

Wednesday, 17 March 2010

1

2 (10.00 am)

3 THE CHAIRMAN: Yes, Mr Moss.

4 MR MOSS: Sir, good morning. Our first witness this morning
5 is Colonel Vernon, who is already in the witness-box.

6 THE CHAIRMAN: Yes, I can see him there. Colonel, if you
7 would be kind enough to remain standing for a moment
8 while I ask for you to be sworn.

9 CHRISTOPHER HILARY VERNON (sworn)

10 THE CHAIRMAN: Thank you. Please sit down. It's quite
11 a small witness box, I think you will find. You may
12 have to press yourself up against the microphone in
13 order to speak into it so we can all hear. I hope you
14 are not too uncomfortable.

15 Yes.

16 MR MOSS: Thank you, Sir.

17 Questions by MR MOSS

18 MR MOSS: Colonel, would you start by giving the Inquiry
19 your full name, please?

20 A. My name is Christopher Hilary Vernon. I am a serving
21 officer in the British Army.

22 Q. I hope that you will have on a desk in front of you, in
23 a folder there, a hard copy of your statement to the
24 Inquiry. If you could just take that, please, and if we
25 could have the final page of your statement which is on

1 our screens at BMI03449. Do we see that you were
2 signing this statement on 30 July 2009 last year?

3 A. That's correct.

4 Q. You have kindly alerted the Inquiry to an additional
5 matter relating to conduct after capture on which you
6 may be able to assist the Inquiry. Subject to that
7 minor addition, are the contents of this statement true
8 to the best of your knowledge and belief?

9 A. They are.

10 Q. Everybody has had an opportunity to read that statement,
11 so I only need to pick up certain topics and aspects
12 arising out of it. May we start, please, just briefly
13 with your career history. Can you remember in what year
14 you joined the army?

15 A. 1978.

16 Q. You tell us that your service has included, I think,
17 four operational tours in Northern Ireland; is that
18 right?

19 A. That's correct.

20 Q. It may not matter, but you say in paragraph 2 of your
21 statement that the first of those was in 1977.

22 A. It should be -- they were late 1970s/early 1980s. I may
23 have got that textually wrong, I am afraid, but four is
24 the correct number.

25 Q. In addition to that service in Northern Ireland, you

1 tell us that you served in a media capacity as
2 a lieutenant colonel in Bosnia; is that right?

3 A. That's correct, in 1995.

4 Q. You also had three years as the commanding officer of
5 the Queen's Royal Hussars.

6 A. That's correct.

7 Q. You were then involved in your media role in Op Telic 1,
8 which we will obviously come to. I think after that you
9 were the commandant of the Land Warfare School between
10 2003 and 2006; is that right?

11 A. That's correct.

12 Q. And your current rank is full colonel; is that correct?

13 A. That is correct.

14 Q. Thank you. Could we turn to some aspects regarding your
15 training first, please?

16 Other than in conduct after capture training, had
17 you had any training yourself in the deprivation of
18 sight of prisoners?

19 A. Not that I'm consciously aware specifically of where and
20 when, but I was aware of the general parameters in which
21 hooding, deprivation of sight could be used. Quite how,
22 where and when, I can't recollect.

23 Q. And those general parameters, what did you understand
24 them to be?

25 A. As I said in my statement, firstly hooding could be used

1 to protect the prisoner themselves from seeing other
2 prisoners and therefore being vulnerable to that other
3 prisoner. It could be used in terms of the safeguarding
4 operation of security in terms of being in a friendly
5 coalition base and not wishing them to see the
6 surrounds. Thirdly, it protects other prisoners from
7 seeing the other prisoner if they are in the same
8 confines. So those three reasons.

9 Q. In answering those questions, you refer, Colonel, to the
10 use of hooding. Did you, in fact, understand that
11 hooding was a permissible means to deprive prisoners of
12 their sight if sight deprivation was necessary for one
13 of those reasons?

14 A. Yes, I did.

15 Q. Again, other than in conduct after capture training, had
16 you seen hessian sandbags used in training or on
17 operations for that purpose?

18 A. No, I had not.

19 Q. Had you seen blindfolds used for that purpose in
20 training or on operations other than in the conduct
21 after capture setting?

22 A. No, I had not.

23 Q. Had you ever been given any guidance as to whether
24 blindfolds or hoods -- one or the other -- was the
25 preferable or the most appropriate means to achieve the

1 deprivation of sight?

2 A. No. The purpose, as I have said, was sight deprivation.

3 The methodology or the means used to -- I had never

4 touched on or reflected on.

5 Q. You tell us also in your witness statement that, so far

6 as the deprivation of sleep, depriving prisoners of food

7 and water and the application of noise is concerned,

8 again leaving the conduct after capture to one side,

9 that you don't think you'd had any specific training in

10 those matters. Is that right?

11 A. That is correct.

12 Q. But your understanding of whether that would have been

13 permissible to be used on British prisoners was what?

14 A. That would have been outwith the permissible methodology

15 to use.

16 Q. May I turn then briefly to the question of conduct after

17 capture training? It may be that you can simply answer

18 this question "yes" or "no". Have you personally been

19 involved in conduct after capture training?

20 A. Yes, I have.

21 Q. The Inquiry knows, both from documents and from other

22 evidence, that that training involved the use of stress

23 positions, deprivation of sleep and deprivation of

24 sight. I don't want to ask you anything about the

25 details of those or the duration of those, but I do want

1 to see if you can help the Inquiry about any warnings
2 that may have been given during conduct after capture
3 training. Again, do you personally -- perhaps you can
4 answer this "yes" or "no" -- have any experience of what
5 warnings may have been given on the training as to
6 whether they were techniques that could be used by
7 British soldiers on prisoners that they took on
8 operations?

9 A. I make it quite clear -- we were very clear on all my
10 experiences of that -- that we were being trained to
11 withstand what might happen to us. It was not training
12 to train us in how well we might treat others. Does
13 that answer it?

14 Q. Yes. You say that you make it quite clear that you were
15 very clear in all your experiences of that. Just help
16 us with this: during the training, in your experience,
17 was an explicit warning given that this is training to
18 help you withstand what an enemy might do to you, but
19 you must not use these techniques on prisoners that you
20 take?

21 A. Yes. That was very clear and would have been understood
22 by all those undergoing the training.

23 Q. How was it made clear?

24 A. You are asking me to recall back quite some time now,
25 but I would have thought it was done in the preamble,

1 the forwards, to the start of the training course.
2 I would have thought -- I can almost definitely
3 recollect to the best of my recollection that was how it
4 was done.

5 Q. Thank you. Can we turn then please to Op Telic 1 in
6 Iraq? Just tell us the essence of your role on
7 Op Telic 1, please.

8 A. I was the media spokesman brought at short notice into
9 Kuwait to front the impending coalition intervention to
10 the world's media, national, international and regional,
11 and also to coordinate, as the senior person involved
12 with media, the complete media operation effort --
13 "media operations" is what we in the military term
14 "media". I think that is fairly self-explanatory --
15 across the whole of the 1st (United Kingdom) Armoured
16 Divisions' area of operation, clearly meshing in with
17 the United States effort and back through to Whitehall.

18 Q. Where did you sit within the formations? Were you part
19 of 1 (UK) Division or part of the National Contingent
20 Command Headquarters?

21 A. I was with Headquarters 1 Division, direct access to
22 General Brims, the GOC, with whose authority and on
23 whose behalf I spoke.

24 Q. Thank you. You speak in your witness statement about
25 having media operations staff and that one of your staff

1 was Mr de Ville. Can you help us as to what his role
2 was?

3 A. Yes, he was a Government information service officer,
4 I think from the Home Office, called out again at short
5 notice to be the technical media adviser to myself and
6 to General Brims on matters of technical media
7 expertise.

8 Q. You speak in your witness statement about involvement
9 that you had in prisoner-handling concerns arising out
10 of a visit to the TIF and to the JFIT at Um Qasr.
11 Before we come on to that, had you yourself had any
12 involvement in your media role prior to your visit to
13 Um Qasr in matters relating to how prisoners of war
14 should be handled?

15 A. Yes, I had. One of the things we do with the media
16 staff was we monitor on a daily basis the international,
17 national and regional media coverage to see what media
18 angles the media are taking. In the context of the
19 differing points of view on the whole enterprise, not
20 surprisingly many of the media outlets were taking
21 a very negative line -- they perhaps always do -- and
22 therefore we are looking at what they are focusing on
23 and where potential areas we need to make sure we have
24 got it right being.

25 From the very beginning it was very clear that how

1 the coalition were to handle their prisoners of war
2 would be a major media focus and, therefore, that was an
3 area I was increasingly aware we needed to make sure
4 that we were absolutely above board and that everyone
5 was aware that the media scrutiny would be on us in that
6 respect.

