and discussed it with me and then I brought it up
7 with the commanding officer.

8 Q. Let's just break that down. What were they reporting as
9 Provost Sergeant Smith's concerns?

10 A. Are you asking me if I recall exactly what they said to
11 me?

12 Q. Yes. We have all read, obviously, what Potter and Lamb
13 have to say about this. I am particularly interested
14 just to explore your own recollections, not what you
15 have read in others' statements. I don't say that of
16 you critically, but that's what we are looking for. Do
17 you remember now what Potter and Lamb were saying
18 Sergeant Smith's concerns were?

19 A. Not without reading the statements and the evidence
20 submitted.

21 THE CHAIRMAN: When you say "not without reading", do you
22 mean that your recollection is solely based upon what
23 they have said in their witness statements?

24 A. Yes, Sir, it was prompted as such.

25 THE CHAIRMAN: You have no independent recollection other

1 (1.58 pm)

2 THE CHAIRMAN: Mr Lighten, you are still under oath.

3 MR MOSS: Just briefly, I am interested in your
4 recollections or things you recollect, even if your
5 recollections have been jogged by reading other
6 statements. We are not so interested if what you are
7 saying is "I have read that statement, it must be right,
8 but I don't remember", but that helps with what we are
9 looking for.

10 We are dealing with your subordinates, Potter and
11 Lamb, and the concerns that had been raised. Do you
12 remember whether you agreed with the concerns that they
13 were raising?

14 A. I can't say. I can't answer that in the affirmative
15 because I don't remember discussing it until I read the
16 statement.

17 Q. It is right, though, isn't it, that you say that you did
18 raise this with the CO?

19 A. Yes.

20 Q. Does it follow that you must have been, to some extent,
21 concerned by what had been reported to you because you
22 felt it was sufficiently important to take it up with
23 the CO?

24 A. Yes, it would follow because, as I think I stated
25 earlier, I would trust those two, I would trust their

1 judgment, I would have trusted them to report accurately
2 to me, and, therefore, if they had reported that to me
3 as they have stated, I would have then thought, "Right,
4 okay, then there's perhaps something that needs to be
5 looked at here" and therefore I would have then raised
6 it.

7 Q. Taking these matters up -- something of this
8 seriousness -- with the CO was the right thing to do,
9 wasn't it?

10 A. That's correct.

11 Q. Bearing in mind that you had no recollection at all of
12 these matters before you saw the evidence of Potter and
13 Lamb, how confident are you that you raised this with
14 Colonel Mendonca at all?

15 A. Confident because of the serious nature of it and
16 confident that I would have been happy to approach him
17 about it and confident that I would have trusted them to
18 bring something like that to my attention.

19 Q. What, please, then, is your recollection of what you
20 said -- I don't mean the exact words, but the gist -- to
21 your CO?

22 A. I don't remember what I said to my commanding officer.

23 Q. I don't want you to guess, but are you able to help us
24 with what the level of your concern was? Were you
25 saying "This is troubling" or "I ought to just pass

1 something on"? Can you help at all?

2 A. It is most likely that I would have said something along
3 the lines of the latter, "Colonel, this has been
4 reported to me, I want to bring it to your attention",
5 and I would have discussed it with him.

6 Q. This isn't a criticism. Is that you, as it were,
7 rationalising what you think you would have done, rather
8 than what you remember doing?

9 A. Yes.

10 Q. Do you now recall what Colonel Mendonca's response was?

11 A. No.

12 Q. You don't?

13 A. Not in any detail at all.

14 Q. What was the generality of it?

15 THE CHAIRMAN: I really don't want you to guess at it. If
16 you don't know, you had just better say so.

17 A. In which case I am unclear and unsure, Sir.

18 THE CHAIRMAN: Well, I don't think it is fair to either of
19 you if you guess about what you said. That wouldn't be
20 right.

21 MR MOSS: Sir, in the light of that, I think I have to
22 ask -- if we just look at paragraph 84 of your witness
23 statement, BMI05974, what you were telling the Inquiry,
24 Mr Lighten, in November of last year -- you see the last
25 three or four lines of this -- is that you raised the

1 concerns of Potter and Lamb with the CO, "... but his
2 response was that this was a matter of operational
3 security and as such was not my company's business".

4 Just pausing there, take it from me for a moment,
5 you didn't get that from Potter or Lamb because neither
6 of them give evidence to that effect, that the CO's
7 reaction was "This is a matter of op sec", operational
8 security, so was that the CO's response?

9 A. That's what I think, yes, but I'm not certain.

10 Q. Do you remember what you told Potter and Lamb as to what
11 the CO's response had been?

12 A. Not with any degree of certainty, no.

13 Q. The thrust of their evidence was that you told them that
14 the matter had been dealt with. Would you challenge
15 that?

16 A. I don't think I have any place to challenge that, no.

17 Q. If that is right, how had the matter been dealt with if
18 what, in fact, had happened was that the CO had told you
19 that it was none of your company's business?

20 A. Because that's his prerogative actually because
21 a commanding officer and a brigade commander -- actually
22 a company commander -- do things and know things that
23 they don't always need to make other people privy to.
24 And if he tells me or if he told me on occasion that
25 I did not need to know something, then I -- you do

1 not -- and I have no ground upon which not to take that
2 upon trust.

3 Q. Did the CO give you any indication of how it was that
4 keeping a prisoner knelt, blindfolded, by a generator
5 contributed towards operational security?

6 A. Not that I can recall.

7 Q. Can you remember whether you were satisfied with the
8 CO's response, whatever it was?

9 A. Not with any degree of certainty.

10 Q. Doing the best that you can?

11 A. Doing the best that I can, I would then say to you
12 "yes". The logic for that is, if I had been unhappy
13 with it, I would more likely have remembered such.

14 Q. Was this, so far as you recall, the only occasion on
15 which Colour Sergeant Lamb raised concerns with you
16 about prisoner-handling?

17 A. Until I read his evidence, I would have said "yes".

18 Q. I take it from that answer that you know -- again I use
19 surnames -- but Lamb recalls and has given evidence
20 about another occasion. Very briefly, an incident had
21 gone on on the ground and he had taken custody of some
22 people who were effectively really potential witnesses
23 to the incident, seven of them, taken to C Company
24 lines, Camp Stephen, and despite being witnesses, his
25 concern was that Parry, the company sergeant major of

1 C Company, and other soldiers at C Company had those
2 witnesses hooded, shouted at and being moved around,
3 made to squat, stand up and so on, forced exercises, and
4 that Lamb's approach was that he was not having them
5 treated like that and took them back off the custody of
6 the CSM. He says that he reported that matter to you.
7 Do you have any recollection of that now?

8 A. No.

9 Q. If Lamb says that that is what happened, would you have
10 any reason to doubt it?

11 A. No.

12 Q. If that is right, it follows, doesn't it, that one of
13 the senior NCOs who you knew and trusted had raised two
14 significant concerns with you about how prisoners were
15 being treated?

16 THE CHAIRMAN: A nod does not go on the shorthand note.

17 "Yes" is the answer, is that right?

18 A. Yes, it is, sir.

19 MR MOSS: Should that not have given you grounds for serious
20 concern at the time about what was going on?

21 A. If that had happened, yes it would, but I don't recall
22 it.

23 Q. MOD007087 please. This, Mr Lighten, is the second of
24 your short statements to the SIB on 21 March 2006.

25 Another matter at the end of that paragraph, you said

1 that:

2 "Regarding Major Kenyon raising a point regarding an
3 allegation by Captain Goodenough that his troops had
4 witnessed detainee abuse, I can recall that this did
5 happen, but I am unsure of whether it was at this
6 meeting or another. I also do not recall what was said
7 or who and how it was dealt with."

8 Obviously that is all a bit vague, but you did seem
9 to be saying, did you not, in 2006, that there was
10 a third occasion when detainee abuse or treatment was
11 raised in your presence, one that was reported as being
12 from Captain Goodenough. Is that right?

13 A. Yes, yes, I have a vague recollection of that.

14 Q. In case it helps the Inquiry, Captain Goodenough was he
15 your QM Tech?

16 A. He started the tour as such and then he was given
17 a specific task of setting up -- how could I describe
18 it -- a police training depot and, as such, he really
19 relinquished his responsibilities for the technical
20 quartermaster's side.

21 Q. The Inquiry also knows that there was a Captain Good --
22 not a Captain Goodenough, but a Captain Good as well.
23 Are you able to help as to whether this concern related
24 to something raised by Captain Good or
25 Captain Goodenough?

1 A. I don't recall a Captain Good, actually, but I do know
2 Captain Goodenough.

3 Q. So, again, a third concern here that certainly came to
4 your ears about detainee abuse. But you say you have no
5 recollection of raising further concerns on the basis of
6 these sort of reports that were reaching you?

7 A. That, I think -- I have a recollection of that matter
8 certainly being dealt with between Major Kenyon and the
9 commanding officer to the commanding officer's
10 satisfaction. Now if you ask me what the detail of that
11 discussion was, I am not privy to that and I've no idea.

12 Q. Just finally this then: even if it was being dealt with
13 between Captain Good (sic), Major Kenyon and perhaps the
14 CO, added to concerns that you had heard about from
15 Colour Sergeant Lamb and Sergeant Potter, were alarm
16 bells not ringing about prisoners being abused by 1 QLR?

17 A. Not at that point because I was quite confident in the
18 way my company were dealing with people and I had not --
19 I was not on a daily basis seeing what other companies
20 were doing. So I could quite happily say that at no
21 time was I overly concerned about the way my men were
22 treating detainees.

23 Q. All right. Now still staying with the period before
24 Baha Mousa's death, I just want to return to the
25 question of conditioning. You told us what general

1 conversations you had at the handover. Did your
2 understanding of what was involved in conditioning
3 develop during those early months of the tour, June,
4 July and August?

5 A. No, I don't think it did. Actually, I would still
6 understand it as creating the conditions to be able to
7 question someone.

8 Q. Does it follow that you say you didn't have
9 conversations with anybody else as to what techniques
10 were actually used for the conditioning?

11 A. Yes, it does.

12 Q. You knew, though, didn't you, that there was a process
13 by which the shock of capture would be maintained by
14 disorientating the detainee?

15 A. Yes.

16 Q. But you never informed yourself of what that actually
17 involved?

18 A. You could observe that, that a person would be
19 plasticuffed, if they were a terrorist suspect they
20 would be hooded, and they would be brought back to camp,
21 processed and then handed over.

22 Q. I follow that, but other than the plasticuffing and the
23 hooding, you don't know what other techniques were used;
24 is that what you are saying?

25 A. Yes, that's correct. I never delved into that.

1 Q. It is not perhaps necessary to look at the detail
2 because I know that you have been able to look at them,
3 but it is right, isn't it, that there were a number of
4 orders, Op Quintessential in September, the warning
5 order for Op Lightning and the first operational order
6 for Op Lightning, which referred to conditioning taking
7 place or sometimes conditioning must not take place.
8 You know that, don't you?

9 A. Yes.

10 Q. If you were to receive those orders, for the majority of
11 time -- allowing for being on R&R on occasions and
12 so on -- but they would have come to you, wouldn't they?

13 A. That's correct.

14 Q. Might it be the case that the real position is that you
15 and the others at the senior end of the battlegroup knew
16 full well what the conditioning process entailed and
17 that, when you saw it in those orders, you knew that it
18 involved the application of stress positions?

19 A. No.

20 Q. Did it not strike you as curious that this phrase was
21 being used in orders, "not to be conditioned"?

22 A. No, I don't think it is strange. It does stand up to
23 logical scrutiny. It is either be conditioned to be
24 prepared to be questioned by someone from brigade or
25 not. I think it is quite black and white.

1 Q. Does it suggest to you, when one sees the order in that
2 negative way "not to be conditioned", that it was an SOP
3 otherwise for the conditioning to take place?

4 A. It would depend what the operation was for.

5 Q. If it involved suspected terrorists or insurgents?

6 A. I wouldn't disagree. You could read it that way.

7 Q. But you remained in ignorance, did you, of what that
8 actually involved, despite these orders coming your way?

9 A. Yes, because, as I said to you earlier, my business was
10 to ensure people were detained, brought back, treated
11 properly and then handed over, along with my company.

12 Q. You told us that understandably your CSM was your
13 right-hand man. That's right, isn't it?

14 A. Yes.

15 Q. If we just look, please, at BMI02711, paragraph 18.
16 This is part of a statement to this Inquiry by
17 Major Peebles. He is talking about the time of his
18 handover where he took over from Major Royce. You see
19 that in paragraph 18 he is talking about an occasion
20 where there were two detainees in the TDF. That's at
21 BG Main obviously.

22 "... they had first field dressings ... over their
23 eyes, they were put into basic stress positions, one was
24 standing with his arms straight out, bound and
25 blindfolded and the other was crouched on the floor with

1 no support for his back, crouched in a squatting
2 position. There were also orders being given by the
3 [CSM] ... WO2 Darren Leigh MC (now deceased) that the
4 'stress' positions should be held for 15 minutes on and
5 then 15 minutes off. My understanding from Major Royce
6 was that this practice described above was known as
7 'conditioning' and had been previously approved by the
8 chain of command."

9 How does it come to be that your company sergeant
10 major, on this account, was applying stress positions to
11 prisoners without your knowledge?

12 A. I don't believe he was.

13 Q. If that was going on, you say, what, that is something
14 you certainly should have known about?

15 A. Yes, and I am pretty damn sure I would have known about,
16 as well.

17 THE CHAIRMAN: So what are you saying? That that didn't
18 happen?

19 A. I don't believe that happened, Sir.

20 THE CHAIRMAN: I see.

21 A. I am quite clear about that. I would like to know who
22 was supposed --

23 THE CHAIRMAN: You don't believe it happened?

24 A. Yes, I don't believe it happened.

25 MR MOSS: Thank you. Just on a miscellaneous point, please,

1 may we look at MOD007084? I just wanted to pick up on
2 a matter that arises out of this, your first SIB
3 statement, your statement of 16 March. Can we just look
4 at the final paragraph on that page? You were
5 indicating that you had been asked by the SIB officer
6 about instructions received during CO's O Groups
7 relating to the handling of detainees.

8 " In response I can state that on numerous occasions
9 this was discussed. The message passed down from
10 brigade HQ to the unit CO and then to the company
11 commanders was to be robust with looters and as we as
12 a unit I believed throughout the tour were always in
13 a war fighting role that instruction was left to the
14 company commanders to interpret."

15 The phrase you use there, "robust with looters",
16 should the Inquiry understand it that that was a message
17 that was coming down from brigade HQ?

18 A. Yes. That's exactly the way I understood it.

19 Q. To Colonel Mendonca?

20 A. Yes.

21 Q. And passed on by Colonel Mendonca to you?

22 A. Correct.

23 Q. And left, what, for you to interpret?

24 A. The colonel -- how do I put this -- was quite clear that
25 he was being given these instructions and he was quite

1 clear that we were in a difficult position because there
2 was no police force, no jails, no judiciary, no prisons,
3 yet we were being asked to try to maintain some
4 semblance of law and order. It was quite clear that we
5 had to maintain and win the battle to win for hearts and
6 minds. So it was also quite clear that this was a very
7 tricky thing to try to achieve, to be robust with people
8 in order to try to deter them when you could not
9 actually take them to prison and give them to the police
10 and the police deal with them. So, on one hand, you are
11 being asked to be firm and fair with people, but
12 actually they know that nothing is going to happen to
13 them. The other thing I would say about this is you
14 have to be -- and we were all quite clear about this --
15 very clear with the soldiers when you pass on an
16 instruction such as that.