7 Q. That being a concern of yours with your media
8 responsibilities, did you do anything as a result?

9 A. Yes, I do recall, as I say in the statement, at one
10 stage -- every morning you have an update right across
11 the British area of responsibility, at which the three
12 brigade commanders, brigadiers who command the brigade
13 and the general officer commanding and most of the
14 senior staff listen in, a radio conference, for lack of
15 a better word, at which I took about a two-minute slot
16 and just alerted particularly the brigade commanders to
17 the fact that the media were focusing extremely
18 intensely on our handling of prisoners of war and we
19 needed to be sure that we were quite clear that we were
20 in line with the Geneva Conventions and, indeed, with
21 the general officer commanding's initial directive,
22 where he had expressly said that at all times we should
23 be seen to be acting decently in everything that we did.

24 MR MOSS: It's not your fault at all. You are speaking
25 rather quickly.

1 A. Okay, sir.

2 Q. I do it as well at times, but a note is being taken of
3 what you say.

4 A. Sorry, I apologise.

5 Q. Thank you.

6 Coming, then, to that visit to the TIF, how did that
7 visit arise? What first alerted you to the need to go
8 to Um Qasr?

9 A. I was alerted by witness S009.

10 Q. Yes, S009. That's a name you can use during this
11 morning's hearing.

12 A. Okay, by S009, who was the commanding officer of the
13 Queen's Dragoon Guards. They had been given
14 responsibility, albeit as a formation and reconnaissance
15 regiment, to construct and to run the prisoner of war
16 camp -- the coalition prisoner of war camp at Um Qasr.
17 I received a phone call -- I don't think directly from
18 him, but to one of my staff -- requesting myself to go
19 down there. I had quite a lot of things on. It was not
20 at the top of my priority, but I made time to do so and
21 went down one morning with my media adviser,
22 Mr de Ville.

23 THE CHAIRMAN: A little bit slower still, please.

24 A. Sorry.

25 MR MOSS: At the stage where that message had come through

1 to you, did you have an understanding of what the
2 concerns of S009 were?

3 A. Not in detail. He had simply told me that he had
4 concerns and he would be grateful if I made a visit to
5 discuss those concerns with him. Is that speed better
6 for you? Thanks.

7 MR MOSS: You are getting knowing smiles and nods from the
8 ladies who are taking the note. Thank you.

9 May we have on the screen please MOD007097? This is
10 your statement to the SIB which you gave on 14 March
11 2006. You tell us in your statement to this Inquiry
12 that you stand by the contents of this statement. Is
13 that right?

14 A. That is correct. That statement was given in Kandahar
15 in 2006 when I was working there in Afghanistan.

16 Q. I just want to ask you about this, in case it matters.
17 Could we have a look at the third paragraph there? In
18 2006 you were able to say in this statement that the
19 visit that you made was about 27 or 28 March 2003. Do
20 you see that on the screen?

21 A. Yes, I do.

22 Q. How were you able to date the visit when you were giving
23 this statement in 2006?

24 A. I would just like to put this in context. I was the
25 chief of staff in Kandahar in 2006. An RMP staff

1 sergeant comes into my office and says, "I would like to
2 have an hour's interview with you". I just want to put
3 that in the context. I didn't have a diary, so I am
4 just working off my best recollection as I could in that
5 one-hour interview that I am giving in Kandahar.

6 Q. Correct me if I am wrong, but were you piecing it
7 together from the date of the invasion and from --

8 A. Yes, I took a diary at the time. I didn't have it in
9 Kandahar, I don't have it now. I am rather surprised
10 I don't have it. It may be in my own belongings
11 somewhere. What I am doing is my own time and space
12 record. I know we went over the border on the 18th.
13 I know it was about ten days later, broadly, that
14 I visited the prisoner of war camp at Um Qasr. But it's
15 not diary-factual is what I am saying, to the best of my
16 recollection.

17 Q. Was S009 someone who was well known to you?

18 A. Yes, he was commanding officer of the Queen's Dragoon
19 Guards. I had been commanding officer to the Queen's
20 Royal Hussars. In army terms those are cavalry
21 regiments from the same organisation, the Royal Armoured
22 Corps. I knew him socially and I knew him as a fellow
23 commanding officer of a cavalry regiment, although at
24 this stage I had finished command and moved on.

25 THE CHAIRMAN: You have speeded up again.

1 A. Sorry, sir.

2 MR MOSS: It may be an obvious question, but did you
3 understand at the time why it was you to whom S009 was
4 turning in raising these concerns?

5 A. Yes, and I have read his statement and I was totally
6 d'accord with him. He saw me as a point of leverage by
7 which he could gain access for his concerns and I fully
8 realise that was the reason he was probably asking me to
9 go down there.

10 Q. And you tell us in your statement -- is this right --
11 that having received this message, you travelled Um Qasr
12 in fact on the same day.

13 A. That's correct.

14 Q. Who was it who accompanied you on the visit?

15 A. It was Mr de Ville and my driver, a lance corporal in
16 the Royal Tank Regiment.

17 Q. Thank you. If you have read S009's statement -- and
18 this is a name that you shouldn't use but will, I hope,
19 be on a cipher list -- just pause for one moment.

20 (Handed)

21 A. Thank you.

22 Q. If you have read S009's statement, you will know that he
23 suggests that the person who was accompanying you -- and
24 please don't use the name -- is the lady whose name is,
25 alongside on that list, the cipher S034.

1 A. That's correct. I had noted that. That's not my
2 recollection. I am absolutely adamant I would have gone
3 with de Ville. He travelled everywhere with me and S034
4 actually doesn't work at Headquarters 1 Div, but works
5 at the different locations, so --

6 Q. Yes.

7 A. -- the two don't really go together.

8 Q. Thank you. When you arrived, then, at the camp, who was
9 the first person that you spoke to about these matters?

10 A. In terms of significance, S009.

11 Q. And what did S009 say to you?

12 A. He just -- he showed me round the main prisoner of war
13 camp which he was running I think the purpose of which
14 was to show me that it was being run absolutely
15 properly. There was an officer's detention area; there
16 was a soldier's one. The meals were being done under --
17 they were getting Arabic food. There was a system by
18 which people who were clearly not soldiers and shouldn't
19 have been prisoner of wars -- a process was already away
20 to release them. A lot of people had been picked up off
21 the battlefields who clearly shouldn't probably be
22 there.

23 I think the main purpose was he was showing me that
24 everything was being done properly and in line with
25 proper procedures. He then said, "I want you to come

1 and have a look at this organisation here" and took me
2 to an adjacent organisation next door.

3 Q. We will come on to what you saw. Before he took you to
4 the JFIT, did he talk to you about any concerns that he
5 might have had? Did he explain what his concerns were?

6 A. No, I was pretty clear to him. I had about an hour and
7 a half to be there. I wasn't going to spend much more
8 than that. I was doing about 30 media interviews live
9 a day and that was my primary function. We weren't
10 mincing words, for lack of a better way. He just said,
11 "I want you to come and have a look at this".

12 Q. Look at paragraph 13 of your statement, BMI03444. You
13 tell us in your statement that:

14 "On arrival at the PW camp S009 briefed us on his
15 concerns."

16 Is that right?

17 A. In that he said, "I would like you to come and have
18 a look at this establishment over which I have
19 a concern".

20 Q. It was as limited as that statement?

21 A. Yes. It was pretty short and sharp because time was of
22 the essence.

23 Q. Forgive me, if we just have that back on the screen, we
24 see, just going over the page, that you say that the
25 concerns "... centred on the treatment of PW by unit

1 that I believe was part of the Defence Intelligence
2 Security Centre ('DISC') from Chicksands". Do you say
3 that because of what S009 said to you at the time or
4 from the subsequent conversations that you had with the
5 captains?

6 A. It was subsequent to the time. He didn't pre-brief me
7 on where, when and from. That became evident in the
8 subsequent conversations.

9 Q. So, what, the two of you with Mr de Ville went to the
10 JFIT part of the camp, did you?

11 A. That's correct.

12 Q. Once you were there, did you see Iraqi prisoners who
13 were in the JFIT?

14 A. I did. They were in what is in Kuwait and Iraq -- it
15 was within -- a "sand berm" it's called, which is a wall
16 which goes around and was about 200 metres by 100.
17 There's lots of them -- some were constructed by the
18 coalition, some were constructed by the local people --
19 and the JFIT was located in one of those.

20 In the middle of this were, as I say, about --
21 I recall 30 to 40, clearly, Iraqi prisoners, who were
22 hooded, some kneeling, some sitting and generally -- and
23 I recall being handcuffed as well.

24 Q. Thank you.

25 A. In the open. In the open.

1 Q. Can I ask you about the hoods then? So far as you can
2 recall it now, were all of the prisoners hooded or only
3 some of them?

4 A. My recollection is that all of them were.

5 Q. If we just have a look at certainly what you say in your
6 witness statement to this Inquiry. May we just look
7 briefly at MOD007098? This is back with your statement
8 given in Kandahar, the second paragraph. You say there:
9 "At the prisoner of war camp operated by DISC
10 I noticed a number of what I believed to be Arab looking
11 prisoners kneeling on the ground in what could be
12 considered a stress position as well as some overs
13 sitting with their heads covered by sandbags (hooded)
14 and their hands handcuffed to the rear."
15 That might be taken to suggest that only some of the
16 prisoners were hooded. What do you say about that?

17 A. No, my recollection was that they were all hooded.
18 Those who I saw out in the open were all hooded. It is,
19 though, seven years ago.

20 Q. Of course. Those who were hooded, whether it was some
21 or all of them, what were they hooded with?

22 A. I didn't get nearer than within 15 metres of them.
23 I wasn't going to go over and make an inspection of
24 these prisoners. It looked to me, as I best recall,
25 hessian bags.

1 Q. I don't want you to guess and you will tell us if you
2 couldn't see, but were you able to tell whether it was
3 one sandbag or more than one?

4 A. I couldn't say. As I said, I didn't get nearer than
5 25 metres.

6 Q. Again, I don't want you to guess, but are you able to
7 say one way or the other whether the whole of the face
8 was covered with the sandbag or whether it was wrapped
9 up so that the mouth was not covered?

10 A. Again, I didn't get that near. My recollection is that
11 they were over the whole head, but I could be wrong
12 given the proximity to the prisoners -- my proximity to
13 the prisoners.

14 Q. How long did you have these prisoners in your sight for?
15 How long did you spend observing them?

16 A. Very briefly as we walked in and walked past because my
17 primary focus was that I wished to speak to the staff of
18 JFIT to discuss the issue with them. So it was in
19 passing as we moved into the conference tent -- duration
20 of a two-minute walk.

21 Q. Presumably, as you saw things on the ground, you had no
22 means of knowing for how long they might have been
23 hooded.

24 A. No, I did not.

25 Q. In any of the subsequent discussions that you had that

1 day, Colonel, did you come to understand for how long
2 those prisoners or prisoners in general at the JFIT
3 might spend hooded?

4 A. No, I didn't. I don't recall it being a topic of the
5 ensuing conversation.

6 Q. Now, the physical positions in which those prisoners
7 were, I think you tell us that they were not all in the
8 same position; is that right?

9 A. Yes, my recollection was that some were kneeling and
10 some were sitting. Is that what I said in my statement?
11 I think I said that. Am I consistent?

12 Q. Yes. It is just your current recollections of it that
13 we are interested in. Those who were kneeling, you tell
14 us in your statement, they were kneeling with their
15 posteriors resting on their heels and the phrase that
16 you use is "what could be considered a stress position".
17 Why did you think that it could be considered a stress
18 position?

19 A. Because naturally I don't think that human beings would
20 choose to sit in that position, but I would caveat that
21 in that within the Arab world unusual positions of
22 repose are taken, as they are in the African world,
23 et cetera, so I may be applying, you know, a European
24 viewpoint on that. I would certainly not choose to
25 kneel. I would choose to sit to be more comfortable.

1 But I would accept that there are different cultural
2 mores on that. That's me having thought about it in
3 quite some depth in anticipation of that question.

4 Q. From what you could see, was there any sense in which
5 the British guards within the JFIT were requiring the
6 prisoners to sit or kneel in any particular position?

7 A. No, I can categorically say I saw no evidence of British
8 soldiers enforcing any position. All I saw was the
9 Iraqi prisoners in that position.

10 Q. We will come back, then, to this aspect on the hooding.
11 But so far as the positions in which they were kneeling
12 is concerned, did you think that they actually were in
13 stress positions or was your concern that it might be
14 interpreted by others in that way?

15 A. It was my assessment that a kneeling position could be
16 interpreted as a stress position, albeit minor -- going
17 back -- you know, I have done conduct after capture
18 training and I know more about it, but it would not be,
19 from my perspective, a natural position in which to sit
20 and relax. But I qualify that with the fact that, for
21 example, Africans sit on their haunches, as do many
22 people in the African world. So I just think we need to
23 take into account cultural differentials that are not
24 typical from a European perspective.

25 Q. Now, so far as the hooding is concerned, what was it, if

1 anything, about the hooding that caused you concern?

2 A. My primary job, as I have stated, is I was responsible
3 for the complete media operation of the British part of
4 the coalition invasion. Clearly, if pictures of Iraqi
5 prisoners out in the open, hooded, cuffed and kneeling
6 were to be displayed in any media outlet -- and I make
7 the point that the JFIT was very near a major arterial
8 road coming up from Kuwait -- the negative publicity
9 that would ensue would have significant strategic
10 negative impact, particularly in the broader Arab world
11 where clearly, given the arguments about the
12 intervention, we were struggling already to garner any
13 degree of popular opinion, popular support.

14 Q. Since you mention it and so that we don't lose the
15 thread, your reference there to the fact that the JFIT
16 was near a major arterial road, from what you remember
17 would one actually be able to see into the JFIT compound
18 at this stage?

19 A. My assessment was that that was possible. We had
20 embedded media and there were a whole load of unembedded
21 media floating around. This was to the rear of the
22 battle at this stage. Things had moved on to Basra and
23 they had moved on to Baghdad, so this was
24 a comparatively safe area which was swarming with just
25 freelance media floating around in 4x4s. From the top

1 of a 4x4, standing on the roof, long lens, I definitely
2 ascertained that a long-range photograph could be taken
3 of that facility, to the best of my recollection.

4 Q. It may be said that those concerns about what
5 photographs may show and their impact might be
6 self-evident. I want to ask you about a different
7 matter.

8 Did you have concerns from a humanitarian point of
9 view about the actual treatment of these prisoners and
10 their welfare, as opposed to how it might be interpreted
11 if it was photographed?

12 A. Yes. My concern was two-fold. My primary
13 responsibility, as the media guy, was to make sure that
14 we were presenting this thing in the best possible
15 light, notwithstanding -- as I have said, I know that
16 hooding is allowed in certain circumstances, I then --
17 and this was the ensuing conversation I had with the
18 JFIT staff -- wished to be reassured that the
19 justification for this was significant, the intelligence
20 being garnered was significant to outweigh --
21 notwithstanding the rights or wrongs of it -- the
22 potential strategic negative impact. But I wanted to be
23 convinced that there was an operational requirement for
24 this type of methodology to be going on in addition to
25 my primary concern, which was the negative strategic PR

1 loss. So what I am saying, it was two-fold.

2 Am I making myself clear?

3 Q. Yes. Were you in fact concerned that these prisoners
4 were being mistreated?

5 A. As I said, I had -- yes, I had -- I needed -- I wanted
6 to be convinced that there was an absolutely operational
7 necessity for this to be going. Firstly for the
8 hooding -- I have said I had understood there were times
9 when you could use hooding and I have given you those
10 reasons. Handcuffing, yes, there were times when
11 prisoners clearly have to be handcuffed, in extremis
12 when they were initially captured, for example. The
13 kneeling, I have interpreted it as a mild stress
14 position, but I really just wanted to be convinced that
15 these rather extraordinary measures, which were not in
16 line with how the main prisoners were being treated in
17 the main facility, were absolutely justified -- that was
18 where I was coming from -- and that what we were doing
19 was right.

20 Q. You tell us that you then spoke, is this right, with
21 members of DISC who were present at the time?

22 A. That is correct.

23 Q. The ranks of those officers that you spoke to -- please
24 don't use names, even if you can remember them -- you
25 tell us in your statement that it was two captains and

1 a warrant officer. How confident of those ranks are
2 you?

3 A. I would say 50 per cent because there was quite a lot
4 of, you know, as was common, just wearing of T-shirts
5 within the smaller enclosed facilities on which rank is
6 not worn, but if I said two captains and a warrant
7 officer, that, at the time, I think, when I made the
8 statement in Kandahar in 2006, was to the best of my
9 recollection. But I put a 50 per cent caveat on that.

10 Q. What did those two officers say to you when you spoke
11 with them and raised your concerns?

12 A. I explained who I was and what my primary purpose was,
13 as from the media perspective, and my concern about the
14 negative strategic impact if this was outlined in
15 international -- particularly regional -- media like
16 Al Jazeera or the Gulf Arab Times. I digress, but the
17 next morning the Americans were hit by the very same
18 thing on the cover of Arab Times.

19 Then I went into -- I said, as a full colonel from
20 Headquarters 1 Div, I equally wished -- I had some
21 slight concerns about this in terms of is this necessary
22 and I wanted them to convince me of the arguments as to
23 the necessity of what they were doing.

24 Q. That's what you said to them. What was the essence of
25 their response?

1 A. I think one of the statements I read said that there was
2 a heated debate. Despite the rank differential --
3 because S009 was wearing full colonel rank at that
4 stage -- they argued a degree of autonomy. They were
5 experts in their field. You have to, in military terms,
6 respect experts. You don't go barging into another area
7 and completely overrun their expertise. But
8 I particularly asked what intelligence was being
9 garnered --

10 Q. Forgive me for interrupting you. Can we just break it
11 down a little bit? This point about they argued
12 a degree of autonomy -- I promise I will come back to
13 the later stages of the conversation -- what do you mean
14 by "they argued a degree of autonomy"?

15 A. Both my statements, as you will know, say that --
16 I say -- they said they were not under command of
17 1 Division. I now know, having read other statements,
18 that they do concur they were under the command of
19 1 Division. If I have that wrong, it is not my
20 recollection. That was a point of issue.
21 I therefore -- my authority over them was limited
22 because I represented the land component commander
23 there.