17 Q. So when it was passed on to soldiers by you, how did you
18 pass on the order? What message did you give out,
19 having received the "be robust with looters" line?

20 A. I passed that on at the company orders group, which
21 would have had the multiple commanders there,
22 John Harker, Sergeant Major Leigh, at which point we
23 went into some discussion about this because I think it
24 was Potter and certainly John Harker made the point that
25 I have just made to you about being very clear and

1 having to be very careful with this sort of thing to
2 soldiers.

3 We discussed this as a company O Group, if you like
4 benchmarked it, made sure that everybody understood that
5 this actually means be firm, be fair, but somehow or
6 other we need to try to square the circle to support law
7 and order, to try to deter people at the same time, so
8 that we are acting within the brigade headquarters'
9 intent, and maintain our standards and concurrently try
10 to maintain the commanding officer's intent to maintain
11 the battle to win hearts and minds, all wrapped up
12 together.

13 Q. Cutting to the quick, is there a risk arising out of all
14 of this that the message to soldiers may have been
15 passed on as "be robust" --

16 A. Of course there is always a risk, yes.

17 THE CHAIRMAN: Listen to the question.

18 A. Sorry, Sir.

19 MR MOSS: -- without a requisite emphasis being given to the
20 importance of sticking on the right side of the law?

21 A. Yes, there would be a risk, but we took steps to
22 minimise that. I think if you go back and you ask my
23 orders group, they will tell you that we debated that at
24 length and we were quite clear about what was required.

25 Q. I would like to move on -- thank you for that -- if

1 I may, to a few matters relating to Operation Salerno
2 itself. As I am sure you understand, that's the
3 operation at which Baha Mousa and those detained with
4 him were arrested. You understand that, don't you?
5 A. Yes.
6 Q. You tell us in your statement that you do recall that
7 there would have been an O Group which you would have
8 attended. It is right, isn't it, that B Company were
9 given their own list of target hotels for that
10 operation?
11 A. That's right.
12 Q. Do you remember one way or the other whether anything
13 was said -- whether in the O Group or anywhere else --
14 before Operation Salerno about a link with the murder of
15 the members of the RMP or with the murder of Dai Jones?
16 A. No, I don't remember either of those being mentioned at
17 that point. What I -- no, I don't remember that.
18 Q. You were not yourself involved, were you, at the
19 Hotel Haitham where Baha Mousa was arrested?
20 A. No, Anzio Company.
21 Q. You say that B Company did search other targets,
22 including one hotel where some guns were found -- is
23 that right?
24 A. That's correct.
25 Q. -- and that there was an incident where a soldier, who

1 you name in your statement, had found some US dollars
2 and tried to keep the money. Is that correct?

3 A. That's correct.

4 Q. Can I just ask this? The Inquiry has heard quite a lot
5 of evidence about a private in A Company who took some
6 dinar. This is definitely a different private and
7 a different theft?

8 A. Yes, it would be, yes.

9 Q. Does it concern you that on the same operation two
10 soldiers from two different companies were both found to
11 be taking money?

12 A. It would do now.

13 Q. We don't perhaps need to go into the fine detail, but
14 essentially how was the private from B Company dealt
15 with?

16 A. The money went back, apology was made and he did extra
17 guard duty.

18 Q. Who would have given him that by way of punishment?

19 A. Sergeant Major Leigh did because we were outside the
20 hotel. I think it was Potter's -- yes, it was. It was
21 6 Platoon, so Peel and Potter, one of their guys. And
22 Potter, as the platoon sergeant, brought him to Leigh.
23 Sergeant Major Leigh said, "Sir, this is that, that,
24 that. I want to do this, this, and this", and I said,
25 "Yes, okay, let's do that".

1 Q. So Sergeant Major Leigh dealt with the matter, but with
2 your blessing, would that be fair?

3 A. Correct.

4 Q. Do you recall whether or not the CO ever came and
5 addressed B Company in relation to that theft --

6 A. No, I don't.

7 Q. -- or any other thefts on Op Salerno?

8 A. I don't have a clear recollection of that.

9 Q. You tell us in your statement that you recall going out
10 on another operation at dusk that same day -- presumably
11 the Sunday -- and seeing some of the detainees kneeling
12 or sitting outside the TDF on open ground with hoods on
13 and plasticuffed at the wrist. Is that right?

14 A. Yes.

15 Q. Can I just ask you this? How confident are you that
16 that picture of detainees outside the TDF, sat kneeling,
17 actually occurred on the day of Op Salerno?

18 A. I wouldn't be confident.

19 Q. I ask you that because it may be suggested that the
20 majority of evidence tends to suggest that the
21 prisoners, while kept hooded, were kept hooded inside
22 the TDF building, not knelt outside, and were only taken
23 individually or in twos to be questioned, so that they
24 wouldn't have been kneeling, certainly on the Sunday, in
25 a group outside the TDF. Might it be that you are

1 mistaking this with another occasion?

2 A. Quite possibly.

3 Q. Whatever occasion this was, you say in your witness
4 statement that when you saw this group of detainees, you
5 recall thinking that if they had been there all day, it
6 was a long time to be outside. Is that right?

7 A. Yes. I wondered why they had not gone to the TIF.

8 Q. You go on to say:

9 "There was nothing to suggest that they had been
10 there all day and, as such, I did not report it or
11 discuss it with anyone else."

12 Is that right?

13 A. Yes.

14 Q. In fact, presumably the position would be that you
15 simply had no idea whether they had been there all day,
16 half the day or ten minutes.

17 A. That would be quite right.

18 Q. If they had, in fact, been left outside, these
19 detainees, all day in the sun, hooded, would that have
20 been a matter of concern?

21 A. Yes, it would.

22 Q. Ought you not on this occasion, whenever it was then, to
23 have at least found out why prisoners were being left
24 out in the sun and how long they had been left there
25 for?

1 A. Yes, I should have done probably.

2 Q. Thank you.

3 After Operation Salerno, can you recall any
4 conversations in which you learnt anything about the
5 circumstances in which Baha Mousa had died and those
6 detained with him came to be, in some cases, seriously
7 injured?

8 A. The latter came to light later and I don't recall it
9 coming to light immediately. I think it was John Harker
10 who told me the next morning that we had had a death in
11 custody.

12 Q. Yes. But as to the circumstances of that or who may
13 have been involved or responsible?

14 A. He and I did not discuss who should have been
15 overseeing, who he'd been dealing with, who he'd been
16 guarding or anything like that at that time.

17 Q. You didn't hear a rumour about those who may have been
18 involved or were responsible? It just didn't cross
19 your --

20 A. No.

21 Q. I just need to deal with a couple of matters, if I may,
22 finally to deal with evidence from a number of other
23 witnesses to the Inquiry. I hope you will know who
24 I mean if I refer to, first of all,
25 Sergeant Tillotson --

1 A. Yes, of course.

2 Q. -- your intelligence officer, and a soldier known to us
3 as "S038". Do you know who that is?

4 A. Yes.

5 Q. Now, you will have seen the account of S038 in relation
6 to a search operation carried out by your company, where
7 there was a major haul of weapons said by Tillotson to
8 have been a matter of prestige, a large haul --

9 A. Mm-hm.

10 Q. -- and where three Iraqi civilians were detained and
11 brought back to your company headquarters.

12 A. Yes.

13 Q. Do you have any recollection now of that operation?

14 A. Some. I think it was 5 Platoon. I am fairly sure it
15 was Mr Riley. I don't think it was his entire platoon,
16 I think it was his multiple. That's about it for the
17 operation.

18 Q. All right. Dealing with S038 first, he says that,
19 having conducted the search and made arrests at the
20 scene, once the arrestees were handed over to a member
21 of the RMP who was attached to B Company, the RMP
22 drop-kicked one of the detainees, kicking him in the
23 balls, and his account is that he then ensured that they
24 were handed over to you and he later reported to you
25 that assault that he had seen by the RMP. Do you

1 remember being told by S038 that he had seen an RMP
2 assaulting detainees on that operation?

3 A. Not at all and I think that is absolutely ridiculous,
4 actually.

5 Q. So you say that that is made up, do you?

6 A. Correct.

7 Q. For completeness, he says that your response was that
8 you would speak to her boss, but that's just not true,
9 is it? Is that what you are saying?

10 A. I think he is absolutely accurate. If that had
11 happened, yes, I would have done, and the RMP would have
12 been gone in about half an hour.

13 Q. Do you remember there being a female member of the
14 RMP --

15 A. Yes, I do.

16 Q. -- attached to B Company?

17 A. Mm-hm.

18 Q. Do you remember what her name was?

19 A. All I recall was that she was called "Donna". The
20 reason I recall she was called "Donna" is because my
21 signaller had a thing for her.

22 Q. I don't think I will probe that much further. Thank
23 you. I think we know who that is.

24 S038 also says that once back at B Company lines, he
25 saw and heard the CO call one of the detainees

1 a "terrorist fucker" and then punch the detainee. Did
2 you see anything like that?

3 A. No.

4 Q. It may be an obvious question but, had you seen
5 something like that, would you have remembered it?

6 A. Yes.

7 Q. Did you ever hear talk of that having happened?

8 A. Not at all.

9 Q. Still on the same incident, S038 gave evidence which was
10 to the effect that he, at the very least, strongly
11 suspected that the three detainees were then assaulted
12 by a B Company clerk, a female clerk, of your company.
13 Do you remember there being a female clerk who worked
14 for you?

15 A. Yes, I do.

16 Q. In your company?

17 A. Mm-hm.

18 Q. What was her name?

19 A. I can't recall her name.

20 Q. Do you recall being told or being involved in
21 a suggestion that she had assaulted these detainees?

22 A. No, I don't.

23 Q. The suggestion from S038 was that you ordered her inside
24 the building. Do you remember that?

25 A. No, I don't.

1 Q. Sergeant Tillotson, in his evidence, said that he did
2 have some recollection of you speaking to her. I think,
3 in effect, calming her down and telling her that you
4 would deal with her later. Does that ring any bells?

5 A. That is entirely possible because said company clerk was
6 the worst discipline problem in the company in terms of
7 all sorts of things: time-keeping, trying to go in the
8 blokes' showers. She was later discharged from the army
9 for drug usage. She had been sent to Burma Company
10 because she had been the company clerk of all the other
11 four companies in the battalion and had had to be taken
12 from post each time, and she couldn't look after
13 herself, couldn't administrate herself, couldn't be
14 anywhere on time.

15 THE CHAIRMAN: I think we get the general picture.

16 A. Understood, Sir.

17 MR MOSS: Leaving the other disciplinary things to one side,
18 did you have any experience of her abusing prisoners?

19 A. No. I would have thought that would be out of
20 character.

21 Q. Do you remember seeing any photographs arising out of
22 this operation, in particular one that showed the
23 weapons and showed a detainee from the neck downwards?

24 A. I have a recollection of seeing a photograph of a pile
25 of munitions, but I don't have a recollection of seeing

1 a photograph of a detainee from the neck downwards.

2 Q. The suggestion from Tillotson was that that was one and
3 the same photograph. He referred to it as the "main
4 company photograph". The one of reasons why he
5 recollects it, apart from the weapons, is that it did
6 show blood splattering to the garment of the detainee
7 who was shown on it. Does that ring any bells with you?

8 A. No. I can certainly -- I have no recollection of seeing
9 the photograph of the two things together.

10 Q. Just taking it all together then, the suggestions of
11 assaults by whoever of these three detainees, is this
12 the first that you have heard of it in the evidence from
13 this Inquiry?

14 A. Yes.

15 Q. Do you know anything about further photographs that may
16 have been taken that may have shown the injury to these
17 detainees --

18 A. No.

19 Q. -- or those photographs being deleted, whether
20 accidentally or deliberately being deleted, from the
21 B Company computer?

22 A. I read that in soldier -- is it 37 or 38?

23 Q. S038.

24 A. -- S038's statement, and I -- no, I don't have
25 a recollection of that and I would be amazed if

1 Sergeant Tillotson had been so lax.

2 Q. Can I move then to Lance Corporal Jones. Is he somebody
3 that you remember?

4 A. No.

5 Q. As you will be aware, he has given this Inquiry evidence
6 of a number of incidents, a couple of which I ought to
7 raise for your comment. The first is an occasion when
8 B Company soldiers, whose identities he could not give,
9 but not from his platoon, arrived with seven or eight
10 detainees at about B Company lines. His account was of
11 them being placed in the vehicle park in B Company
12 lines, which you may recall, not far from the B Company
13 office, and that those detainees were then roughed up by
14 B Company soldiers, including a particularly hard punch
15 from a blond-haired soldier who he thought worked for
16 B Company headquarters. Do you know anything about
17 that?

18 A. No, that was the first I had read of that or knew of
19 that when I first read that statement.

20 Q. The blond-haired powerfully built soldier from B Company
21 HQ, does that mean anything to you as to who that might
22 be?

23 A. That could be one of a couple of people.

24 Q. Who might they be? I appreciate you are not able to
25 give a firm indication.

1 A. Clarkson and -- the other name escapes me, but he was
2 a battalion rugby league player.

3 Q. If that happened, it would have been quite wrong and
4 appalling treatment, wouldn't it?

5 A. Correct.

6 Q. And if it was, as Lance Corporal Jones says it was,
7 happening out in the open, in sight of the office, it
8 would be, in one sense, all the more worrying,
9 wouldn't it?

10 A. Absolutely, because on the other side of that was the
11 vehicle mechanics detachment with the REME guys, on one
12 side was the accommodation block, on the other side was
13 the quartermaster sergeant's icer(?) container which he
14 worked from. On the other side were the portaloos where
15 people used to go. So other people would have seen that
16 in daytime.

17 Q. Is the position, in fact, that that sort of thing, even
18 if you didn't see it, was going on and that a blind eye
19 was turned to it?

20 A. No.

21 Q. Lance Corporal Jones also gave this Inquiry evidence, as
22 you will have seen, of an occasion when a civilian was
23 picked up and was taken to the old university grounds
24 and that he, Jones, could see that that prisoner was
25 being roughed up in the back of a Land Rover and was

1 then taken out and given a real beating within sight of
2 the platoon commander. Taking it, I hope, fairly and
3 neutrally, he remained of the view that he thought that
4 that platoon commander was Peel, but there was some
5 level of uncertainty about whether it was Peel or not.
6 Do you know anything about that incident?

7 A. No, I don't, and I think -- when I read that, I don't
8 believe it, because actually the university was not in
9 our area of operations and we would not have gone there
10 in the course of our duty unless specifically directed
11 to do so.

12 Q. Do you remember whether Peel was in the habit of driving
13 his own Land Rover?

14 A. No.

15 Q. You don't remember one way or the other or you don't
16 think that's something that he did do?

17 A. It's not something I recall him doing.

18 Q. Finally this then. The final aspect that I ought to
19 raise for your comment is Jones' more general comments
20 to the effect that, as far as B Company was concerned,
21 he perceived a lack of control from senior officers, low
22 morale and an entrenched view that condoned violence.
23 Was that perhaps the reality of B Company?

24 A. No, not at all.

25 Q. If the sort of things that he had spoken about were

1 Q. Can I just, then, ask you about paragraph 61 of your
2 statement, which is at BMI05969, just to clarify. In
3 paragraph 61, you are talking about stress positions in
4 this context, but I think you also mentioned it in the
5 context of hooding as well. Moving on from Northern
6 Ireland being a peace support operation, you say:

7 "I do not know whether the stress positions are also
8 forbidden in a war fighting operation."