24 Q. As you indicated, your statements do suggest that what
25 they said to you was that they were from an independent

1 unit. The evidence to the Inquiry suggests in fact that
2 they reported to 1 (UK) Div. How confident are you now
3 that those officers were purporting to say to you that
4 they were an independent unit who reported to London?

5 A. Well, I wouldn't have made that statement in Kandahar in
6 2006 unless I thought that was the case. I stand by
7 what I said, but I recognise the difference of
8 testimony.

9 Q. So a degree of autonomy being expressed. What about the
10 substance of the matter and the justification for the
11 hooding and the cuffing? Did they say anything about
12 that?

13 A. My first question was, "What intelligence are you
14 getting? Why are they so special that they merit this
15 different thing?" And they said they were senior Iraqis
16 there, including the Iraqi divisional commander, and
17 they were getting very good intelligence on the ORBAT,
18 which is the organisation of the Iraqi division that had
19 opposed the British. I make my initial point on that,
20 that Iraqi division had surrendered and disintegrated
21 within day 1, so that intelligence was not relevant to
22 what was then going on, and this is me using my broader
23 military judgment. I made that point.

24 There was then a debate about the hooding and they
25 went into the same arguments, with which I concurred,

1 when hooding can be used, protection of one or the other
2 or operation security, to which I didn't entirely demur,
3 but I was not convinced that the -- that what we were
4 getting out of this justified those rather extreme
5 measures.

6 The other point, as I say in my statement, I do
7 recall they did say they had the Cestra(?) suspects of
8 Iraqis, who had quite frankly murdered two British
9 soldiers outside Al Jabbar. There was a mob that
10 murdered them -- two engineers on about D plus 3. That
11 actually convinced me somewhat more that there was may
12 be some justification and these were special case
13 prisoners, which is what they were saying, rather than
14 just senior Iraqi military officers who had surrendered
15 on day 1.

16 THE CHAIRMAN: You are speeding up again.

17 A. Okay, I will slow down.

18 THE CHAIRMAN: It is very difficult, I do understand. But
19 it is equally very difficult for these ladies who sit in
20 front of me.

21 MR MOSS: So taking it in the round, to what extent had the
22 officers been able to assuage your concerns?

23 A. I was not entirely convinced and I left letting them
24 know that I was not convinced and I would be referring
25 the matter back to Headquarters 1 Div. I am pretty sure

1 I told them that. I certainly -- we didn't resolve the
2 matter on the ground and my concern was very clear to
3 them.

4 Q. The flavour of it, was this in fact a heated exchange?
5 Just a difference of view? A row? What was it like?

6 A. To be frank, as a full colonel, being told by a couple
7 of captains that, "You are wrong, mate" did not impress
8 me or S009 particularly. But this is war. This is not,
9 you know -- rank isn't everything. These were experts
10 in their field and I had to show a degree of recognition
11 of their expertise and I didn't believe I had the
12 authority to step in too heavily at that stage. But
13 I made very clear, my concerns, and I was not convinced
14 that what they were getting out of it justified what
15 they were doing. I also made them very clear that the
16 negative strategic impact of this could completely
17 outweigh any local intelligence we were gaining.

18 Q. So that we are clear about it, you were having this
19 discussion with the two captains, as you remember it.
20 Was anybody else present alongside you during the
21 conversation?

22 A. S009 and Mr de Ville.

23 Q. You tell us in your statement that following that
24 conversation and while you were still with S009 at the
25 camp, Lieutenant Colonel Mason arrived. Did you discuss

1 these matters with Colonel Mason?

2 A. I did. We exited from the sand berm, which is the JFIT,
3 and then returned back to the main part of really the
4 Queen's Dragoon Guards headquarters at the prisoner of
5 war camp, where we had a sit-down in a tent, in which
6 there was de Ville, myself, S009, and then Mason, who
7 was a lieutenant colonel at the NCC, the National
8 Component Command -- he was at their headquarters in
9 Qatar -- was there visiting at the time. We had
10 a debate as to the rights and wrongs and what -- of what
11 was happening and what should be done and what I thought
12 I was going to do.

13 I made it clear within that forum that I did have
14 concerns both with my media hat on and actually more
15 generally and I would be taking it back to 1 Div and
16 referring it probably to the legal branch and to our
17 lawyers there because, as ever, a lot of these things
18 take a legal ruling.

19 Mason's view, perfectly professional, was that in
20 his view what was happening was justified, given the
21 special case nature of some of these prisoners, as
22 I already said they were being described as by the
23 JFIT -- a professional disagreement of view. I had
24 mine, they had theirs.

25 Q. So far as those views of Colonel Mason were concerned --

1 I don't want you to guess and say if you don't know --
2 do you know whether Colonel Mason had himself actually
3 seen inside the JFIT and seen what was going on or was
4 he going by your description?

5 A. I would be speculating if I said. I would -- I think
6 I could say if he was talking with -- no, no, I can't
7 say -- I don't know.

8 Q. Thank you.

9 Did you tell S009 or Colonel Mason what you were
10 going to do as a result of what you had seen and the
11 discussions that had you had?

12 A. Yes. I am pretty sure that I said I would be returning
13 back to Headquarters 1 Div and there I would refer it
14 into the legal branch there and knowing, by putting it
15 into the legal branch, you were putting it firmly into
16 the system.

17 Q. And referring it to the legal branch, as your intention,
18 was that something that you told the Chicksands
19 officers, if I can call them that, what you were going
20 to do or is that something you only said to S009 or
21 Mason, if I may use their surnames?

22 A. I think to the latter forum, not to the Chicksands
23 officer. I just made the Chicksands officers aware of
24 my concern and that I would be taking some action with
25 1 Div.

1 Q. Was that essentially the end of that visit of yours to
2 the TIF and to JFIT?

3 A. It was. I have left at that time. It would have been,
4 by that time, about 11 in the morning, I recollect.
5 I drove back to Headquarters 1 Division. I was not at
6 Headquarters 1 Division the majority of the time. I was
7 about 4 kilometres away because I had 30 embedded media,
8 CNN, Sky -- all the television crews and a whole load of
9 staff living in a separate place because we couldn't
10 have them at the main headquarters, and that's where
11 I thence returned to. But I spoke to -- can I mention
12 the legal person's name?

13 MR MOSS: Colonel Mercer.

14 THE CHAIRMAN: I would tell you what I would do. I would
15 answer the question. You have already. You were asked
16 if that ended that visit and the answer to that is "yes,
17 it did".

18 Now just wait for the next question, all right?

19 A. Yes, Sir.

20 MR MOSS: We will come on to Colonel Mercer in a moment.

21 Did you visit the TIF or the JFIT on any subsequent
22 occasions?

23 A. I did not.

24 Q. How clear are you in your recollection that you only
25 carried out one visit to the TIF or the JFIT?

1 A. Absolutely clear.

2 Q. Turning then to Colonel Mercer, you say in your
3 statement that you reported the matter to him. If it
4 matters, did you do that face to face or by telephone or
5 by some other means?

6 A. I recall doing it face to face.

7 Q. What did you say to Mercer? What was the essence of
8 your report to him?

9 A. It would have been, "I have just been to the JFIT,
10 I have concerns over what happening there. I think we
11 need to get a legal view on whether what is happening
12 there is right", and I clearly expressed my major
13 concern from my particular job portfolio was that the
14 front page of the Gulf Arab Times would be a disaster
15 for the UK and US if this sort of thing were to get on
16 the front page of such a journal.

17 Q. At that stage, did Colonel Mercer give any indication of
18 what his views were of the matter?

19 A. To the best of my recollection he said, "Yes, got it,
20 thank you, I will act upon it".

21 Q. Did you follow the matter through in any way? Were you
22 subsequently involved in anything that Mercer did or did
23 you get feedback from Colonel Mercer about anything that
24 he might have done?

25 A. No, because I returned then to where all the media

1 were -- you know, I was absolutely content that I had
2 fed it in and that Mercer would act on it and my
3 subsequent understanding is that is what happened.

4 Q. Do you know one way or the other whether
5 Colonel Marriott had an involvement in these matters?

6 A. I would be speculating, but -- and I am -- it would be
7 totally normal for the chief of staff of a division to
8 be apprised, I would have thought, by his lawyer on such
9 an issue, but I can't be absolutely sure.

10 Q. If we just look at paragraph 18 of your statement if we
11 may -- BMI03446 -- you say that you would be
12 speculating, but at the bottom of paragraph 18 in your
13 statement to the Inquiry you did say, Colonel:

14 "I am aware, however, that Colonel Marriott, chief
15 of staff ... (now Brigadier Marriott ...) was further
16 apprised of the matter."

17 You seemed a bit more confident when you gave your
18 statement to the Inquiry. How were you aware that
19 Colonel Marriott was apprised of the matter?

20 A. I would have to say that therefore could be seen to be
21 erroneous because -- all I am aware is that the
22 debate -- that the issue was taken through the chain of
23 command and properly dealt with within Headquarters
24 1 Division and therefore Colonel Marriott, I am saying,
25 would have been made aware. But I cannot say

1 100 per cent. I didn't speak to Marriott on the issue
2 specifically.

3 Q. And that --

4 A. But I do know it became an issue with Headquarters 1
5 Division because on subsequent trips there, I asked some
6 of the staff officers there -- I said, you know, "Is
7 this thing an issue, one of many?", and I was told,
8 "Yes, it is, it's being staffed".

9 Q. Being staffed, you were told?

10 A. Yes.

11 Q. Subsequent to that discussion, then, with
12 Colonel Mercer, when you were out and about on your
13 media work, did you see anywhere prisoners detained by
14 British forces who had their sight deprived by any
15 means?

16 A. No, I did that -- not -- but if I could just put that in
17 context, I wasn't right at the forward element of an
18 infantry or armoured battlegroup around Basra. I was
19 slightly to the rear of that. So I wouldn't have been
20 at the point at which prisoners were being picked up off
21 the battlefield. But I did not is the answer.

22 Q. Do you know one way or the other what, if anything,
23 Mr de Ville did on his side of the house following this
24 meeting?

25 A. I don't think he did anything. He was quite sensibly,

1 as a civil servant, embedded within this military
2 environment, leaving it very much to the military to
3 work this issue and I think very sensibly.

4 Q. I would just like to turn, if I may, just to get your
5 assistance on it and your comment on it, so that we have
6 it, to one or two other accounts that the Inquiry has
7 received and perhaps some suggestions that you may have
8 had a slightly greater involvement in some of the
9 discussions. May we start in that regard with a short
10 extract from the statement of now Major General
11 Marriott?

12 Could we have on the screen, please, BMI06131, just
13 to get the context of this. We see from paragraph 20
14 that General Marriott is talking about the visit to the
15 prisoner of war camp and those who he understood were
16 involved in a visit. He then goes on to talk about
17 discussions that happened thereafter and advice from
18 Colonel Mercer -- five lines up -- advising that hooding
19 should stop immediately.

20 If we go over the page, please, talking about
21 discussions, you will see about five or six lines down
22 that he says:

23 "The only other person that may have been involved
24 in these discussions at 1 Div HQ would have been
25 Major Waters (S02 G2). I do not remember the specifics

1 of [that] ... I had confidence in Lieutenant
2 Colonel Mercer's advice and I [that is General Marriott]
3 agreed that hooding should not be done."

4 He then says this:

5 "Colonel Chris Vernon was a media adviser and his
6 advice to the general was that hooding would be a media
7 disaster and it should be stopped. Major General Brims
8 agreed with both my and Colonel Vernon's advice that
9 hooding should be stopped."

10 Pausing there, as you will appreciate, that suggests
11 that as far as General Marriott recalls it, you gave
12 some direct advice to Major General Brims to the effect
13 that hooding would be a media disaster and should be
14 stopped. Do you think that that might be right?

15 A. I don't recall. I mean clearly I spoke to General Brims
16 on a lot of issues because I had to be, clearly,
17 absolutely conversant with what he was thinking.
18 I don't recall having a direct conversation on that.
19 But the way that could have worked, there was
20 a lieutenant colonel sitting permanently in the
21 headquarters who worked for me, doing media, and a whole
22 load of majors and captains. I would have -- you know,
23 because they were working for me -- made it very clear
24 that if this issue comes up, "The media advice you are
25 to give and you can say it's Vernon talking" -- and this

1 may have been within General Brims' presence -- "is that
2 this could be a strategic negative PR issue."

3 So it could happen through a proxy is what I'm
4 saying, but I don't recall a direct conversation with
5 General Brims on that. But I did discuss many, many
6 issues with him clearly.

7 THE CHAIRMAN: It does reflect your views?

8 A. It absolutely reflects my views and I would have put
9 those through to my SO1 and in a different form he would
10 have reflected my views potentially to General Brims,
11 who would have asked for them.

12 THE CHAIRMAN: Yes.

13 MR MOSS: Just in case there is any sensitivity about it,
14 please don't name the lieutenant colonel to whom you
15 have just referred, but if needs be I am sure you will
16 be prepared, will you not, to provide the Inquiry with
17 that name of the lieutenant colonel in media operations?
18 Don't give it, but --

19 A. Yes, you would have to remind me of it, but I could then
20 confirm it because I have actually forgotten.

21 THE CHAIRMAN: If that's the way it works, but never mind.

22 MR MOSS: Could we just look again, please, for your
23 assistance, at the witness statement of then Lieutenant
24 Colonel Duncan. We have that at BMI06045. Mr Duncan is
25 telling us in his witness statement to the Inquiry that

1 he remembered that -- and this is paragraph 42:

2 "I remember that during my visit I was summoned at
3 short notice to a meeting with Colonel Vernon ..."

4 When he was talking about a visit, he is talking
5 about a visit to the TIF that he was making.

6 "I remember that during my visit I was summoned at
7 short notice to a meeting with Colonel Vernon, who
8 I believe was a media spokesman on Op Telic 1, and
9 Colonel S009, who had responsibility for
10 prisoner-handling at divisional level. Also present
11 were S002 ..."

12 Pausing there, do not use that name, but if you look
13 at your cipher list, do you see who S002 is?

14 A. Got it, yes.

15 Q. "... and Captain S014."

16 Again, please do not use the name, but that name is
17 given for you on the cipher list.

18 A. Got it.

19 Q. That latter name, the name for S014 -- again I emphasise
20 please don't use it -- but is that a name that is
21 familiar to you, S014's name? Is it familiar to you?

22 A. The name you've got there, is that present rank or the
23 rank at the time?

24 Q. It was the rank at the time.

25 A. But there's a sort of -- it says a different rank S014

1 for the one I've got correlating to S014 on my list of
2 soldiers. Which rank are we talking about?

3 Q. At the time S014 was a captain.

4 A. That's the point. What I've got is a different rank on
5 the thing -- so it is present rank. The rank at the
6 time -- no, I don't recall that.

7 Q. Thank you.

8 Going back to Colonel Duncan's account:

9 "I was summoned to this meeting in order to discuss
10 the issue of the media having access to the TIF during
11 the forthcoming visit by the Red Cross."

12 Just pausing there, do you have any recollection of
13 a meeting at which Lieutenant Colonel Duncan was present
14 and S002 was present and there was discussions about
15 whether or not the media should be allowed access to the
16 TIF during a visit that was coming up by the Red Cross?
17 Does that ring any bells at all?

18 A. The issue of allowing the media access to the prisoner
19 of war camp had been an agenda issue from D plus 2.

20 Q. Yes.

21 A. You are constantly looking at areas where you can allow
22 access to the media and this was constantly on the
23 agenda. But to my recollection this was not the purpose
24 of this -- of my visit, certainly, and it was not the
25 primary -- it was not the issue of conversation that

1 I've referred to in relation with NCC and Colonel Mason.

2 Q. More generally, during your visit, which you say was
3 your one and only visit to the TIF, do you recall
4 Colonel Duncan and S002 being there and talking to you
5 at all?

6 A. I do now. I didn't at the time I made the statement.
7 Am I allowed to say going through with my counsel
8 yesterday this was discussed?

9 Q. Don't go into the details of what was discussed, but
10 that brought a recollection --

11 A. It brought a recollection and I have seen the statement
12 by him and I now do recall an intelligence corps
13 lieutenant colonel within the forum that I have already
14 described where Colonel Mason was the protagonist in
15 terms of being the interlocutor.

16 Q. That is S002 that are you referring to, is it, or to
17 Lieutenant Colonel Duncan?

18 A. Duncan -- well, I just recall an intelligence corps
19 lieutenant colonel being there. I was not aware of his
20 name.

21 Q. Thank you. He goes on:
22 "Concerns were raised by Colonel Vernon and by S009
23 that prisoners should not be seen to be hooded as this
24 would likely generate adverse media coverage."
25 That was your view, was it not, as you have told us?

1 A. Correct.

2 Q. He goes on to say:

3 "It was his view that the media visit shouldn't take
4 place at all."

5 Do you remember that, an argument that the media
6 visit shouldn't take place at all?

7 A. I don't recall that as being the topic of conversation.

8 I may be wrong, but it wasn't the major issue.

9 Q. If it matters, he suggests that he was overruled on that
10 by both you and by S009. Is that right?

11 A. As I am saying, I don't recall that angle of the
12 conversation.

13 Q. He says at paragraph 44:

14 "The discussion then turned to the question of
15 hooding ..."

16 He, Lieutenant Colonel Duncan, said that his
17 understanding was that "... depriving prisoners of their
18 sight was necessary to protect them being seen by other
19 prisoners and/or for other reasons of operational
20 security, and that it was therefore permissible.

21 However, as a compromise we agreed at this meeting that
22 prisoners would have their sight restricted by the use
23 of blindfolds or blacked-out goggles instead of hoods."

24 Pausing there, does that bring back any recollection
25 that there was a discussion of alternative means that

1 could be used to deprive prisoners of their sight
2 instead of hoods?

3 A. I vaguely recall that, but from where -- but not in
4 great detail. But from where I was coming from, it
5 didn't actually matter in terms of negative PR -- where
6 they were going to have hoods or goggles, the media
7 would have made no differentiation.

8 THE CHAIRMAN: So you wouldn't have approved of that from
9 a media point of view?

10 A. From a media angle -- I could understand in terms of
11 discomfort it would be less discomfoting and achieve
12 the same means. Yes.