9 I just want to understand what kind of distinction
10 you are touching upon there as regards
11 prisoner-handling.

12 A. I'm unsure what you're asking because I don't think
13 there is a distinction.

14 Q. So in what circumstances might one use stress positions
15 in the causing pain/causing discomfort variety in
16 accordance with rules of engagement that you know of?

17 A. You wouldn't.

18 Q. Just in terms of the lack of clarity generally about the
19 rules of engagement -- and I don't want to ask you
20 details about shooting policy -- do you regard, looking
21 at the picture as a whole about what happened with
22 prisoner-handling in Telic 1, that the lack of clarity
23 did transfer across into prisoner-handling and, in
24 effect, people and groups of people lost clarity about
25 what was permissible and where the line should be drawn?

1 A. Yes.

2 Q. May I ask you about one or two examples about that?

3 Can I start with the robust treatment for looters order

4 that you have already been taken to. The language of

5 "robustness" moves beyond "firm and fair" and you talked

6 about needing to square the circle between those two

7 matters. First of all, do you agree that there was

8 a particular danger of particularly the young soldiers

9 misunderstanding the language of "robustness" and it

10 could get lost in translation for them?

11 A. Yes. If it wasn't handled carefully, yes, I do.

12 Q. In the discussions that you either had in your company

13 O Group or above, was part of this squaring of the

14 circle an analysis that Iraqis would consider a failure

15 to use robust treatment on them as a sign of weakness?

16 A. Yes, I think we did, actually, when I consider that in

17 the round. We will have considered that.

18 Q. You would have considered that?

19 A. Yes, we would have considered that.

20 Q. And that kind of discussion went on that, "Given what

21 they're used to" -- and I paraphrase -- "if we don't

22 come down relatively hard on this, they are just going

23 to see us as weak"?

24 A. I don't think that's unfair.

25 Q. Using techniques to disorientate people beyond the

1 imperative of security for the purposes of questioning,
2 is it correct that you have never heard of any of that
3 in any of your learning about the Geneva Conventions or
4 the law of armed conflict before this trip?

5 A. Yes, that's correct.

6 Q. And insofar as a conditioning process went on, you were
7 never briefed about it as to its details in an O Group
8 at HQ, is that correct?

9 A. Not that I can recall.

10 Q. It would have been a significant development, in terms
11 of your account, of rules of engagement in relation to
12 prisoner-handling, wouldn't it?

13 A. I'm not sure I would agree with that, actually, because
14 if you have not changed your war-fighting rules of
15 engagement and you are still taking detainees or
16 prisoners and they are required to be questioned, at
17 that point there is not a fundamental change.

18 Q. I am afraid that brings me back to my opening question
19 about the difference between the categories, war
20 fighting, stabilisation and the like. I just want to
21 understand where you have learned or where you get the
22 position from that people can be disorientated for the
23 purposes of questioning in a war-fighting or any other
24 situation.

25 A. The answer to that must be on Telic 2. But if you ask

1 me exactly where and who told me that, then I couldn't
2 give you the answer.

3 Q. So it must follow, then, if it is that late and that
4 level that you don't remember, that this is
5 a development on anything you had known before?

6 A. It's different, yes.

7 Q. And you alluded -- there has been a training session
8 that you think your company sergeant major and
9 Major Royce were involved in, but the details of any
10 training or any instructions to B Company, when they
11 were going to do the guarding at the TDF, has never come
12 back to you that there was conditioning involved?

13 A. The way I understood it, the conditioning was managed by
14 the people from 19 Mech Brigade in conjunction with the
15 provost staff.

16 Q. So nothing has come back to you through your soldiers,
17 who would have been guarding in line with those
18 managers, anything that they saw around the
19 conditioning?

20 A. No, no.

21 Q. Just then briefly on the Suss-Francksen line of
22 Colonel Mendonca keeping Burma Company near -- in fact
23 keeping you near, in the words of the statement. Just
24 in terms of you thinking it being a sensible view in
25 terms of corporate readiness, I just want to ask you

1 about two new platoon commanders, Peel and Riley.

2 A. Mm-hm.

3 Q. We have heard what you said about the Jones account

4 about Peel. Was there anything about his inexperience

5 or the way in which he was handling himself on the tour

6 that caused you concern?

7 THE CHAIRMAN: Which? Peel or Riley?

8 MR FRIEDMAN: Peel.

9 A. No.

10 Q. On the generator account, as it has been prompted by

11 reading Potter and Lamb, the obvious question flows from

12 the fact that you can't recall it, that you have given

13 a specific recollection of recall from Colonel Mendonca

14 saying to you, in effect, that it's a security matter

15 and it's none of your business. How is it that you got

16 to that account in your BMI statement to give that

17 detail?

18 A. That's all the recollection I have and that recollection

19 is based on the logic that, if we had disagreed about it

20 or I had been deeply unsatisfied about it, I would have

21 remembered it.

22 Q. Is it in keeping with the character of Colonel Mendonca

23 to give an order like that? I don't know whether that's

24 a fair question, but could you answer that?

25 A. Yes, I would say on occasion. He is a very blunt and

1 forthright man, he doesn't waste words, and if somebody
2 doesn't need to know something, they don't need to know
3 it.

4 Q. Just in terms of the account, in the way it was told by
5 the reporters that you would trust, there is a problem
6 with mission command because the provost staff --
7 Mr Smith -- responsible for what's going on -- is
8 unhappy with what he is being told to do. You agree
9 with that?

10 A. Yes.

11 Q. And in the telling, the line has been crossed too far,
12 there is discomfort and, in effect, white noise
13 treatment. You nod. Is that not something that ought
14 to have stuck in your memory?

15 A. You may say so, but I don't recall it.

16 Q. All right. Just that account from Lamb and the other
17 one about Corunna Company, are those perhaps the type of
18 examples of, in effect, lack of clarity about the rules
19 of engagement coming to your attention?

20 A. That could be one way of looking at it.

21 Q. Are there any other examples -- I don't want to ask
22 about shooting, but in terms of prisoner-handling --
23 where, in effect, you are unhappy about the clarity not
24 being as it should?

25 A. No.

1 Q. Just on the second Lamb account and what my learned
2 friend called a "third account", Lamb had complained
3 about event in Corunna Company. Would you normally, if
4 you heard about events in Corunna Company, go to the
5 officer commanding Corunna Company before you would go
6 to Colonel Mendonca? Would that be in character for
7 you?

8 A. Yes.

9 Q. You see, it does follow that the third example of the
10 Goodenough complaint and Major Kenyon and, as it was put
11 to you, a man, Captain Good -- I just want to ask you
12 whether it may be that you would have gone to speak to
13 Major Kenyon about the events that were being reported
14 to you.

15 A. Yes, I would have done, if I could recall that.

16 Q. You have spoken about your own company and not hearing
17 things about how they were behaving badly. Was there
18 reputation afoot that you were hearing about that other
19 companies were behaving improperly?

20 A. No.

21 Q. Lastly this. On the S038 account, if I can call it
22 that, I just want to ask you a few more matters. The
23 operation, is it right to say that it led to a notable
24 or it was seen as a notable Burma Company success
25 because of the level the haul?

1 A. I don't remember it being -- I remember seeing
2 a photograph of the munitions. It's not that big.

3 Q. No. Do you recall Colonel Mendonca coming to
4 congratulate?

5 A. No, I don't, actually.

6 Q. And on photography generally, did you become aware of
7 a problem of photography or a practice of photography
8 for non-official reasons -- trophy reasons or personal
9 momento reasons?

10 A. No, I didn't actually, but I was aware that it was
11 something like the mobile phone usage that needed to be
12 carefully controlled.

13 Q. You wouldn't accept that on this incident, so described,
14 a lot of soldiers were coming out to see the people
15 arrested and to pose with them, pose with the haul and
16 have photographs taken?

17 A. No, I don't think it was that big a haul.

18 Q. If that sort of thing had happened kind of hoopla around
19 prisoners with photography and the like, would you have
20 accepted that behaviour?

21 A. No.

22 MR FRIEDMAN: Thank you, Sir.

23 THE CHAIRMAN: Yes. Thank you very much.

24 Ms Dobbin?

25 Questions by MS DOBBIN

1 MS DOBBIN: Major, you were asked about prisoner-handling
2 training and whether it would have made any difference
3 if you had known what footing you were on in terms of
4 the training that was given. You suggested not and that
5 the message would have been the same, "Treat equitably".
6 Is that fair?

7 A. Mm-hm.

8 Q. I just wanted to ask you about that. You described your
9 own training, which was very much along conventional
10 prisoner of war lines, with an emphasis on logistics.

11 A. Yes, mm-hm.

12 Q. And I think you described it as "big picture training".

13 A. Yes.

14 Q. It didn't descend into any detail about how you would
15 actually handle detainees?

16 A. Into technique, yes.

17 Q. On the other hand, we have what was going on during
18 Operation Telic 2, which was that soldiers on the ground
19 were actually guarding detainees and possibly, on
20 occasions, being ordered to condition them or maintain
21 the shock of capture or hood them.

22 A. Mm-hm.

23 Q. You are not suggesting, are you, that that broad
24 message, "Treat equitably", would have been sufficient
25 to equip them for that sort of guarding duty?

1 A. No, but what they did with Sergeant Major Leigh,
2 Wilding, Potter and Lamb, under the direction of
3 Major Royce, until this occurred, was and, afterwards --
4 well, it wasn't.

5 Q. Yes. I'm not really asking you about specific
6 situations. I am just asking you to agree that that
7 very broad instruction just wouldn't have been
8 sufficient --

9 A. Yes, that's correct, yes.

10 Q. -- because you couldn't possibly ask 18- or
11 19-year-olds --

12 A. No, no.

13 Q. -- who are asked to maintain the shock of capture to
14 interpret, for example, what "acting equitably" might
15 mean in that situation.

16 A. Mm-hm.

17 Q. I mean that's just common sense, isn't it?

18 A. Mm-hm.

19 THE CHAIRMAN: Is this not more a submission than anything
20 else?

21 MS DOBBIN: Well, Sir, I have put it to other witnesses who
22 have not given the same answer.

23 THE CHAIRMAN: I know. I have heard it before. That's why
24 I am beginning to think that maybe it is better made in
25 a submission.

1 MS DOBBIN: I am very grateful.

2 Can I just ask you a couple of quick questions? As

3 regards Major Royce giving training, you have said in

4 your witness statement that that was an assumption you

5 make because of the position he had --

6 A. Mm-hm.

7 Q. -- that it would have been him?

8 A. He'd have been responsible for that to be delivered, and

9 I expect -- I don't know -- that it would have included

10 people from the intelligence corps, probably from

11 brigade headquarters and possibly from the recipients at

12 Um Qasr.

13 Q. Forgive me for cutting across that but, in short, you

14 would not have been sure it was him? It was just an

15 assumption you made?

16 A. It is an assumption, yes.

17 Q. Thank you. In terms of the meeting that you now have

18 some recollection of, where hooding was being

19 discussed -- and it was the recollection that came back

20 to you today, having heard the evidence given before

21 you -- you were asked about placing that meeting in

22 time. I'm not going to ask you to do that, but is it

23 your recollection that Major Royce was present at that

24 meeting?

25 A. I would --

1 THE CHAIRMAN: If you can't remember, the best thing is to
2 say so.

3 A. I am unsure, sir.

4 THE CHAIRMAN: If you don't know --

5 A. I think it's likely though.

6 THE CHAIRMAN: You think it's likely.

7 A. I think it's likely because it would have been before
8 this and he left at the end of August/sort of September
9 time.

10 MS DOBBIN: That is why I asked.

11 A. So it is likely.

12 Q. Just in terms of the account given by S038 as to what
13 happened, is it a coincidence that you had an
14 unmanageable female clerk who was creating all these
15 difficulties and his evidence that it was a female
16 company clerk who may have assaulted a detainee?

17 THE CHAIRMAN: Can he really answer that? Is that not
18 something that you are going to submit as well?

19 MS DOBBIN: I can do. Thank you, Sir. That is it.

20 THE CHAIRMAN: Thank you.

21 Mr Ashley?

22 Questions by MR ASHLEY

23 MR ASHLEY: You have spoken of some training given in
24 relation to prisoner-handling by Royce, I think early on
25 in the tour. Given the training and given that, by the

1 time the Baha Mousa incident took place 1 QLR had been
2 in theatre for about three months, is it a reasonable
3 assumption that the guard force would have known what
4 they were doing at that stage?

5 A. The answer I give you is they should have done. Yes, it
6 is.

7 Q. It is a reasonable assumption?

8 A. Absolutely.

9 MR ASHLEY: Thank you very much.

10 THE CHAIRMAN: Mr Summers?

11 Questions by MR SUMMERS

12 MR SUMMERS: Mr Lighten, first, when you were being asked
13 a short moment ago by my learned friend Mr Friedman
14 about the consideration that was given to the need to be
15 robust because if you didn't demonstrate that, it would
16 be taken as a sign of weakness, was a distinction drawn
17 in your discussions between being robust in the sense of
18 getting to grips with the situation and not turning
19 a blind eye on looting on one hand, as against how to
20 deal with people once they were arrested?

21 A. Yes, there was, and that is the nub of the matter,
22 because we would -- it seemed like for days on end --
23 arrest people and they would be back, doing exactly the
24 same thing. So it was an ongoing problem. We could not
25 square that circle.

1 Q. Can we revisit, I am afraid, the question of the issues
2 that were raised with you by Mr Potter and Mr Lamb and
3 so on. We have followed, haven't we, that in terms of
4 your recollection, it is entirely dependant upon what
5 Mr Potter and Mr Lamb say.

6 A. Yes.

7 Q. You have no independent recollection of any of it?

8 A. Correct.

9 THE CHAIRMAN: He said that.

10 MR SUMMERS: Do I need to take you to the statements or will
11 you take it from me that Mr Potter says he doesn't know
12 whether you raised it up the chain of command; it is
13 Mr Lamb who reports in his statement that you said you
14 had raised it at an O Group and the CO was dealing with
15 it.

16 A. That's what I have read, yes.

17 Q. Right. I suggest that no conversation took place with
18 Colonel Mendonca about this issue at all. You are sort
19 of nodding.

20 A. I do not have a recollection of that. As I have said
21 earlier, my first recollection of these events was
22 reading the two statements from Potter and Lamb.

23 Q. Right. Because when you were spoken to by the SIB,
24 first, I think, in February of 2006 and then again,
25 shortly thereafter, in March 2006, you knew, didn't you,

1 that they were investigating, at that stage, the
2 circumstances surrounding the death of Baha Mousa and
3 the treatment that the other detainees had received?
4 You knew that?

5 A. Yes. I think I only saw them once though.

6 Q. Well, maybe you saw them once, but there were two
7 statements, one dated 16 February and one dated
8 21 March.

9 A. All right.

10 Q. Be that as it may, you knew what they were
11 investigating. On your account now, it would appear
12 that you are saying you had a conversation with the CO
13 about the treatment of one of those detainees within
14 hours of Baha Mousa's death.

15 A. No, I didn't say that at all.

16 Q. Well, doesn't it follow from what you are saying to the
17 Inquiry now?

18 A. No, I don't think it does actually because my knowledge
19 of speaking to Potter and Lamb is born from what they
20 have said and stated. I don't recall, with any
21 clarity or any certainty, that and those events, so
22 I don't think it does.

23 Q. All right. On the account that you now give, relying on
24 Messrs Potter and Lamb, you were being told by them that
25 Smith had been told directly by the CO to, in a sense,

1 butt out of it and not get involved; yes?

2 A. If you take those statements, yes, that's right.

3 Q. It would follow, then, that if the CO gave the response
4 that you think he may have given, that he appeared to be
5 accepting that he had spoken directly to Smith?

6 A. Yes, that would follow.

7 THE CHAIRMAN: I am not sure, really, that he can really
8 help with any of this because his recollection does not
9 assist him at all.

10 MR SUMMERS: That is --

11 THE CHAIRMAN: The rest was comment.

12 MR SUMMERS: That is rather the difficulty that I am in.

13 THE CHAIRMAN: I appreciate that, but you are going to call
14 your client -- or at least you are not going to call
15 him, but the Inquiry is and quite soon, and he no doubt
16 will be able to tell us about that.

17 MR SUMMERS: All right then. I am grateful and I will move
18 straight on.

19 The last thing is this and it is in relation to what
20 was said by Major Kenyon: is it possible that what you
21 recalled in your statement about Major Kenyon raising
22 concerns occurred after the death of Baha Mousa?

23 A. I'm not sure what you are referring to --

24 Q. Forgive me. I tried to take it shortly. Can we have up
25 on screen MOD007087? This is the statement that was in

1 March 2006, I think.

2 A. Yes.

3 Q. It's that last paragraph. Just remind yourself again.

4 A. Yes. Sorry, can you repeat what you are asking me
5 please? I am unclear.

6 Q. I am asking you whether it is possible that this event
7 happened after the death of Baha Mousa, not before.

8 A. Yes it is possible.

9 MR SUMMERS: Thank you.

10 THE CHAIRMAN: Mr Evans?

11 Questions by MR EVANS

12 MR EVANS: Thank you, Sir.

13 Mr Lighten, you were asked some questions about
14 conditioning and you said, I think, that you didn't
15 regard it as your business. Whose role did you
16 understand it was to manage the conditioning process
17 within the battalion?

18 A. Within the battalion?

19 Q. Well, generally then.

20 A. Within the battalion, strictly the battlegroup
21 internment review officer, the provost staff; and within
22 the company, the sergeant's mess(?) chain of command, to
23 assist and support them in the delivery of that.

24 Q. Prior to the death of Baha Mousa, did you have any
25 reason to doubt that the prisoner-handling process and

1 the conditioning process was being managed
2 appropriately?

3 A. No.

4 Q. Mr Moss asked you some questions about the second
5 incident reported by Mr Lamb, which Mr Lamb says he
6 reported to you, which you have no recollection of.

7 A. Mm-hm.

8 Q. Can I just take you to have on screen, please, BMI05148,
9 which is Mr Lamb's statement. If we look at that. It
10 is the bottom of paragraph 20 going over the page:

11 "I reported these events to Major Lighten and the
12 fact that I was unhappy about the treatment of the
13 detainees and he confirmed that he would take it up the
14 chain of command. I respected Major Lighten and am
15 confident that he would have done this, however I never
16 received any follow-up on this complaint."

17 First of all, do you have any reason to doubt that
18 if Mr Lamb says you said this, that you would have taken
19 it up the chain of command?

20 A. No.

21 Q. And if you did do that, as he recalls it, who do you
22 think it is likely you would have taken it to?

23 A. In the first instance, probably Mark Kenyon.

24 Q. Sorry, I lost that.

25 A. Sorry, in the first instance, probably Mark Kenyon.

1 THE CHAIRMAN: I think you are at cross-purposes.

2 MR EVANS: I think we might be.

3 If you had found it necessary to report an incident
4 of this kind, as reported to you by Mr Lamb, and Mr Lamb
5 has said that you had told him you would take it up the
6 chain of command, who would have been your natural port
7 of call for a complaint of this kind?

8 A. Up the chain of command, obviously the commanding
9 officer, if he had been there.

10 Q. Yes, right. And if he had not been there?

11 A. Major Suss-Francksen.

12 Q. The 2IC?

13 A. Yes.

14 Q. You were asked some questions about the detainees you
15 saw kneeling. That was paragraph 89 of your witness
16 statement. Might we have that on screen please? I am
17 looking at the second page, which is BMI05976. Mr Moss
18 suggested to you that if they had been left out in the
19 sun, you might have done something about it. Can I just
20 take you to your witness statement where you say three
21 lines from the bottom:

22 "I cannot recall whether they were in the sun or the
23 shade."

24 Does that remain your recollection? Do you still
25 not know which it was?

1 A. It would be impossible to tell round there with the
2 trees and the buildings. It could be a mixture.

3 Q. Could it be either?

4 A. Yes.

5 Q. In the normal course of events, with prisoners in this
6 situation, would you expect them to be outside very long
7 while they were being processed?

8 A. No. The whole emphasis on the process was for people to
9 be at Um Qasr as quickly as possible.

10 Q. All right. In the following paragraph, paragraph 90,
11 you mention that on the few occasions where prisoners
12 were kept for longer, the CSM made sure that the
13 detainees were given food and water whilst they were
14 being detained.

15 A. Yes, that's correct.

16 Q. You knew that, did you?

17 A. Yes.

18 Q. Had you any reason to suppose that in this case, where
19 you saw the prisoners kneeling down, that the CSM would
20 not have given them appropriate food and water had it
21 been necessary to do so?

22 A. None at all, no.

23 Q. Two final matters. First of all, S038's allegations
24 about Donna, as you said that she was called. If an
25 assault -- we have heard about -- if an assault of that

1 kind had been reported to you, you said that you would
2 have reported it --

3 A. Mm-hm.

4 Q. -- and you said that the RMP would be gone in half an
5 hour.

6 A. Mm-hm.

7 Q. What did you mean by that?

8 A. My experience of the Royal Military Police is that they
9 are utterly completely professional and I have never
10 seen one of them, in 20 years, do anything wrong
11 whatsoever. They would have moved her -- if that had
12 been the case and I had reported that to the adjutant
13 commanding officer -- straightaway and investigated it
14 straightaway and prioritised it straightaway because
15 they do not tolerate any blemishes upon their reputation
16 and rightly so.

17 Q. Finally this: you talked a little about the female clerk
18 and the disciplinary problems you had with her
19 generally. Can I ask you this? If, in that context, it
20 had been reported to you that she had been alleged to
21 have assaulted anybody, what would you have done?

22 A. Again, that would have been adjutant, commanding
23 officer, discipline and there would have been an
24 unintended bountiful consequence for the company in
25 that she would have needed to be moved somewhere else,

1 again.

2 MR EVANS: Yes. Thank you very much.

3 THE CHAIRMAN: Thank you, Mr Moss.

4 Further questions by MR MOSS

5 MR MOSS: Mr Lighten, can I come back to the matter that
6 your own counsel, Mr Evans, was asking you about in
7 relation to Colour Sergeant Lamb?

8 Could we just look, please, at BMI05147, just so we
9 get the context again, at the bottom of paragraph 17.
10 What Mr Lamb was talking about was an incident where his
11 platoon had taken Iraqis back to the camp. The company
12 "... had put out a report which, as stated, I believe
13 was C Company. In any event I remember that the [CSM]
14 of that company at the time was WO2 Parry". We know
15 that that was C Company.

16 Over the page, please, paragraph 20, still dealing
17 with the same incident, it is in relation to that
18 incident that Lamb was saying:

19 "When I returned to BG Main that evening I reported
20 these events to Major Lighten and the fact that I was
21 unhappy about the treatment and he confirmed that he
22 would take it up the chain of command."

23 So this was an incident involving one of your SNCOs,
24 but when he was visiting C Company. Now if that had
25 been the incident and it involved the CSM of C Company,

1 would you have gone first to the OC of C Company or
2 would you have gone straight to the CO or the 2IC of the
3 battlegroup?

4 A. Actually, I would probably have gone straight to the 2IC
5 of the battlegroup and asked for his advice.

6 MR MOSS: Thank you. Sir, those are all the questions
7 I have. I ought perhaps just to indicate, although,
8 perhaps as Mr Evans' own questions indicate -- it is not
9 easy for any of us -- but in the course of questions by
10 Mr Summers, it was suggested to the witness that
11 Mr Potter had not indicated that the concern was taken
12 up the chain of command.

13 That is what his statement said. He said something
14 rather different during the course of his oral evidence,
15 but we can look at that in due course. The reference is
16 Day 44, page 26.

17 THE CHAIRMAN: Yes. Very well. You need not bother with
18 that, Mr Lighten. Thank you very much for coming to the
19 Inquiry and answering questions. That is all the
20 questions you are going to be asked. I am grateful to
21 you for coming. You are now free to go. We have other
22 business today, but you can go.

23 I think the sensible course, Mr Elias, is -- I fear
24 we are going to have a longish afternoon. The sensible
25 course is for us to have a quick ten-minute break now

1 and then hopefully get through Mr Suss-Francksen.

2 (3.15 pm)

3 (A short break)

4 (3.23 pm)

5 MR ELIAS: Sir, may I call Christopher Michael

6 Suss-Francksen, please?

7 THE CHAIRMAN: Yes, if you would be kind enough to stand up,

8 Mr Suss-Francksen.

9 CHRISTOPHER MICHAEL SUSS-FRANCKSEN (sworn)

10 THE CHAIRMAN: Thank you very much. Do sit down.

11 If you can get close enough to the microphone so
12 that we can all hear you. That is important, obviously.

13 If there is anything you are asked that you don't
14 understand, I am sure you will say so.

15 A. Yes, Sir.

16 THE CHAIRMAN: Thank you.

17 Questions by MR ELIAS

18 MR ELIAS: Could you give the Inquiry your full name,
19 please?

20 A. Christopher Michael Suss-Francksen.

21 Q. Would you have a look, please, in a folder alongside
22 you, I hope to your right? You should find a copy of
23 your statement there. If you go to the end of it, to
24 our page BMI01593, do you find your signature above the
25 date of 18 June of last year?

1 A. Yes, sir, I do.

2 Q. When you signed that statement, were you attesting to
3 the Inquiry that the contents were true to the best of
4 your knowledge and belief?

5 A. Yes, sir.

6 Q. Mr Suss-Francksen, I do not intend to ask you about all
7 parts of that statement -- indeed there are many aspects
8 of it, particularly the detail you give as to what
9 I might describe as the day-to-day life in Basra, with
10 the difficulties, the pressure and so on -- but I know
11 you may take it that we have all read it and, of course,
12 it stands, as the chairman has ordered that all
13 statements do, as part of the evidence to him in this
14 Inquiry. So although I do not go to parts of it, it
15 will nonetheless be in the Inquiry's mind.

16 Briefly, please, about your army history. I think
17 you were in the army, were you, for 17 years?

18 A. Yes.

19 Q. Without giving your date of birth, would you say how old
20 you were when you joined the army?

21 A. 21.

22 Q. Was that in 1987 or thereabouts?

23 A. I might have been 22, actually.

24 Q. 21 or 22. That will do. You left the army in 2004?

25 A. That's correct, sir.

1 Q. You retired, I think, in August 2004.

2 A. Yes.

3 Q. We know that in 2003, as major, you were 2IC of 1 QLR in
4 Iraq. Were you still in that post when you retired in
5 August 2004?

6 A. No, I was posted for administration purposes to the
7 Irish Guards in about May 2004.

8 Q. Perhaps that doesn't matter too much to us, but it does
9 follow, does it, that you were 2IC of 1 QLR through,
10 what, until about May of 2004?

11 A. Yes, that's correct, yes.

12 Q. Thank you. In the army you attended Sandhurst, is that
13 right?

14 A. Yes.

15 Q. You were posted to Germany, to Northern Ireland, to
16 Kosovo --

17 A. Yes, sir.

18 Q. -- and in 2003 you were posted to Iraq. Can you recall
19 the date on which you were posted?

20 A. I arrived in Basra on 10 August. I know that
21 specifically because the riots were going on.

22 Q. 10 August 2003. Did you remain, then, through there
23 until November?

24 A. Yes, I left on 10 November.

25 Q. I want to ask you just a little please -- you go into

1 detail in your statement about some aspects of your
2 training over the years. I don't want to deal with
3 that, as it were, item by item, but I do want to
4 understand, please, your situation on deployment to Iraq
5 in 2003, resulting from all the training you may have
6 had and what, as it were, your position was in relation
7 to certain specific aspects about which you may or may
8 not have been trained.

9 You had received training in prisoner-handling?

10 A. In regards to Northern Ireland training, yes, but not
11 prisoner-handling in terms of how to look after
12 a specific prisoner. Officers get training more in
13 terms of aspects of prisoner handling in wartime is in
14 regards to -- you are set a problem on a TEWT, for
15 example, where --

16 Q. Your rather soft with your voice.

17 A. Sorry, you are set a problem on a tactical exercise as
18 part of a tactics course at the platoon commander level
19 or the company commander level, where, at the end of the
20 day, someone might say -- let's say you had a company of
21 enemy soldiers, "How would you deal with it?", and it is
22 more about the logistical problem.

23 Q. I understand. I am going to stop you there because I
24 don't think the Inquiry is very interested in that
25 aspect, but rather more in what you may have gleaned

1 from any training you had as to how prisoners in general
2 should be treated once apprehended.

3 A. How individuals should be treated is humanely and within
4 the bounds of the Geneva Convention.

5 Q. Would it be fair, as some witnesses have told the
6 Inquiry, that that was training that was, as it were,
7 rooted in any soldier, humane treatment of prisoners?

8 A. Yes, I mean humane treatment of anyone should be rooted
9 in all individuals.

10 Q. At the time of your deployment to Iraq, did you
11 understand that there should be any difference in the
12 treatment of prisoners of war as opposed to civilian
13 detainees?

14 A. No, only in the respect that there were going to be --

15 Q. What may happen to them is another issue --

16 A. -- former regime loyalists and common -- what in the
17 Northern Ireland circumparlance(?) would have been
18 called an "ordinary decent criminal".

19 Q. That doesn't really answer my question. Did you
20 understand there was to be any difference in the way
21 they were treated?

22 A. No, only that the ordinary decent criminal would be
23 handed to the police at the first opportunity.

24 Q. That may be the way they are processed --

25 A. Yes.

1 Q. -- but in terms of how they were treated on
2 an hour-by-hour, day-by-day basis, was there to be any
3 difference?
4 A. No, none whatsoever.
5 Q. Your position on deployment to Iraq on the use of hoods
6 for prisoners, what was your understanding from training
7 as to that?
8 A. I had never been trained in the use of hoods.
9 Q. Had you ever seen hoods used in training?
10 A. No, I believe not.
11 Q. So, on deployment as 2IC, you had never seen hoods in
12 any circumstance, had you?
13 A. No, not in terms of prisoner of war handling on
14 exercises or on operations.
15 Q. Had you received any instruction as to whether hoods
16 were permitted to be used on detainees or not prior to
17 deployment to Iraq?
18 A. No, I believe not, no.
19 Q. So did you have a view independently, as it were, gained
20 from anywhere, on deployment to Iraq as to whether
21 hooding was or was not proper?
22 A. I probably had a personal view that hooding should
23 probably not be used. When I got to theatre, I found
24 that they were using hoods for purposes of not allowing
25 people to see where they were going.

1 Q. We will come to that and what happened in theatre. I am
2 asking you at the moment about the time of deployment --
3 A. Yes.
4 Q. -- and anything you may have learnt before that. So you
5 had never seen it and you had never received any
6 instruction in relation to them?
7 A. I believe that -- no, not any positive training in the
8 use of hoods.
9 Q. Had you been given any instruction that hoods were not
10 to be used on detainees?
11 A. I can't recall.
12 Q. What about the use of stress positions? Still at the
13 same time, when you were going to Iraq as 2IC, had you
14 received any training in the use or otherwise of stress
15 positions?
16 A. No, I never received any training in the use of stress
17 positions.
18 Q. Had you seen stress positions used in training or
19 training exercises?
20 A. No.
21 Q. Had you received any instruction that stress positions
22 were not to be used on prisoners?
23 A. I had received no specific instructions, but I think it
24 would be a natural conclusion.
25 Q. What would be a natural conclusion?