13 MR MOSS: Just give me one moment, please.

14 Yes, thank you. You tell us in your witness
15 statement -- is this right -- that you were then to
16 leave theatre on 9 May.

17 A. That is correct.

18 Q. Just one other matter then. Can you help us with this?
19 You tell us in your statement that you are aware from
20 your subsequent appointment as the commandant of the
21 Land Warfare School that after Op Telic 1 the LOAC
22 training was increased. Could you expand on that
23 a little bit? What was your experience after Op Telic 1
24 of training in relation to these sort of matters that we
25 have been discussing?

1 A. Well, perhaps if I can just elaborate -- the accusation
2 of not just answering the question -- but my job at
3 Warminster was that we trained, at the Land Warfare
4 School, brigade commanders, commanding officers, majors
5 and junior officers prior to taking brigade, regimental,
6 company, squadron, command appointments. It is
7 pre-employment training. Particularly on a brand new
8 course that was brought in in 2003, which all junior
9 officers attended, most of whom had served in Iraq by
10 that stage --

11 Q. Take it a little more slowly.

12 A. -- the weight of instruction on law of armed conflict
13 training was increased within the syllabi across the
14 range as a direct result of ongoing operations in Iraq.

15 Q. And did that include -- I don't want you to guess. Say
16 if you don't know -- instruction on physical aspects of
17 prisoner-handling, deprivation of sight and stress
18 positions and that sort of thing?

19 A. No, given the rank attendancies, as brigadiers,
20 lieutenants -- it is much more academic -- it is Geneva
21 Conventions, Hague conventions, that sort of more, if
22 I can say, higher-level instruction, rather than
23 practical nitty-gritty stuff on the ground. That was
24 the nature of those types of courses.

25 Q. But at least as regards the academic side of that,

1 Geneva Conventions and so on, what you are telling the
2 Inquiry, is this right, is that there was a greater
3 weight given to the law of armed conflict and what that
4 meant in terms of the Geneva Conventions in your
5 subsequent post?

6 A. Absolutely, on all of those courses, and at Warminster
7 at the Land Warfare Centre they have an operational
8 legal branch there and they increasingly became involved
9 in the instruction on all those courses.

10 Q. Just wait there. There may be some more questions for
11 you?

12 THE CHAIRMAN: Now there will be, I dare say, one or two
13 more questions from other counsel.

14 Mr Friedman.

15 Questions by MR FRIEDMAN

16 MR FRIEDMAN: Colonel, can I start with hooding specifically
17 as a methodology for achieving sight deprivation? We
18 have the purposes that you have described, but as
19 regards hooding as a methodology you weren't taught that
20 hooding could be used; is that correct?

21 A. No, because I -- as I said, I have done conduct after
22 capture --

23 Q. Yes.

24 A. -- but I have never been taught that that was a method
25 that should be employed by the British Army, no. But

1 I did understand, as I have said, that sight deprivation
2 by whatever means was a justifiable methodology.

3 Q. Well, the Inquiry has, from a number of other witnesses,
4 an understanding that a means of achieving sight
5 deprivation for the purposes you've described could be
6 hooding. It seems in the way that you've given your
7 answers that if you understood that hooding was
8 a permissible methodology, that was something of
9 a residual understanding unreflected upon by you.

10 A. That's correct. But if I may just elaborate, I mean,
11 there was -- you are going to have to use whatever means
12 you've got available at the time. I am sure if there
13 had been blindfolds or other methods, they would have
14 been preferable. But, you know, I am afraid that wasn't
15 the case.

16 Q. Well, just in terms of focusing this: with the benefit
17 of hindsight and standing away from the pressures at the
18 time, a question does arise as to why people couldn't
19 rip the sandbags up and make blindfolds or folds around
20 the eyes, rather than putting the hoods on them. I just
21 want to understand where you think, in your experience,
22 you achieved an understanding that putting a hood on the
23 head might be a permissible way to do it.

24 THE CHAIRMAN: I don't think he has ever said that. He said
25 that's what happened on conduct after capture.

1 MR FRIEDMAN: Well, I just want to check on this because
2 when you first answered it, you said "My understanding
3 was that a hood could be used". Then you said "I didn't
4 really reflect on it". I will get on to the conduct
5 after capture, but if you had an understanding outside
6 of conduct after capture that hooding could be used as
7 a means -- first of all, did you have that --

8 A. By others upon us, yes.

9 Q. No, I wanted to understand whether your understanding
10 was you could use hooding upon others for security
11 means.

12 A. No. What I understood was that sight deprivation was
13 a justifiable methodology in the -- to achieve the
14 purposes that I have outlined.

15 Q. Right.

16 A. The methodology to achieve it I had never really
17 pondered upon, but I do understand in what I saw at the
18 JFIT that hessian hoods were probably the most
19 pragmatic, if only, option available at that stage.
20 I do take your point on cutting them up. It's a fair
21 point.

22 Q. Moving to the checks you wanted to make with the JFIT
23 personnel and understanding your dual purpose of making
24 those checks, your portfolio and wanting to see the
25 justification, this phrase that you put into the 2006

1 statement, "independent unit reporting directly to the
2 chain of command in London", when you emphasise that you
3 wouldn't have put that in the statement if you weren't
4 thinking that to be what they said, it's quite a serious
5 thing to say, is it not, if it turns out to not be
6 a proper representation of who they are reporting to?

7 A. It is, and I am absolutely clear I wouldn't have said
8 it -- not even withstanding in the heat of Kandahar,
9 unless that was my distinct recollection at the time.
10 I remember it -- it sticks out in my memory as to that
11 was one of their lines and therefore I was surprised
12 when I saw the contradictory testimony.

13 Q. Leaving aside what one can understand as subject matter
14 specialism, was there, in your view, a culture of
15 deference particularly given to the HUMINT subject
16 matter specialists or perhaps they expected it in
17 a particular way?

18 A. Experts in their field are always set aside and given
19 slightly greater regard in military terms, whether it's
20 HUMINT specialists, explosive ordinance disposal
21 personnel or a Harrier pilot. I think that's the nature
22 of the armed forces.

23 Q. Yes.

24 A. What I was really doing was not giving -- I was giving
25 them respect for their technical expertise, but wishing

1 to be convinced as a relatively senior generalist
2 officer that what they were doing was right and met our
3 broader strategic plan, particularly the negative PR
4 angle.

5 Q. Can I just press, though, on whether there may be,
6 either from this experience or more generally from your
7 experience, a particular problem that goes beyond just
8 an expectation of technical respect and a demand for or
9 an allocation of deference to HUMINT specialists that
10 can go across the lines that you have spoken about and
11 lead to negative consequences.

12 A. My subsequent experience in Afghanistan three years
13 later, actually in a more complex environment, was that
14 certainly that was not the case. This is -- if I may
15 just qualify -- this is May 2003.

16 Q. Yes.

17 A. This is the British Army embarking upon something that
18 was pretty new at this stage. We are talking about --
19 the Balkans, Northern Ireland, that was the proceeding
20 things, and, therefore, perhaps in the early stages of
21 2003, but I would say, from my experience subsequently
22 as chief of staff for the whole of Southern Afghanistan
23 with British, Canadians, Dutch and Americans under
24 command, that certainly from a British perspective that
25 was no longer the case by 2006. Things had rationalised

1 in the intelligence field.

2 THE CHAIRMAN: Just pause.

3 A. Sorry, am I digressing too much?

4 THE CHAIRMAN: Yes, in short. I am only interested in 2003.

5 I am fascinated by what happened afterwards, but

6 interested in 2003. Okay?

7 A. But he is asking --

8 THE CHAIRMAN: I know, but you stick to 2003, please.

9 MR FRIEDMAN: Insofar as I am responsible, I draw it back to

10 2003 and say this --

11 THE CHAIRMAN: Can I just ask one question? Was there, at

12 that time, some sort of feeling generally in the army

13 that the intelligence people were slightly on their own

14 and running their own show?

15 A. I think you could say that. Intelligence has always

16 been a need-to-know subject.

17 THE CHAIRMAN: Yes.

18 A. "Need to know" by that very description implies a degree

19 of separation from the mainstream. Is that a sufficient

20 answer?

21 THE CHAIRMAN: Yes, thank you.

22 MR FRIEDMAN: Just to follow on that answer and looking at

23 2003, what you're saying then is that that autonomy that

24 you just described might have been aggravated by the

25 novelty of the situation and intelligence having to play

1 a very dynamic role.

2 A. I would agree with that.

3 Q. Just looking at the data that they gave you, the men you
4 spoke to in the JFIT, from what you were told by them,
5 coupled with what you saw, were you convinced that their
6 purpose in using the hoods was only security?

7 A. I think, as I have said, I wasn't entirely convinced.
8 I wasn't -- I saw some merit in their arguments. These
9 were special category prisoners, they told me. But when
10 that was weighed up -- when what they were getting out
11 of this was weighed up against the negative strategic PR
12 impact this could have, I was certainly not convinced
13 and I think I made that clear.

14 Q. Just to break that down, though, it's one thing to
15 overstate the security aspect, but did you regard other
16 purposes as being in play in the use of hooding?