1 A. That you wouldn't use stress positions on prisoners,
2 except for the circumstance, for example, in Northern
3 Ireland, where you may put someone against a wall while
4 you are searching them, so you put their fingers against
5 the wall. But I would not regard that as a long-term
6 stress position. It is merely a position whereby
7 a soldier can guard a person while someone else searches
8 them.

9 Q. Why would you have assumed that stress positions should
10 not be used?

11 A. Because it's not within the realms of the Geneva
12 Convention.

13 Q. Because it's inhumane?

14 A. Yes.

15 Q. Again, lastly before going to Iraq, had you received any
16 instruction or training on the use of conditioning or
17 conditioning techniques?

18 A. No, none whatsoever.

19 Q. You know what I mean by "conditioning", do you?

20 A. I do now. During the tour I understood "conditioning"
21 to mean the process of hooding and separating the
22 prisoners.

23 Q. Sorry, during the tour --

24 A. Yes.

25 Q. -- in Iraq --

1 A. Yes.

2 Q. -- you understood "conditioning" to mean ...?

3 A. The process of, if you had an internee, that they would

4 be hooded and separated and brought back to camp to be

5 questioned.

6 Q. That's what "conditioning" meant?

7 A. That's what I understood it to mean, yes.

8 Q. Hooding?

9 A. Yes.

10 Q. Separating, what, from other detainees?

11 A. Separating from each other, yes.

12 Q. Where did that understanding come from?

13 A. From the practice that I saw that was going on.

14 Q. The practice. We will come back to that in a moment or

15 two.

16 On 10 August you went out to Iraq. Did you have

17 a handover from your predecessor?

18 A. Yes, I did.

19 Q. Was that what I might call a full handover?

20 A. It was fairly brief. We had one day.

21 Q. That was with Major Bostock?

22 A. With Major Bostock, yes, that's correct.

23 Q. It was a time, wasn't it, when, as you say in your

24 statement, quite a large number of personnel at around

25 that time were changing over?

1 A. Yes, not all on exactly the same day, but within a few
2 days of each other, yes.

3 Q. As you say in your statement -- I don't think I need
4 take you to it -- you say it wasn't helpful.

5 A. Yes. With hindsight, the changing over of quite a large
6 number of personnel mid-tour is obviously not helpful
7 because a lot of knowledge, corporate knowledge, will go
8 out of the door.

9 Q. I want to ask you, please, about what you observed in
10 Iraq, once there, in relation to those same aspects that
11 you were looking at a few minutes ago.

12 You obviously saw detainees, did you, on a regular
13 basis?

14 A. I wouldn't say on a regular basis. I visited the
15 building that you know as the "TDF" and saw detainees in
16 there.

17 Q. Because that was how far from your office?

18 A. Well, there was a full-length swimming pool and that --
19 then there was a balcony after that, and then that
20 building was offset from the accommodation, so I would
21 say a minimum of 30 metres.

22 Q. Yes. So the TDF was about 30 metres or so, perhaps
23 a bit more, from your office?

24 A. Yes. You couldn't see it from my office because my
25 window faced the other way.

1 Q. So how often would you see detainees at BG Main?

2 A. Very, very occasionally. They were held inside the TDF.

3 If they were questioning them, they would bring them to

4 the back of the battlegroup headquarters, to the room at

5 the back of the int cell where they questioned them. So

6 I would see them moving from one place to the other or

7 I saw them in the TDF when I visited it.

8 Q. When you saw them moving from one place to the other,

9 did you see detainees hooded?

10 A. Yes, I did, yes.

11 Q. With sandbags?

12 A. With a sandbag, yes.

13 Q. What was your reaction the first time that you saw that?

14 A. Well, I believe that I found that it was acceptable

15 because -- the idea being that these persons wouldn't

16 know the inside of our camp and, furthermore, wouldn't

17 know our pattern of life.

18 Q. So who told you, if anyone, that it was acceptable to

19 hood detainees for that reason or those reasons?

20 A. I cannot recall.

21 Q. You did discuss it with somebody, did you?

22 A. I may have done. I can't recall. I imagine that

23 I would have done with someone, either the commanding

24 officer or possibly Major Royce.

25 Q. Forgive me putting it this way, Mr Suss-Francksen, but

1 a number of soldiers have told the Inquiry that they too
2 saw detainees with sandbags over their heads in Iraq,
3 but some of them claim to have been trained or to have
4 taken part in exercises where they had had bags put over
5 their own heads or seen it before, but you had never
6 seen it before.

7 A. I have never had a bag put over my head, I don't
8 believe, no.

9 Q. So were you shocked when you first saw it?

10 A. No, not specifically, no.

11 Q. Did you regard it as humane?

12 A. I regarded it as humane if it was done for a short
13 period, which I believed that it was being done for
14 a short period.

15 Q. What would a short period be, in your view, that would
16 make it humane?

17 A. Well, as I understood it, it was from the moment of
18 capture to the arrival at the detention facility, and
19 then, if the detainee was being -- or the internee --
20 was being moved around camp, then they would be hooded
21 again.

22 Q. So it wasn't a question of there being any specific
23 time, "ten minutes will be as long as we should do it"?

24 A. No, I don't believe that there was an SOP that said that
25 a detainee should be hooded for this amount of time --

1 not to my knowledge, anyway.

2 Q. Did you ever give consideration to whether, if men were
3 being bagged in this way for a period of time, it would
4 be inhumane?

5 A. I would have considered that if people had been bagged
6 for a period outside those reasons, for example, the
7 drive back to camp -- and nowhere within Basra was there
8 a particularly long drive back to camp -- or moving from
9 the TDF to the Battlegroup Main building, which was
10 a distance of 30 metres.

11 Q. You don't recall specifically speaking to anybody about
12 the hooding?

13 A. No.

14 Q. You didn't take it up with the CO?

15 A. I don't believe so, no.

16 Q. Was it ever discussed -- that is the treatment of
17 prisoners -- at any O Group meeting that you attended?

18 A. Not that I can recall, no.

19 Q. So was the hooding, as you understood it -- I am going
20 to call it, in shorthand terms, "for security
21 reasons" -- did you understand that hooding was used for
22 any other purpose?

23 A. No, I didn't, no. That was my understanding of what the
24 hooding was being used for.

25 Q. Did you ever see stress positions used in Iraq?

1 A. No, I didn't, no.

2 Q. Never?

3 A. No.

4 Q. Did you visit the TDF yourself?

5 A. Yes, I did, on a few occasions.

6 Q. How often would you visit?

7 A. I visited the TDF both when there were no internees in
8 there and when there were internees in there and
9 often -- not every day -- there were people in there.
10 I would wander around the camp, around Battlegroup Main,
11 on most days for various reasons.

12 Q. Forgive me, but how often would you visit the TDF; that
13 is to say go inside?

14 A. Infrequently.

15 Q. What does that mean?

16 A. If I felt that, as part of my route around camp,
17 I needed to go in there, then I would go in there.
18 I had no fixed timetable for visiting the TDF.

19 Q. You did see detainees in there, did you, from time to
20 time?

21 A. Yes, I did, yes.

22 Q. Perambulating the camp as you would --

23 A. Yes.

24 Q. -- from time to time?

25 A. Yes.

1 Q. Did you ever see detainees hooded inside the TDF?

2 A. No, I didn't, no.

3 Q. Would you have regarded that as proper?

4 A. No, I would not, no.

5 Q. And you never saw detainees in stress positions?

6 A. No.

7 Q. Did you ever see detainees conditioned?

8 A. No. I saw them hooded, moving from the TDF to

9 Battlegroup Main building for the purposes of

10 questioning.

11 Q. Can we look for a moment, please, at paragraph 58 of

12 your statement to this Inquiry, bearing in mind it was

13 mind June of last year. Paragraph 58:

14 "I am not familiar with the term 'conditioning'."

15 A. Yes, as in I'm not familiar with it in the way it has

16 been described by this Inquiry.

17 Q. How do you think it has been described by this Inquiry?

18 A. Well, with stress positions and prolonged periods of

19 hooding.

20 Q. So that is the distinction that you sought to draw,

21 is it, in your statement to this Inquiry?

22 A. Yes. I mean, my understanding of "conditioning" was

23 that it was the separation of the internees and hooding

24 and bringing them back to camp and preparing them for

25 questioning.

1 Q. Could we have a look, please, at another document,
2 MOD048638? This is a draft statement apparently
3 prepared for you. You have seen that? 2007. I want to
4 ask you, please, about a page well on into the
5 statement, MOD048652.

6 This is what you were saying in 2007 -- forgive me
7 putting it this way -- before this Inquiry was thought
8 of. Paragraph 13:

9 "Conditioning -- I was not familiar with this
10 expression."

11 A. Yes.

12 Q. Was that true?

13 A. I was not familiar with what it meant, no. I didn't
14 understand its meaning.

15 Q. But you have told the Inquiry today what you understand
16 its meaning to be.

17 A. Yes, that is my perception of what it meant, yes.

18 Q. You are obviously aware of the fact, Mr Suss-Francksen,
19 that when in Iraq, the term "conditioning" was being
20 used in FRAGOs and orders, are you?

21 A. Yes.

22 Q. FRAGOs and orders that would have been directed to you,
23 amongst others?

24 A. Yes.

25 Q. I don't know whether we have to go to documents -- we

1 can if you wish -- but, for example, FRAGOs that
2 indicated that in a particular case conditioning was not
3 to take place.

4 A. Yes, as in it was not expected that people that would be
5 interned were going to be found; for example,
6 anti-smuggling operation, where we expected to find, as
7 I have already explained, ordinary decent criminals and
8 expected to hand them over to the Iraqi police.

9 Q. So what did you understand by the term "conditioning" in
10 the orders then?

11 A. That these people would be prepared for questioning by
12 being hooded and brought back to camp.

13 Q. So, what, you are telling the Inquiry, are you, that
14 there was no distinction to be drawn between an order
15 that they should be hooded and an order that they should
16 be conditioned?

17 A. I don't believe that there was an order to hood as such.
18 I don't recall an order to hood.

19 Q. Whether or not there was an order, the instruction to
20 hood or to condition, you tell the Inquiry, was the same
21 in Iraq in your time.

22 A. No, I think hooding was an SOP that came out of this
23 term, "conditioning".

24 Q. Yes.

25 A. Yes.

1 Q. What did "conditioning" mean in addition to hooding?

2 A. Preparing for -- bringing someone back and preparing

3 them for questioning.

4 Q. How would they be prepared for questioning?

5 A. By separating them and making sure they didn't talk to

6 each other.

7 Q. And in what other way?

8 A. I don't know. I didn't know then. I do know now.

9 Q. So when FRAGOs contained the word, as we have seen they

10 did -- and the Inquiry is familiar with it now --

11 "condition" or "conditioning", was that your

12 understanding of it?

13 A. Yes, it was. Also I don't believe it was used in too

14 many FRAGOs.

15 Q. So when you were indicating in 2007 and again to this

16 Inquiry last June -- if I have understood what you were

17 saying correctly -- that you didn't recognise or

18 understand the term, was that correct?

19 A. I believe -- no, possibly not. I didn't perhaps explain

20 myself well enough in my statement.

21 Q. What did the term "bagged and tagged" mean to you?

22 A. I think it can mean one of two things. In Northern

23 Ireland I had seen, for example, the RUC bag someone

24 they had arrested for forensic purposes and mark them up

25 and apply plasticuffs. It could also have meant,

1 colloquially, "hooded and plasticuffed". It was not
2 an expression that I would have used.

3 Q. But you did see it, did you, from time to time, in
4 FRAGOs or orders?

5 A. Not from time to time. I believe that Major Seeds --
6 possibly Major Seeds -- wrote that on one of the very
7 first FRAGOs that he wrote when I was in theatre and
8 I believe I questioned him on what it meant and I said,
9 "That's not the sort of language we should be putting in
10 our FRAGOs".

11 Q. What did he tell you that it meant?

12 A. I think he thought it meant -- I can't recall exactly.
13 I believe he possibly thought he was writing a way to
14 say that people should be hooded and plasticuffed.

15 Q. If we have a look, please -- if I may just take you to
16 one -- at MOD030900, Operation Quebec FRAGO. This is
17 the second page of it. You see under the names of
18 Colonel Mendonca, Major Royce -- if you go to the middle
19 column and to (6) towards the top:

20 "TQ [tactical questioning] will take place at
21 BG Main HQ under the direction of the IO, using brigade
22 TQ assets. Arresting soldiers will be required.
23 Prisoners should arrive for TQ bagged and tagged unless
24 over 45 years of age."

25 There cannot be much doubt about what that meant,

1 can there?

2 A. No --

3 Q. Hoods on their heads?

4 A. As I said, yes, that means hoods on their heads and

5 plasticuffed, I expect.

6 Q. If there were any other aspects of conditioning that

7 were taking place in BG Main in relation to tactical

8 questioning or otherwise within the TDF, were you ever

9 aware of it?

10 A. No, I wasn't, no.

11 Q. Were you ever aware of any ill-treatment of any

12 detainees at any time --

13 A. No.

14 Q. -- either from anything you saw --

15 A. Nothing from what I saw, no.

16 Q. -- or any report to you or to anyone else --

17 A. No, there was no report to me.

18 Q. -- or any gossip or rumour?

19 A. No gossip or rumour.

20 Q. So throughout the time that you were in Iraq, you were

21 not aware of anything wrong in the prisoner-handling

22 sphere at all?

23 A. No, and in fact, when I arrived in theatre, I had heard

24 stories from my previous post at PJHQ and I therefore

25 was on the lookout to see whether those events that

1 I had heard as reported in PJHQ were carrying on with
2 1 QLR.

3 Q. What, and so you were alert to the fact that there may
4 be problems?

5 A. I was alert to the possibility that there could be
6 problems.

7 Q. That detainees may be mistreated?

8 A. Yes or that Iraqis might be mistreated.

9 Q. I take it that most of the detainees were within
10 BG Main.

11 A. Yes, but I don't mean just detainees inside camp.
12 I mean Iraqis on the street.

13 Q. I understand. With that alert, as it were -- I don't
14 want to go into the detail of it -- did you make it your
15 business to visit the TDF on a rather more frequent
16 basis to see how detainees were, in fact, being handled?

17 A. I made it my business to go there on an infrequent
18 basis.

19 Q. You would be aware, would you, when there were detainees
20 on the base?

21 A. I would imagine so, although there may have been reasons
22 why a detainee could have come into camp and I would not
23 know about it.

24 Q. I understand that. There may have been specific reasons
25 why you might have been elsewhere, but as a general

1 rule, in your position, you would expect, wouldn't you,
2 to know if there were detainees on the base?

3 A. I would expect so, but there are two ways -- I imagine
4 there are two ways an internee could appear in a TDF,
5 one from a planned operation, which I am more likely to
6 know about, and from an unplanned incident, which
7 I might not know about.

8 Q. Let me ask you about responsibility for the TDF and the
9 detainees who were housed there in particular, please.
10 When you arrived in Iraq in August, what did you
11 understand was the chain of command responsibility for
12 the TDF?

13 A. That the battlegroup internment review officer, at that
14 time, Major Royce, was responsible for the internees and
15 the processing of them and that he used the provost
16 staff, and I believe a military parlance would be that
17 the provost staff remained under command of the RSM, but
18 were op com to the BGIRO.

19 Q. And the RSM, did he have a role in this?

20 A. No, I don't believe -- well, I never specifically saw
21 the RSM dealing with detainees.

22 Q. And your understanding that the BGIRO, as we have been
23 calling him, and the provost staff was, if you like,
24 that chain of command, where did that understanding come
25 from?

1 A. From the practice that I saw in place.

2 Q. You weren't briefed about that by anyone, were you?

3 A. I was briefed by Major Royce, and during the handover of
4 Royce to Peebles they would report to me as to how their
5 handover was going.

6 Q. Did you ever see anything in writing that set the
7 responsibility for the TDF in the hands of the BGIRO as
8 opposed to the RSM?

9 A. No, I can't recall seeing that.

10 Q. But the RSM retained some responsibility, did he, for
11 the provost staff?

12 A. Yes, as I said, in military parlance they would have
13 been regarded as being under his command, but under
14 operational command of the internment review officer.

15 Q. Was the role of the BGIRO or indeed of the RSM ever
16 discussed at any O Group meeting that you attended --

17 A. No.

18 Q. -- or indeed any other meeting?

19 A. When I first arrived, Colonel Mendonca briefed me on the
20 personalities, in what he thought of the individuals and
21 how well he thought they would carry out their jobs.

22 Q. But in terms of being briefed as to what the
23 responsibilities were, that did not happen specifically?

24 A. I cannot recall. I imagine that during that briefing he
25 told me what their roles were, yes.

1 Q. What was the role of the RSM when you were in Iraq?

2 A. Well, he was the -- he still had his title of the
3 regimental sergeant major. It is very difficult to do
4 that if you are located in Battlegroup Main and the
5 battlegroup was split in various locations. He
6 obviously was at the head of the warrant officer chain
7 of command and he expected when -- he expected the
8 sergeant majors to report to him. So he kept that chain
9 of command going. He was obviously also responsible to
10 the commanding officer for discipline aspects of the
11 soldiers and he was also used as the commander of the
12 commanding officer's second vehicle in the CO's TAC.

13 Q. Was it, in reality, that last matter that you have
14 referred to that took up much of his time?

15 A. I think that matter took up the same amount of his time
16 as the commanding officer because he would obviously be
17 commanding that vehicle when the commanding officer was
18 commanding his vehicle.

19 Q. Paragraph 38 of your statement to this Inquiry,
20 Mr Suss-Franksen, BMI01578, paragraph 27, you say at the
21 end of paragraph 27, over the page:
22 "The provost staff were a little bit caught between
23 the two chains of command of the RSM and the ISTAR ...",
24 or the BGIRO, as he became.

25 A. Yes.

1 Q. What did you mean by that?

2 A. Well, as I have explained already, they were still under
3 command, if you like, for administration purposes, to
4 the regimental sergeant major, but the BGIRO had them
5 under op com, which means he was able to delegate tasks
6 to them.

7 Q. From your observations of how things worked in practice,
8 did it become apparent to you that the provost sergeant
9 was spending little time in or around the TDF?

10 A. I'm not particularly sure I kept a close eye on what the
11 provost sergeant was doing in terms of how he spends his
12 time.

13 Q. Putting it perhaps another way round, did it become
14 apparent to you that the provost corporal --
15 Corporal Payne -- was perhaps, to a large extent, for
16 longish periods, his own boss?

17 A. I'm not sure I could have made that opinion at the time.

18 Q. When you went to the TDF, who would normally be there?

19 A. Usually the guarding multiple.

20 Q. That's when there were detainees present?

21 A. Yes.

22 Q. So there usually were when you attended, were there?

23 A. Yes.

24 Q. Who would be in charge of the guarding multiple?

25 A. It would not necessarily be clear -- maybe, that there

1 might be a lance corporal and a corporal sat outside and
2 inside would be detainees or internees.

3 Q. In that situation, what was your understanding of where
4 responsibility lay? Did it lie with the chain of
5 command, I should say, from the guards? Would their
6 chain of command be their normal chain of command up
7 through their multiple commander, platoon and so on?

8 A. Yes, you would expect that to be the case.

9 Q. Now I want to ask you a little, please, about
10 Operation Salerno. Did you play a part in that
11 operation?

12 A. In regards to planning it, yes.

13 Q. Were you out on the operation?

14 A. No.

15 Q. You know that a number of detainees were arrested and
16 brought ultimately to Battlegroup Main.

17 A. Yes.

18 Q. Were you aware of their arrival at Battlegroup Main?

19 A. I don't believe so. I can't recall the moment of their
20 arrival.

21 Q. Without doubt they were at Battlegroup Main from some
22 time through the Sunday morning and didn't leave until
23 the Tuesday morning. That you know. Would you agree
24 that that in itself was exceptional?

25 A. Yes, that was exceptional.

1 Q. Did you visit those detainees at any stage of their
2 detention?

3 A. No, I didn't.

4 Q. Was there any reason for that?

5 A. None that I can recall now, no.

6 Q. This was, wasn't it, a larger group of detainees than
7 would normally be brought to Battlegroup Main?

8 A. I believe so, yes.

9 Q. You say you believe so. Did you not know so?

10 A. It was not usual for -- I think it was -- nine people to
11 be held at one time, no.

12 Q. Yes. In your position, did you become aware of any
13 difficulties in terms of the time it was taking to
14 process them?

15 A. Yes.

16 Q. Did you play a part in summoning a second tactical
17 questioner?

18 A. I certainly did, yes.

19 Q. So it must have been brought to your attention, was it,
20 that there were difficulties in conforming to the
21 14-hour rule --

22 A. Yes.

23 Q. -- about which you would have known?

24 A. I knew about the 14-hour rule. It was obvious that they
25 were not going to achieve the 14-hour rule, which is why

1 I -- we got in touch with brigade headquarters to see if
2 we could get another TQer.

3 Q. Did you think, Mr Suss-Francksen, in your position, that
4 these detainees, being kept in what the Inquiry has been
5 told many times now were obviously very hot and
6 uncomfortable conditions for this extended period of
7 time, that it was incumbent upon you to visit to see how
8 these detainees were being guarded and supervised?

9 A. I believe I thought that Major Peebles was
10 responsible -- directly responsible -- for them and that
11 he would be looking after them.

12 Q. You were never aware, during the time they were housed
13 in the TDF, of any violence towards them?

14 A. No, none whatsoever.

15 Q. Assaults upon them?

16 A. No, none whatsoever.

17 Q. You did go to the TDF, however, didn't you, at some
18 stage during this detention?

19 A. I went to the TDF after the death of Baha Mousa.

20 Q. That was when you were requested to do so by
21 Major Seeds?

22 A. Yes, Major Seeds, I think, came into the ops room and
23 said "Come to the TDF".

24 Q. Had you learnt by that time of the death of Baha Mousa?

25 A. Yes, I believe I had.

1 Q. Do you recall how you had learnt of that?

2 A. I can't recall exactly how I learnt of that, no. I'm
3 sorry. I don't remember. I don't have a recollection
4 of that.

5 Q. Presumably that was a shock to you, wasn't it?

6 A. Yes, I think it was. I think that it was reported that
7 a detainee had had a heart attack.

8 Q. But you don't remember who reported that to you?

9 A. No, I can't remember who told me that.

10 Q. Were you in BG Main when that was reported to you?

11 A. I believe I was. I can't recall where I was when
12 I heard of the death of Baha Mousa.

13 Q. When you heard about it, what did you do?

14 A. Again, I can't recall exactly what I did other than that
15 I went to the TDF with Gareth Seeds.

16 Q. Did Gareth Seeds tell you that he wanted you to come and
17 see the conditions in the TDF?

18 A. I can't recall exactly what he said. I think he was
19 concerned that they were still cuffed.

20 Q. Any other concerns that he had?

21 A. No, I mean, I can't remember his words or what he said.

22 Q. Do you remember seeing Major Quegan in the TDF also?

23 A. No. I don't remember seeing Major Quegan. The TDF was
24 dark.

25 Q. What, so dark that you wouldn't recognise people there?

1 A. Well, I believe that it was lit from the -- the light
2 that was available was from street lights outside and
3 then people used torches.

4 Q. Yes. With those you would be able to get enough light
5 to identify someone else present?

6 A. Yes, you would.

7 Q. You know what Major Seeds has told this Inquiry he found
8 that Sunday night in the TDF?

9 A. Yes, but I cannot recall what he said.

10 Q. He said he found the detainees inside the TDF in
11 a terrible state, one on the floor in a foetal
12 position -- and I am summarising, but this is
13 essentially what he said -- groaning in obvious pain,
14 and he spoke of the stench and the heat and conditions
15 which shocked and appalled him.

16 A. Yes.

17 Q. Did you find that?

18 A. Yes, I believe so.

19 Q. He told the Inquiry that the purpose of taking you down
20 there was because he was so disgusted by what he saw.
21 Were you disgusted by what you saw when you got there?

22 A. Yes, I was.

23 Q. You have recorded what happened, it seems, at
24 paragraph 54 of your statement to this Inquiry, haven't
25 you, at BMI01587? You refer to being asked questions by

1 solicitors to the court martial, being informed of what
2 Gareth Seeds had stated, that he was concerned about
3 plasticuffed detainees in the detention centre.

4 "... we both went there and Gareth removed the cuffs
5 and that the detainees were not looking particularly
6 happy and one lying down was looking pretty miserable.
7 He states that we were told that they had been medically
8 examined and as there was nothing further we could do we
9 then left ... I cannot now recollect this ..."

10 A. Yes.

11 Q. Is that true, Mr Suss-Francksen?

12 A. It's true that I can't remember the detail, no. I can
13 remember going into the TIF. I can remember that it was
14 dark. I can remember that one of them was lying on the
15 floor and that they were cuffed.

16 Q. Forget the detail. Can you remember -- I don't think
17 I overstate the position of Major Seeds when he gave
18 evidence anyway -- the overwhelming feeling of disgust
19 and horror?

20 A. I think I was -- yes, I was shocked and I believe that
21 is why I left the TDF.

22 Q. Forgive me. If you were shocked in that way --

23 A. Yes.

24 Q. -- causing you to leave, is that something that you
25 would have ever forgotten, let alone forgotten within

1 four or five years?

2 A. I wasn't -- I didn't leave because of the shock.

3 I believe that I left -- and again, I'm sorry, I can't

4 recollect the detail, but I believe that either I heard

5 CO's TAC coming into camp, in which case I wanted to

6 indicate to the commanding officer the situation, or

7 I went back to Battlegroup Main in order to ensure that

8 the commanding officer was on his way back to camp.

9 Q. But you have now that feeling of shock and disgust as to

10 what you saw?

11 A. Yes.

12 Q. So tell us what you did see that gave you that feeling,

13 please.

14 A. That the detainees were still cuffed.

15 Q. Was that it?

16 A. Yes.

17 Q. Really?

18 A. Yes.

19 Q. So, what, do you have any recollection of Major Seeds

20 uncuffing them?

21 A. I'm not sure. I think he had -- he maybe had a small

22 knife or Leatherman tool. I think he may have started

23 to do that.

24 Q. Isn't the truth of the matter, Mr Suss-Francksen, that

25 the detainees in that detention centre at that time were

1 obviously seriously unwell or some of them?

2 A. That's not the way it appeared to me, no.

3 Q. Groaning and in filthy conditions?

4 A. The TDF was filthy all the time. It was a dirty place.

5 But then all of our accommodation was dirty.

6 Q. Unable to help themselves, certainly as to one or two of

7 them, and obviously in need of immediate assistance.

8 Would that be a fair way of describing what you must

9 have seen with Major Seeds?

10 A. Well, I think they were cuffed and therefore they needed

11 to be uncuffed.

12 Q. It didn't occur to you, did it, that what you had

13 seen -- knowing that one detainee had already died,

14 albeit you may have been told it was from a heart

15 attack -- that perhaps the other detainees ought to be

16 examined by a medic as soon as possible?

17 A. I think it did and I think -- I believe that I had

18 a telephone call, either -- to the med centre from the

19 Battlegroup Main, when I got back to the ops room, and

20 I either spoke to the doctor or one of the medics.

21 Q. And so did you order a medical examination of all the

22 remaining detainees?

23 A. Again, I have no exact recollection of that, but

24 I believe that either I spoke to Major Peebles or

25 I spoke to the doctor.

1 Q. With what purpose?

2 A. With the purpose of finding out what medical treatment
3 the detainees had received and would receive.

4 Q. Forgive me. I don't think you have given an account of
5 that hitherto.

6 A. No.

7 Q. Do you recall it now?

8 A. No, I don't. As I say, I think that that is what I did
9 next.

10 Q. If it had simply been a question that you had gone to
11 the TDF because Gareth Seeds had brought you down there
12 because he was concerned at them being cuffed, why,
13 then, would you have been so assiduous as to bring in
14 the medics and so on?

15 A. Because one of them had -- it had been reported that one
16 of them had had a heart attack.

17 Q. Presumably the medics had had that under control. The
18 man had died.

19 A. Presumably, yes.

20 Q. Why was there, then, the need to call in the medics for
21 others?

22 A. Well, to ensure that the rest of them were all right.

23 Q. What evidence or suspicion did you have that they may
24 not be all right?

25 A. Other than the fact that one of them had died of a heart

1 attack, none.

2 Q. It is not the truth of the matter, is it,

3 Mr Suss-Francksen, that you are playing down what you

4 saw and what you know must have happened to a very

5 considerable extent?

6 A. I don't believe so, no.

7 Q. When it was all over and you had gone outside, did you

8 ask Major Seeds, "Well, you brought me all this way

9 down. Why didn't you simply cut off the plasticuffs

10 yourself? You didn't need me to come down to see it"?

11 A. No, I don't think so. I think Major Seeds was still

12 inside the TDF.

13 Q. You left him inside, did you?

14 A. I think so, yes.

15 Q. Was it ever apparent to you, then, why he had -- forgive

16 me putting it this way -- dragged you down to the TDF

17 that night?

18 A. Yes, he wanted to show me that the rest of the detainees

19 were still cuffed, which they should obviously not have

20 been.

21 Q. But he had the authority to remove the cuffs himself or

22 order that that be done.

23 A. He should have done. He should have done, yes.

24 Q. Did you ever raise with him, "Why did you bring me down

25 here to take the cuffs off?"

1 A. No, I didn't, no.

2 Q. These detainees left on the Tuesday morning. Did you go
3 and see them again?

4 A. I can't recall. I don't believe so.

5 Q. Were you not concerned about them now, having seen what
6 you had seen and learnt what you had learnt?

7 A. No. I had seen the detainees still cuffed and that one
8 of them had died of a heart attack.

9 Q. When did you first learn that perhaps one of them had
10 not died of a heart attack?

11 A. I can't recollect when that occurred.

12 Q. Are we talking hours or days or weeks or after you left
13 Iraq.

14 A. I can't recollect, I am afraid.

15 Q. Did you hear any gossip that night, the following
16 morning, about the fact that soldiers had beaten these
17 detainees?

18 A. No, I don't believe I did.

19 Q. You never heard any such talk?

20 A. No.

21 Q. In your position as 2IC, you were a man who had to have
22 an ear close to the ground. Would that be fair?

23 A. Yes, and I specifically -- for example, the reason why
24 I went around camp would be to try to keep an ear to the
25 ground. I would visit the soldiers in the sangars from

1 Burma Company to find out what they thought about what
2 was going on.

3 Q. You were one of the pairs of eyes and ears of the CO?

4 A. Yes, correct.

5 Q. Didn't you think, on that Tuesday, that perhaps you
6 ought to find out how these detainees were in daylight?
7 It had been dark in the TDF the night before.