17 A. Sorry, could I ask you to repeat that?

18 Q. Yes. It's one thing to overstate security, but did you
19 regard other purposes as being in play in the use of the
20 hooding?

21 A. Yes. As I think I said, if I didn't, they were making
22 the case that it was for the protection of the prisoners
23 themselves, the three reasons I have given --

24 Q. I understand that -- if I could interrupt. Are you
25 aware of the term "shock of capture"?

1 A. I can -- you know, I can work that out very easily what
2 is "shock of capture", but I have never received formal
3 treatment --

4 Q. I understand. But did you regard, aside from the
5 purposes that you have given, all security- and
6 protection-based, that there was another purpose
7 involved, which was to effectively maintain the shock of
8 capture of these prisoners pending their questioning?

9 A. No, I didn't. That's taking it one stage too far.

10 Q. Just in regard to these two murder suspects, the murder
11 of the soldiers outside of Jabbar, is there any sense in
12 which they spoke about those men that made you think
13 that it's not just as murder suspects they pose
14 a security risk, but they want to use techniques on them
15 because it's important to get intelligence out of them?

16 A. No. What I would have accepted in their argument in
17 relation to that particular incident, the murder
18 suspects, was I would have agreed that their putting
19 them into special category status was justified.

20 Q. You have had time to think about it over the years.
21 Just trying as best you can to think back to the way in
22 which you were having things described to you --

23 A. No. If I -- I was not convinced that senior Iraqi
24 officers necessarily justified special treatment because
25 the intelligence -- it was invalid by that stage. The

1 Iraqi Army had practically integrated. But in relation
2 to -- they told me they had suspects of two British
3 soldiers who were pretty brutally murdered, I would have
4 accepted their logic, that those suspects -- they had
5 the evidence, I did not -- potentially could have
6 justified what they were saying was different category
7 status from the mainstream prisoners of war in the main
8 facility.

9 Q. Just moving to your discussions, if I can use --

10 THE CHAIRMAN: I think this must be the final topic.

11 MR FRIEDMAN: Yes. Moving to discussions with Mason and
12 Duncan, did you get a sense from them that, whether
13 perfectly professionally, they were also tied into
14 overstating the security aspect of all this?

15 A. No, I didn't. I just think they were stating their
16 professional view was at a divergence from mine.

17 Q. Then the last question: on this idea of shock of capture
18 or any technique to assist questioning, did you hear at
19 any time while you were in Iraq about this being
20 a secondary purpose of hooding along with the security
21 aspect?

22 A. No, I did not.

23 Q. Thank you.

24 THE CHAIRMAN: Thank you. Ms Edington?

25 MS EDINGTON: No questions, thank you.

1 THE CHAIRMAN: Mr Garnham?

2 MR DONMALL: It is Mr Donmall in fact today, Sir.

3 Questions by MR DONMALL

4 MR DONMALL: Just one very brief question. Colonel, you

5 mentioned "special category status". By that, do you

6 mean a reference to a security argument or do you mean

7 something other, something else?

8 A. The argument that the JFIT staff had put to me, when

9 I said "Who are these people? Why are they getting

10 different treatment?", was that they were special

11 category prisoners of war, namely senior Iraqi officers

12 and the suspects of the murder of the two British

13 soldiers, and that placed them in that category; is that

14 clear?

15 Q. So do you mean to say that that special category, they

16 were saying, entailed different security concerns?

17 A. Yes. And the intelligence that they were looking to

18 garner was of a different magnitude.

19 MR DONMALL: No further questions, Sir.

20 THE CHAIRMAN: Thank you very much.

21 MR MOSS: Sir, I don't have any more questions, thank you.

22 THE CHAIRMAN: That's all the questions that we are going to

23 ask you, Colonel. Thank you very much for coming to the

24 Inquiry and giving your evidence. You are now free to

25 go.

1 A. Thank you.

2 MR MOSS: It is just a little bit earlier than the morning
3 break, but would it be convenient to take the break now?

4 THE CHAIRMAN: I think it will be very sensible, but I will
5 ask those who are more affected by it. We will stop
6 now. Ten minutes please.

7 (11.12 am)

8 (A short break)

9 (11.22 am)

10 MR ELIAS: Sir, I call David Peter Friend, Colonel Friend,
11 please.

12 THE CHAIRMAN: Yes. Colonel Friend, if you would be kind
13 enough just to remain standing for the moment, I will
14 ask that you take the oath.

15 DAVID PETER FRIEND (sworn)

16 THE CHAIRMAN: Thank you. Please sit down.

17 A. Thank you.

18 THE CHAIRMAN: If you could place yourself so that you can
19 speak into the microphone, then we will all be able to
20 hear.

21 A. Yes, Sir.

22 THE CHAIRMAN: Thank you.

23 Questions by MR ELIAS

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

1 A. David Peter Frend.

2 Q. You are currently a lieutenant colonel, is that right?

3 A. That's correct, sir.

4 Q. Colonel Frend, would you look to a folder which I hope
5 is to your right and find within it a copy of the
6 statement that you have made to this Inquiry. Go, if
7 you will, to the last page of that statement at
8 BMI02911.

9 A. Sir, I have that.

10 Q. Do you confirm that your signature is there above the
11 date of 14 July of last year?

12 A. That's correct, sir.

13 Q. When you signed that statement, Colonel Frend, were you
14 doing so attesting to the Inquiry that the contents of
15 the statement were true to the best of your knowledge
16 and belief?

17 A. I was.

18 Q. Thank you.

19 We have read that statement and I don't propose to
20 take you by any means to all parts of it, but to
21 concentrate on certain aspects of the evidence that you
22 can give to this Inquiry.

23 You joined the army in 1997, is that right?

24 A. That's correct.

25 Q. You joined as a qualified barrister?

1 A. That's correct.

2 Q. You had initial training with the Adjutant General's
3 Corps (Army Legal Services), with the Royal Military
4 Police and then a commissioning course at Sandhurst?

5 A. That's correct.

6 Q. You served in Northern Ireland as a legal adviser?

7 A. That is correct.

8 Q. And you joined the Army Prosecuting Authority in
9 December 2001?

10 A. That is correct.

11 Q. I want to ask you, please, about your role in Iraq in
12 2003 in particular. What was your position in Iraq?

13 A. I was the SO2 at 1 (UK) Armoured Division main
14 headquarters.

15 Q. You describe yourself in your statement as an
16 "augmente", having volunteered from your post in the
17 Army Prosecuting Authority.

18 A. Yes, that is correct.

19 Q. And at that stage your rank was major?

20 A. I was a major.

21 Q. Thank you. At paragraph 4 -- could we have that put up,
22 please, at BMI02885 -- of your statement to this
23 Inquiry, you set out -- I put it up because it may be
24 easier and quicker to deal with in this way -- your role
25 in Op Telic 1 as a legal adviser. You say "receiving

1 instructions and giving advice" and you describe how it
2 fell into four distinct phases, which are discussed as
3 you set out (i) to (iv) here.

4 Between 7 February and 26 March you were a legal
5 adviser to HQ 1 (UK) Armoured Division in Kuwait and
6 Iraq, as you say, providing general legal advice prior
7 to and in preparation for the invasion and the initial
8 ground offensive.

9 At (ii) you say that between 26 March and 11 April
10 you were legal adviser to HQ 1 (UK) Armoured Division in
11 Iraq, including providing advice to S002 in relation to
12 the joint forward interrogation team, the JFIT, and
13 sitting on boards to assess individual prisoners of war
14 status.

15 A. That's correct. The only thing I would like to
16 correct -- having read documents I received, I think the
17 date of 26 March should read the "28th" because, as
18 I understand it, 1 UK Armoured Div main headquarters
19 moved into Iraq on the 28th. I was going from memory.

20 Q. So it was on the date of that movement that you changed
21 function, as it were?

22 A. Well, I was differentiating on the basis of moving from
23 Kuwait into Iraq.

24 Q. I understand. Then, under (ii) and (iv), you give your
25 specific role. I don't think I am going to be asking

1 you any questions about that beyond 11 April therefore,
2 but you set them out for us there.

3 In Iraq and in those first two roles, to whom were
4 you directly answerable?

5 A. To Lieutenant Colonel Mercer.

6 Q. Did you have direct involvement -- forgive me if I don't
7 say it each time -- I am dealing with what you have
8 described as your first two roles through until
9 11 April -- did you have any direct involvement in
10 advising on detention or prisoner-handling issues?

11 A. The role I had with respect to detention was in
12 production of a detention internment management
13 ordinance and policy.

14 Q. In terms of what I might call "on-the-ground
15 prisoner-handling issues", did you advise in that
16 context?

17 A. Not in advance, no.

18 Q. I want to ask just a little -- and not in great
19 detail -- about your understanding from training or
20 otherwise of the use of techniques with which this
21 Inquiry has now heard quite a lot of evidence. You had
22 yourself, having joined as a barrister, nonetheless
23 received training, army training?

24 A. That is correct, army training and legal training.

25 Q. You received legal training and army training. Did that

1 army training include LOAC training?