8 A. In hindsight, I probably should have done. I can't
9 recall why I didn't.

10 Q. Could we have a look at a document, please, at MOD16095?
11 This is other dealings that you had in relation to these
12 detainees indirectly, isn't it? It is a note from you
13 copied to the CO.

14 A. No, it's to the chief of staff, 19 Brigade.

15 Q. Forgive me, it's the chief of staff 91 brigade. It is
16 copied to the CO.

17 A. Yes.

18 Q. It is accompanied by another document that we will look
19 at in a moment. But this is a letter that you wrote --
20 just to put it in context -- presumably after Mr Rodgers
21 had returned from the JFIT and reported an encounter
22 that he had had there in relation to the remaining
23 detainees who were delivered there.

24 A. That's correct, yes.

25 Q. As we see in paragraph 2 of the letter, you refer to the

1 fact that:

2 "Anything other than a full discussion of fact could
3 jeopardise the RMP investigation and allow judgment to
4 be passed by those who would further seek to damage the
5 reputation of the battalion and the brigade. To that
6 end the attitude and actions of the JFIT commander
7 toward the officer [that is Mr Rodgers] who accompanied
8 the internees to the JFIT and his subsequent allegations
9 are most unhelpful. A copy of the statement by the
10 officer, who accompanied the internees to the JFIT,
11 regarding the allegations and manner of the JFIT
12 commander is attached."

13 That was a letter you sent, can I put it in
14 shorthand terms anyway -- we can go into more detail if
15 we need to -- in support of Mr Rodgers and his position;
16 would that be fair?

17 A. It was a letter to support the position of, I believe,
18 the commanding officer, which was that the death of
19 Baha Mousa -- or of an internee at that point -- was
20 a subject for the RMP.

21 Q. Of course. But the letter specifically was sent dealing
22 with the manner in which the complaint had been raised
23 at the JFIT, wasn't it?

24 A. That's correct, because Mr Rodgers returned the JFIT and
25 said that --

1 Q. And gave you his account?

2 A. Yes.

3 Q. So to that extent, the letter -- whatever its other
4 purpose may have been -- was supportive of Mr Rodgers?

5 A. It was to highlight to the brigade chief of staff that
6 the other units were throwing allegations around. If
7 they had allegations or they had fact, then they should
8 pass it through the chain to the RMP and not throw it
9 back at platoon commanders.

10 Q. Well, what I wanted to ask you about really were the
11 facts that you were put in possession of when you
12 received the statement from Lieutenant Rodgers. Can we
13 go over the page to MOD016096, please?

14 This is the statement which Lieutenant Rodgers gave
15 you and which presumably you read before you wrote the
16 letter.

17 A. Yes, I believe I probably had it typed up as well
18 because he would have written it in pencil.

19 Q. Thank you. There is a reference -- if we go nine or ten
20 or eleven lines down -- you can probably see it in the
21 middle of the type on the screen -- ten, eleven or
22 twelve lines down, "Man running the JFIT". Do you that?

23 A. Sorry, yes.

24 Q. Just above that, there is reference, not, of course, in
25 relation to the deceased, because he hadn't gone to the

1 JFIT, but to other detainees who had been delivered by
2 Lieutenant Rodgers, to the fact that there were injuries
3 on males, including severe bruising, a cracked rib on
4 one male, abdominal pains on another. Of course we now
5 know -- and you probably do -- that one detainee was
6 also hospitalised at the JFIT almost immediately.

7 Then there is the reference from Lieutenant Rodgers
8 as to what the doctor had spoken about, these injuries
9 and so on, and the suggestion that there had been
10 a fight at the hotel on arrest and so on. I am not
11 interested in that aspect of it, Mr Suss-Francksen, but
12 what I am interested to ask you is this:

13 Put in possession of that statement from
14 Lieutenant Rodgers and forgetting that the RMP were
15 handling the death, you were put in possession, weren't
16 you, of information that indicated, from your own
17 officer, that a doctor at the JFIT was saying that
18 detainees had arrived there with severe bruising,
19 a cracked rib and otherwise injured.

20 A. Yes, if that's what it says in here, yes.

21 Q. What, if anything, did you do about that in terms of
22 ensuring that the matter was taken up internally?

23 A. At this point I believe the commanding officer said that
24 this was to be an RMP matter. The commanding officer
25 was aware of this letter and, therefore, I would have

1 expected the chain of command to have dealt with the
2 issues.

3 Q. Bringing that down into straightforward language -- if
4 you will forgive me putting it that way -- does that
5 mean that nothing was done internally about it?

6 A. Nothing was done internally by me, no.

7 Q. Do you know of anything that was done by anybody as
8 a result of what was said in that letter and the
9 information that was given to you indirectly?

10 A. I can't recall.

11 Q. Did you take it up with the CO that you had received
12 this information?

13 A. Yes, I wrote this brief and he got a copy of it.

14 Q. Did you take it up with him, apart from sending him
15 a copy of this, that there was now apparently some
16 evidence that detainees, apart from the man who had been
17 killed --

18 A. No, I didn't discuss it with him, I don't believe, no.

19 Q. You have seen the evidence now, Mr Suss-Francksen, have
20 you, as to the injuries that Baha Mousa sustained?

21 A. Yes, I have, yes.

22 Q. I don't think it's a matter of any dispute from anyone
23 now, if it ever has been, that he must have received a
24 severe beating --

25 A. Yes.

1 Q. -- whilst in detention.

2 A. Yes.

3 Q. You knew nothing about that at the time, you say?

4 A. No, I knew nothing about it.

5 Q. Or, indeed, if other detainees were similarly abused,
6 you knew nothing about that either?

7 A. That's correct, yes.

8 Q. With hindsight, do you accept any responsibility for
9 what happened in the TDF over those two or three days?

10 A. I should have known what was going on, yes.

11 Q. Does that mean that you accept some responsibility for
12 what happened?

13 A. Yes.

14 Q. Do you think now that you ought to have visited the TDF
15 more frequently than you did in relation to these
16 detainees for the reasons that we have talked about,
17 that there were more of them, that they were detained
18 for much longer than previous detainees had been kept
19 and so on?

20 A. With hindsight, yes.

21 Q. I want to ask you a few other matters -- miscellaneous
22 matters -- please. At paragraphs 25 and 26 of your
23 statement to this Inquiry -- it is perhaps in paragraph
24 in paragraph 26 too, halfway through:

25 "I do recall some discussion on how we should have

1 dealings with the local population on some occasions.

2 One instance followed the death of Captain Jones ..."

3 The Inquiry has heard quite a lot of evidence about
4 the effect that that had.

5 "... where the commanding officer was adamant there
6 was to be no retribution and the company commanders were
7 told to pass that down to the very last private
8 soldier."

9 I just want to understand from you -- that's what
10 you tell us in paragraph 26 -- do you know why there was
11 a need for the CO to issue such a warning?

12 A. Because the soldiers of the Queen's Lancashire Regiment
13 met the population of Basra on a daily basis and
14 therefore, you know, it would be sensible to suggest
15 that they weren't all responsible for the death of
16 Captain Jones and that they should remain professional
17 throughout.

18 Q. Was there ever a doubt that they would remain
19 professional?

20 A. I don't believe so, but I probably imagine that the
21 commanding officer thought it would be a good idea just
22 to reinforce that message.

23 Q. There had not been previous incidents known to you and
24 the commanding officer and maybe other officers that
25 gave rise to the need to give such a warning?

1 A. Not known to me, no.

2 Q. I will move from that, please, to MOD030849. Can you
3 just go over the page, please, and again? Go to the end
4 of the document. Thank you very much.

5 This is a report from Major Fenton. I think you
6 will have seen this. Can we go back to the first page?
7 It is dated 18 September and refers to a death in
8 detention.

9 Under "Chronology" at 3 -- I don't want to take you
10 to the detail of it, but you will have seen it,
11 Major Suss-Francksen, wouldn't you?

12 A. I don't believe so, actually, no.

13 Q. Well, there is reference here to -- for example, on the
14 first day, at 12.30, the detainees being given lunch,
15 the time for tactical questioning beginning at 5 o'clock
16 in afternoon and so on, at 10.30, hoods placed on the
17 detainees' heads and so it goes on. A report, as you
18 see, by Major Fenton dated 18 September. Did you have
19 any input into this report?

20 A. I don't believe I did, no.

21 I can clarify that if you wish. I believe that
22 Major Fenton spoke to the ops room and, at a later time,
23 he rang me and asked me to clarify perhaps one or two
24 points from his report, but he didn't tell me what the
25 contents of his report were.

1 Q. So you clarified certain points for Major Fenton, did
2 you?

3 A. I believe I did. I can't recall exactly which points
4 I clarified, but he seemed to be quite well informed
5 when he rang me.

6 Q. The points that were clarified with you were, what,
7 points of timetabling as to what had happened when?

8 A. Not on all of them. I think he just wanted me to
9 confirm one or two of the timings.

10 Q. How were you able to confirm any of them?

11 A. I probably spoke to Major Peebles.

12 Q. There wasn't any element, was there, of cover-up in the
13 document that was being put forward?

14 A. This document?

15 Q. Yes.

16 A. I don't know. This was --

17 Q. So far as you were concerned?

18 A. You mean my input into this?

19 Q. Yes.

20 A. No, no, none whatsoever.

21 Q. Can we look, please, at your draft court martial
22 statement? We have part of it at MOD048643. Under
23 paragraph 7, "Various personalities within QLR", you
24 refer to George Briscoe, "not a particularly strong
25 RSM". That was your view of him, was it?

1 A. That's correct, yes.

2 Q. "... a decent straight guy who definitely would not have
3 condoned abuse ..."

4 If you go over the page, please, I want to ask you
5 why you said this about Captain Keilloh:

6 "... not particularly active and could often be
7 found sunbathing in the courtyard of the medical centre.
8 He was known for his all over suntan."

9 A. The medics were not busy all the time and therefore
10 there was a bit of a joke that Captain Keilloh had
11 a suntan. It is not necessarily implying that he spent
12 all day sunbathing.

13 Q. Well, did you regard him as a shirker?

14 A. No. I actually had reason to visit the doctor for my
15 own medical purposes from almost my day of arrival in
16 theatre.

17 Q. You say at the foot of this page, towards the foot,
18 about Captain Peter Madden, the padre, that he was a
19 nice chap but did not talk the soldiers' language. Does
20 that mean they did not confide in him, as you saw it?

21 A. I think you would have to ask him that. I don't know.

22 Q. Donald Payne, you saw him on the CO's TAC. You didn't
23 have a view on him one way or another?

24 A. No, I didn't know him very well.

25 Q. You had no criticism to make, did you, of Major Peebles?

1 A. I don't believe so, no.

2 Q. Did you ever see -- moving on to a different topic --

3 Mr Suss-Francksen, a clip of video showing

4 Corporal Payne in the TDF with detainees, the Baha Mousa

5 detainees?

6 A. I saw it in, I believe, November of last year, when it

7 was shown on the news.

8 Q. In relation, in other words, to this Inquiry?

9 A. In relation to this Inquiry, yes.

10 Q. It was never handed in to you at any stage or a copy of

11 it?

12 A. No, I had never seen that video before it appeared on

13 the television.

14 Q. Were you ever aware of any instruction coming down from

15 the CO or elsewhere that the Garamsche tribe should be

16 treated robustly or perhaps more robustly than others?

17 A. No, I don't believe so.

18 Q. Or any suggestion that civilians should be treated

19 roughly?

20 A. No, no direction that any civilian should be treated

21 roughly, no.

22 Q. What, if any, message was given from the CO as to how

23 detainees should be treated?

24 A. I can't specifically recall the commanding officer

25 giving a direction.

1 Q. You have talked a little while ago now of seeing
2 detainees sometimes between the TDF and the place where
3 they were questioned and you would see them with hoods
4 on at that time.

5 A. Yes.

6 Q. Did you ever see detainees at or near a generator just
7 outside that TQ'ing suite?

8 A. No.

9 Q. Could we have a look, please, at BMI00470? I wonder if
10 that can be enlarged. I am going to show you three
11 photographs. You may have seen them before,
12 Mr Suss-Francksen. Do you recognise the location of the
13 photograph?

14 A. Yes. It's looking towards the back gate of camp. The
15 TDF is just to the left of this photograph.

16 Q. Thank you. You can see what's depicted in the centre.
17 Can we look at the next two photographs? I will not
18 comment if we can just be taken through them. Thank
19 you.

20 Did you ever see such a thing?

21 A. No.

22 Q. Would you have regarded that as proper, that detainees
23 were hooded and apparently out in the sunshine?

24 A. That particular photo has some positive and some
25 negative points to it. I can see that they look like

1 they are not seated, so that's not good. It's the early
2 morning, so it's not particularly hot, and it may be
3 that they were waiting for transport to collect them.
4 I can't tell you exactly when that photograph was taken.
5 That is not towards the end of the tour.

6 Q. It's not towards the end of the tour?

7 A. No, because the back gate is still made of a container.

8 Q. I follow. So, what, this is some time from August on?

9 A. No, it could be prior to August.

10 Q. Thank you.

11 Is it the case that in your position as 2IC, you
12 were aware from time to time of incidents of
13 ill-treatment or abuse --

14 A. No, I don't believe so, no.

15 Q. -- and that you turned a blind eye?

16 A. No, I would not have turned a blind eye to any of that
17 sort of activity.

18 Q. That there was a culture of casual violence in 1 QLR
19 that effectively permitted you to turn a blind eye to
20 these things?

21 A. No, I don't believe so.

22 Q. And that when the catastrophe occurred of a death, you
23 rather underplayed what in fact happened and indeed what
24 you saw. Is that the truth?

25 A. I wasn't underplaying it. I was following a direction

1 that it should be investigated fully by the RMP and the
2 SIB. In fact, I expected them to arrive fairly soon
3 after the death of the detainee. I think I wrote that
4 in my brief that I sent to the chief of staff 19 Brigade
5 that I expected that the RMP would be investigating it
6 immediately.

7 Q. Yes. Is it the case, Mr Suss-Francksen, that you did
8 not cooperate with the SIB in their own inquiries in due
9 course?

10 A. The RMP didn't talk to me at all until at least a year
11 after I had left the army, so at least two years after
12 this event occurred.

13 Q. Did you cooperate with them then?

14 A. Mr Spence rang me and asked me if I would talk to him
15 under caution. I said could I get back to him. He said
16 he was happy to do that. I sought independent legal
17 advice and I said did I have to talk to the RMP and
18 I was told "no" and I said "fine". I was also told that
19 if, in the future, there was -- anyone was charged, then
20 I would be able to give evidence later. So initially
21 I told Mr Spence that I had had legal advice that
22 I should not talk to him.

23 Q. So the upshot was that you did not speak with the SIB or
24 answer any questions?

25 A. I did not answer any questions under caution at that

1 stage, no.

2 MR ELIAS: Thank you.

3 THE CHAIRMAN: Now, bearing in mind the time, I am going to
4 finish the witness. But economy from all concerned,
5 without obviously doing injustice to anybody.

6 Mr Friedman.

7 Questions by MR FRIEDMAN

8 MR FRIEDMAN: Mr Suss-Francksen, are you aware broadly of an
9 account that Major Royce has given to this Inquiry and
10 indeed to the court martial that the use of hooding and
11 stress positions inside the TDF to prepare detainees for
12 questioning was a standard operating procedure in
13 BG Main?

14 A. I am aware that he has given that to this Inquiry, yes.

15 Q. Now, you have said today about the use of hooding that
16 if you had seen it in the TDF, you would not have
17 regarded it as proper.

18 A. That's correct, yes.

19 Q. Do you regard it as proper or otherwise that the
20 standard operating procedures described by Major Royce
21 were not made known to you when you became the new 2IC?

22 A. No, it was probably not correct, no.

23 Q. And does it follow from that that it was probably not
24 correct that there appears to have been no, as it were,
25 written direction about how these SOPs were to be used

1 by whom and when?

2 A. Yes, correct, there was no written -- until after the
3 death of Baha Mousa.

4 Q. It is a matter for the chairman about who he believes,
5 but can I ask you this? Given that you never became
6 aware that these SOPs were going on, do you suspect that
7 the fact that they were SOPs is being overstated by
8 someone?

9 THE CHAIRMAN: I'm not really sure that he can answer that
10 nor, if he did, that it is of any great assistance to
11 me.

12 MR FRIEDMAN: I will move on because of the time.

13 Colonel Mendonca you had known for a very long time,
14 since university.

15 A. Yes, on and off, yes.

16 Q. Did you think, despite his obvious abilities and
17 dynamism, that this tour, for all the myriad reasons,
18 was taking its toll on him?

19 A. No, not at all.

20 Q. With regard to the descriptions of RSM Briscoe that
21 appear in that proof to the solicitors of Mr Mendonca,
22 was that a view of RSM Briscoe that he held as well as
23 you?

24 A. Yes, it was. When I arrived in theatre,
25 Colonel Mendonca briefed me on the main personalities.

1 If he had had the choice of RSMs, he would have -- he
2 told me he would have chosen someone else, but that was
3 not the case.

4 Q. Not a particularly strong character?

5 A. No, just not a strong RSM. I believe, you know, his
6 view was that Briscoe deserves to be RSM, but was not
7 a particularly strong RSM.

8 Q. In terms of Major Peebles, did he express a view to you
9 that he did not regard him to be a particularly or
10 highly competent person, if we can put it that way?

11 A. I think he thought that Major Peebles would be
12 overburdened doing the tasks that Major Royce had done.
13 That is why he asked me to take care of the battlegroup
14 warfare officer role more directly.

15 Q. Was he more blunt in his views about Peebles' abilities
16 as an officer?

17 A. I cannot recall him being blunt in terms of saying that
18 Peebles was incapable, no.

19 Q. Very quickly on an incident that related to the
20 Garamsche. On 9 September, during the time that you
21 were acting up as CO -- you are nodding. I am sure you
22 have been made broadly aware of this issue in the
23 Inquiry -- first of all this: was there an order that
24 the Garamsche needed to be dealt with robustly or
25 harshly or otherwise during that particular day or two

1 when one of their leaders had been killed and they were
2 trying to enforce their terms on the whole city?

3 A. No. There was an idea that our reaction as
4 a battlegroup to the threat that the Garamsche posed to
5 our mission, rather than to us, should be met with
6 a robust response, which was exactly why Corunna Company
7 put their soldiers in between the Garamsche and the
8 people of Basra.

9 Q. The commander's diary talks about, if the Garamsche are
10 going to enforce their ultimatum on the people of Basra,
11 they would be dealt with harshly.

12 A. Yes.

13 Q. Was that an order, in effect, that you gave?

14 A. No, I believe that that is probably a watchkeeper
15 writing that or, if it was Major Seeds -- or
16 Captain Seeds as he was -- then, as was typical of
17 Captain Seeds, writing -- for example, where he had
18 written "bagged and tagged" in a previous op order, it
19 was probably an example of his poor English rather than
20 anything else.

21 Q. Are we to take it that nothing has come back to you
22 about anything untoward that happened with the Garamsche
23 prisoners in C Company lines?

24 A. That's correct, yes.

25 Q. The Baha Mousa death. First of all this: at any time

1 before he died or in the short period thereafter, were
2 you told by anyone that he or others had been frequently
3 trying to escape during the course of the day?
4 A. I believe that that was mentioned along with the heart
5 attack theory.
6 Q. Who do you believe told you about it?
7 A. It could have been the adjutant.
8 Q. Yes. There is a sitrep that we may not need to go to,
9 but just this: did you have any involvement in drafting
10 or sending a sitrep in relation to the incident?
11 A. Is it a G3 sitrep or is it a G1 sitrep?
12 Q. It is MOD030957. We will just bring it up. Perhaps if
13 it is just enlarged in the top two boxes of the column
14 and the next box as it were. It is describing this
15 event.
16 A. Yes.
17 Q. Do you recognise this document?
18 A. I don't recognise that specific document, no.
19 Q. Would you be the one to draft the sitrep in that format?
20 A. No. It is more likely to have been the ops officer and
21 the watchkeeper.
22 Q. Then just this on the event after the death: you have
23 accepted that when Major Seeds got you down there, you
24 were disgusted, but his account is not just about the
25 cuffs. Can I take it that your disgust is not just

1 about the cuffs as well?

2 A. Yes, I mean I am trying -- I have really tried hard to
3 remember before I came and sat here about what
4 I thought --

5 THE CHAIRMAN: I just say that's not what you said. You
6 said you were disgusted by the cuffs.

7 A. Yes.

8 MR FRIEDMAN: You see, the one thing that Mr Elias did not
9 add -- and it is fair that it should be put -- is that
10 Major Seeds took the view that they had been beaten, at
11 least some of them. His phrase, "a picture paints 1,000
12 words", he uses in his evidence. Was it clear to you
13 that at least some of them had been beaten?

14 A. No, not that they had been beaten, no.

15 Q. That they were in that terrible state?

16 A. It didn't look to me like they had been beaten.

17 Q. Lastly this then. It is the reference MOD006843. Just
18 enlarge it at the top, just the heading. It is
19 a statement from you that was given for the purpose of
20 High Court proceedings.

21 A. Yes.

22 Q. If we turn to the last page, I am not going to ask you
23 about the detail of it, but on just the last page we see
24 the date of 18 June 2004, which is at MOD006849. Just
25 go back one page to MOD006848. Right at the bottom, you

1 were describing in this statement a number of cases and
2 the last one is going to be Baha Mousa. Do you recall
3 giving this statement for the purposes of High Court
4 proceedings?

5 A. Yes.

6 Q. Yes. Very much in summary, it was for you to give very
7 broad details about a number of investigations into
8 people who had died?

9 A. Yes, I believe this was to do with the rules of
10 engagement regarding soldiers engaging people, shooting
11 at them.

12 Q. Yes. The last one was not that. It was obviously
13 a death of a detainee and it is case 13. Over the page
14 at MOD006849:

15 "I had no involvement in this case at all. So far
16 as I am aware, the matter was dealt with by the RMP
17 straightaway."

18 A. Yes.

19 THE CHAIRMAN: So I am clear, that is the Baha Mousa one, is
20 that right?

21 MR FRIEDMAN: Yes. I hope you are clear that the other
22 ones -- they were the Al Skeini applicants.

23 THE CHAIRMAN: Let's just have the question, please.

24 Did you have paperwork to help you to give the High
25 Court statement?

1 A. No. I think I was sat in a room with a lawyer who took
2 my statement.

3 Q. And it was the MoD who asked you to give the statement,
4 was it?

5 A. I believe so. It could have been the MoD solicitor.

6 Q. The position now, as we see it, is you did have
7 involvement not with Baha Mousa but, as it were, with
8 the survivors of very serious abuse. We know that now,
9 don't we?

10 A. Yes.

11 Q. Whether rightly or wrongly, you wrote a letter the next
12 day telling a man at the JFIT to take this matter up
13 formally. At the time, you must have been putting two
14 and two together that you had seen the survivors of very
15 serious abuse along with Major Seeds, hadn't you?

16 A. I think that probably came to me at a later date. It
17 wasn't immediately -- I didn't immediately know at that
18 point, no.

19 Q. Just if I could ask it once again: given what you had
20 seen the night before and the disgust that you felt,
21 given that a very serious complaint had come through
22 from a 2IC at JFIT, why is it that you were not clear
23 then that something had gone wrong in relation to the
24 survivors?

25 A. I don't really know. I mean, the report to Rodgers

1 was -- I probably concentrated on the fact that, you
2 know, people were throwing up allegations and weren't
3 dealing with them in the correct manner.

4 Q. The last question then: was there ever a suggestion made
5 that the survivors, given that there was going to be an
6 investigation into the dead man, were to be shipped out
7 before, as it happens, the RMP arrived, because they did
8 not arrive until the next day --

9 A. No.

10 Q. -- and before any investigation into their injuries
11 would happen?

12 A. No. If the RMP had said "Hold the detainees in camp",
13 we would have done. The detainees were actually held in
14 camp because we believed that the TIF was shut.

15 MR FRIEDMAN: Thank you, Sir.

16 THE CHAIRMAN: Yes, Mr Garnham.

17 Questions by MR GARNHAM

18 MR GARNHAM: Four matters, please, Mr Suss-Francksen.

19 First, you suggested in answer to Mr Elias that
20 Captain Seeds used the term "bag and tag" in his
21 drafting of FRAGOs, like the FRAGO for Op Quebec.

22 A. Yes.

23 Q. What is it that makes you think Captain Seeds drafted
24 that rather than, say, Major Royce?

25 A. Because Captain Seeds -- I regarded Captain Seeds as

1 having a sort of youthful enthusiasm. He had only just
2 arrived in theatre and I think he probably -- it came
3 off the top his head. I would go through what
4 Captain Seeds had written in the FRAGOs and occasionally
5 I would pull him up on use of words.

6 Q. But why do you think he drafted that particular FRAGO?

7 A. My only thought is that that's the sort of thing that
8 Captain Seeds might have written because later on in the
9 tour at various issues, I would have said, "No, that's
10 not the correct terminology, use the correct
11 terminology".

12 Q. So you don't have any evidence to support
13 a suggestion --

14 A. No, I have no evidence --

15 Q. -- that he drafted that FRAGO?

16 A. No, I have no evidence. I am just surmising.

17 Q. Did you attend all of the O Groups and all of the
18 commanding officer's prayer groups, morning prayers?

19 A. Yes.

20 Q. Did you ever hear, at any of them, Major Royce say that
21 there had been a direction or a directive from brigade
22 that stress positions were to be used on detainees --

23 A. No.

24 Q. -- or that hooding was to be used on detainees?

25 A. No.

1 Q. You tell us in your statement that Battlegroup Main was
2 a noisy place.

3 A. Yes.

4 Q. There were, you say, four generators behind the
5 headquarters building --

6 A. That's correct, yes.

7 Q. -- and that you slept with earplugs in as a result.

8 A. For about the -- I'm not exactly sure of the date
9 I stopped wearing earplugs. When I first arrived in
10 theatre, the noise was quite loud and I wasn't as tired
11 as I was after a couple of weeks and therefore I started
12 by wearing earplugs.

13 Q. Did you ever hear screaming or shouting from the TDF
14 whilst you were there?

15 A. No, none whatsoever.

16 Q. Lastly, you have described your visit to the TDF with
17 Captain Seeds and the condition of the detainees you saw
18 there. Did you report that to the CO?

19 A. I can't recall the detail. I believe that I left the
20 TDF either because I heard the CO's TAC -- some vehicles
21 outside, which I expected to have been the CO's TAC, or
22 that I went back to the battlegroup -- the battalion
23 headquarters building in order to communicate with the
24 commanding officer to ensure that he was on his way back
25 to camp.

1 Q. Neither of those answer my question.

2 A. Sorry.

3 Q. Did you report to him the condition of the detainees as
4 you had seen them in that TDF?

5 A. I can't recall. I must have done.

6 MR GARNHAM: Thank you very much.

7 THE CHAIRMAN: Ms Dobbin?

8 Questions by MS DOBBIN

9 MS DOBBIN: It is right that you entered theatre on
10 10 August, isn't it?

11 A. That's correct.

12 Q. And I think you had a one-day handover, is that correct?

13 A. Yes.

14 Q. And it is also right that Major Royce left in August as
15 well?

16 A. Yes.

17 MS DOBBIN: Thank you. That is all, Sir.

18 THE CHAIRMAN: I think that was reasonably obvious, but
19 never mind.

20 Mr Beer?

21 MR BEER: No, thank you, Sir.

22 THE CHAIRMAN: Sorry, Mr Summers.

23 Questions by MR SUMMERS

24 MR SUMMERS: Mr Suss-Francksen, firstly the CO and
25 discipline. Can I take you to two things that you have

1 said previously to check that you still stand by them?

2 A. Yes.

3 Q. First, MOD048643, which is another part of the statement

4 you gave to the solicitors representing Colonel Mendonca

5 at the court martial.

6 "I would describe JEM [meaning Colonel Mendonca] as

7 focused, driven, determined, knowing what he wanted to

8 achieve, confident ..."

9

10 THE CHAIRMAN: Can you just pause for a moment? You have

11 presumably read that, have you?

12 A. Yes, I have, yes.

13 THE CHAIRMAN: And you stand by what's in it?

14 A. I believe so, yes.

15 THE CHAIRMAN: Well you either do or you don't.

16 A. Yes, I mean I signed it -- well, I didn't sign it,

17 but I --

18 THE CHAIRMAN: I am merely trying to -- thereafter you can

19 make submissions about that.

20 MR SUMMERS: In the next paragraph -- I am not going to read

21 it out -- but your view was that if he could be

22 criticised for anything on discipline, it was sometimes

23 going a bit too far?

24 A. Yes, in fact I felt that he had done that on a couple of

25 occasions. Do you want me to clarify?

1 THE CHAIRMAN: I don't, but Mr Summers may.

2 MR SUMMERS: No, I think we have it.

3 Can we go next to BMI01582? At the very bottom of
4 that page, to get the beginning of the sentence because
5 you were asked whether the CO made his position on
6 treatment of detainees clear, you say here:

7 "Neither the commanding officers or myself or indeed
8 other officers based at HQ would have tolerated abuse of
9 detainees and if we had become aware of any abuse we
10 would have put a stop to it immediately ..."

11 Where did you derive that from in terms of
12 Colonel Mendonca's view? How do you know that was his
13 view?

14 A. Because that was his view how to treat all Iraqis,
15 whether they were detainees or not.

16 Q. Was that something he had said, something he had --

17 A. Yes, I believe so, yes.

18 Q. -- discussed at O Groups or said to you informally?

19 A. Probably both.

20 Q. Morale. What is your position on the morale within
21 1 QLR during this tour and your time on it?

22 A. I think morale was very good throughout. I would
23 suggest that the death of Baha Mousa -- sorry, well, the
24 death of Dai Jones caused a small blip possibly.

25 Q. Can I take you to that specific issue? MOD048646, it is

1 another part of that statement we were just looking at.

2 THE CHAIRMAN: He said that he stands by everything. For

3 the sake of speed, surely you can tell me all about that

4 when it comes to your submissions.

5 MR SUMMERS: So be it. Lastly, so that we can be clear

6 about dates -- I don't think we have this from you --

7 the dates when Colonel Mendonca was away from 1 QLR and

8 you took over command, is this right -- we can go to

9 a document if you need it -- was 26 to 29 August.

10 A. I actually got those dates from his solicitor --

11 Q. Right.

12 A. -- when we wrote that statement.

13 Q. So be it --

14 A. I just said I have no reason not to -- to say that those

15 weren't the dates.

16 MR SUMMERS: Thank you.

17 THE CHAIRMAN: Thank you very much.

18 Ms Edington?

19 Questions by MS EDINGTON

20 MS EDINGTON: Just one matter if I may, Sir.

21 Mr Suss-Francksen, when you are the battalion 2IC

22 and the commanding officer goes on R&R or away, you

23 don't change any policy, do you?

24 A. No, you kind of keep the ship on a steady course.

25 Q. That is really it. You keep it on the course that has

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