2 A. Yes, it did.

3 Q. Did you in fact receive any training in the handling of

4 prisoners that you now recall --

5 A. Nothing --

6 Q. -- forgive me -- apart from LOAC?

7 A. No, nothing specific.

8 Q. From your LOAC training in relation to

9 prisoner-handling, was there any stark message that

10 emerged from that?

11 A. To treat prisoners at all times humanely.

12 Q. Before going to Iraq, did you in fact receive any

13 pre-deployment training?

14 A. Yes. As an augmentee to 1 (UK) Armoured Division,

15 whilst in Germany I received what's known as "OPTAG

16 training", a package which had been put together for the

17 headquarters staff.

18 Q. Did that in any way involve training in the handling of

19 prisoners?

20 A. No.

21 Q. Now your understanding, Colonel, of, as I have said, the

22 use of certain techniques -- I just want to ask you what

23 your understanding was at the time of your deployment to

24 Kuwait and then Iraq.

25 Was "conditioning" a term that was familiar to you

1 at that stage?

2 A. No, it wasn't.

3 Q. You had no idea what it meant?

4 A. I had never heard the phrase.

5 Q. So you had never heard the term "conditioning" used
6 before your deployment to Iraq?

7 A. No, I hadn't.

8 Q. "Shock of capture", was that a term that you were
9 familiar with?

10 A. I believe so, yes.

11 Q. What did you understand was meant by the term?

12 A. The state when one is taken by an opposing force, the
13 dislocation of your normal environment and the pressures
14 put on you by virtue of that.

15 Q. And the significance of it?

16 A. It places a person in a vulnerability.

17 Q. So it places a person in a vulnerability for what
18 purposes, if any?

19 A. I don't think it's a person, I think it's a state. You
20 are in a state of shock of capture and therefore you are
21 vulnerable.

22 Q. Was that something, the shock of capture, about which
23 you received any training?

24 A. No, it wasn't.

25 Q. So this was garnered from general knowledge?

1 A. Garnered from general knowledge, from reading books in
2 respect of armed forces personnel.

3 Q. Did you ever receive any training at any stage in what
4 is sometimes called "maintaining or prolonging the shock
5 of capture"?

6 A. We received no training at all, no.

7 Q. You heard about shock of capture -- I will come back
8 to it -- did you, whilst in Iraq --

9 A. Yes, I did.

10 Q. -- and how that might be, may I use the word, exploited?

11 A. It was part of the discussion that emanated from the
12 complaint that arose.

13 Q. We will come to that in due course. Again, at the time
14 of your deployment to Iraq, had you received any
15 training or instruction as to whether it was appropriate
16 to deprive prisoners of sight?

17 A. No.

18 Q. Specifically to hood them?

19 A. No.

20 Q. Or any training or instruction in the use of stress
21 positions?

22 A. No training or instruction in that, no.

23 Q. Or indeed in any of the other so-called techniques?
24 Deprivation of sleep?

25 A. No.

1 Q. Food and drink?

2 A. No.

3 Q. So these were areas that simply had not been touched
4 upon with you in any training at any time?

5 A. No, apart from being aware of the provision of food and
6 water within the Geneva Conventions.

7 Q. Of course, you were aware more generally, you tell us
8 from your LOAC training, that no doubt
9 Geneva Conventions applied and humane treatment was
10 required.

11 A. Paramount in respect of prisoners of war, yes.

12 Q. Finally on this aspect, did you receive any instruction
13 or training in whether it was right or wrong to use
14 plasticuffs on prisoners?

15 A. No, no instructions at all.

16 Q. Now, you were asked to advise on a mechanism, you tell
17 us in your statement, for the management of detention in
18 Iraq.

19 A. That's correct.

20 Q. Who asked you to advise on that?

21 A. Colonel Mercer.

22 Q. Did you produce a paper in respect of that?

23 A. I did, yes.

24 Q. You tell us in your statement to this Inquiry that the
25 policy publication then upon which you relied was

1 JWP 1-10.

2 A. That was one of the documents upon which I relied,
3 although there was a subsequent document which I drew
4 more heavily on.

5 Q. Was that the document that you refer to at paragraph 35
6 of your statement -- can we have that on the screen,
7 please at BMI02894 -- the document written by
8 Major Bruce?

9 A. That is correct.

10 Q. I'm not going to go into the detail of the document that
11 you drew up for these purposes, but can we just look at
12 paragraph 37 please, where you say this:

13 "The policy and ordinance was very much concerned
14 with providing a legal framework for the continued
15 temporary detention of prisoners of war and detainees,
16 and did not say anything as to how detainees were to be
17 handled."

18 A. That is correct.

19 Q. So it was, if you like, a structure without going into
20 the details of what the rights and wrongs were of their
21 specific handling?

22 A. Absolutely, sir.

23 Q. I follow. You go on in paragraph 37 to say:

24 "The idea of including anything within this document
25 on prisoner-handling, in terms of what can and cannot be

1 done, did not come to mind as advice on this issue would
2 have been provided by the Military Provost Service, who
3 are the experts in the armed forces on matters of
4 custody and detainee handling."

5 A. That's correct, sir.

6 Q. I think, just so that we complete the picture, in
7 paragraph 38 you go on to say to the Inquiry that whilst
8 you drafted this report for Colonel Mercer, you were not
9 responsible for the way in which, if they were, any of
10 these plans were later implemented.

11 A. No, I moved onto other tasks.

12 Q. Thank you.

13 Now you yourself had received LOAC training. In
14 Iraq did you give LOAC training?

15 A. I did.

16 Q. You and other legal colleagues?

17 A. That is correct.

18 Q. You say at paragraph 41 of your statement on BMI02895,
19 please, at the foot of the page:

20 "... during February and March 2003 my legal
21 colleagues and I went out and briefed as many troops as
22 we could on the LOAC. We worked in pairs ..."

23 At the foot of the paragraph you say you think you
24 briefed around 12,500 troops.

25 A. Yes, it was a considerable number.

1 Q. Was the major message that was being given when you
2 briefed on LOAC humane treatment of prisoners?

3 A. Absolutely.

4 Q. Was that at the core of the message?

5 A. It would have been. The message was that they were the
6 soldiers of an opposing armed force. They had done
7 nothing wrong, they would be within the control and
8 power of the state and they are to be treated with the
9 respect that we would expect to be treated ourselves.

10 Q. You will tell the Inquiry, Colonel, if you think you
11 can't answer this question. Transmitting that message
12 in February and in March of 2003, as you were, what, to
13 troops on the ground --

14 A. Yes, they were in their battlegroup locations in
15 preparation.

16 Q. -- did you have any doubts as to whether the core
17 message, as I am calling it, the fundamental message of
18 LOAC, was being understood?

19 A. No. The timing may not have been quite right that close
20 to a conflict, but it was quite clear the message was
21 being conveyed. The concerns that emanated were not to
22 do with treatment of prisoners; it was more to do with
23 the legality of the whole situation.

24 Q. But that's another issue.

25 A. Indeed so, sir.

1 Q. What you were telling the soldiers was the core message,
2 as I have called it.

3 A. Absolutely.

4 Q. Can you just explain to the Inquiry, please, why do you
5 say the timing was perhaps not as good as it might have
6 been?

7 A. The armed forces in all their training constantly -- the
8 principles of the law of armed conflict are implicit in
9 all training they do. I think it was unprecedented this
10 close to a conflict to train or to repeat the message of
11 the law of armed conflict because it should be part and
12 parcel of what an armed force -- the standing armed
13 forces already knows. So therefore this is
14 a reiteration of a training programme that's done
15 annually.

16 Q. It might be argued or suggested, Colonel, that this was
17 a very good time to underline that message, when it was
18 about to, as it were, be brought into practice.

19 A. Indeed, but it felt as if it was being done because
20 there were concerns for other reasons why we were doing
21 it.

22 Q. Was that how you interpreted it?

23 A. Well, that was how we were told, that there was
24 a concern that the mindset of the armed force was still
25 too Northern-Ireland-centric and Bosnia-centric.

1 Q. And therefore, what, the message need to be reinforced?

2 A. It needed to be explained, the differences between the
3 legal position in an armed conflict from a self-defence
4 posture on a peace-keeping operation.

5 Q. Notwithstanding, if I can categorise it, as the
6 reservations that you put forward, you believed, did
7 you, that the message was clearly understood by those to
8 whom you were giving it?

9 A. Yes, so far as I could tell.

10 Q. You tell us in your statement that the presentation was
11 a PowerPoint presentation lasting some three-quarters of
12 an hour.

13 A. I worked off a PowerPoint presentation, but as I say in
14 my statement, there were no facilities whatsoever to
15 deliver via PowerPoint.

16 Q. But you spoke to the soldiers to whom you were
17 presenting for three-quarters of an hour, did you, on
18 this topic?

19 A. I did.

20 Q. And you also go on to refer in your statement to the
21 military provost staff giving what you describe as
22 a parallel brief on what I might call direct
23 prisoner-handling.

24 A. That is correct.

25 Q. That is the physical aspects of it, if you like.

1 A. The technicalities, yes, sir.

2 Q. Did you hear any of those briefings by the military
3 provost staff?

4 A. I did.

5 Q. Do you know whether, in those that you heard, any
6 reference was made to the use of hoods --

7 A. I cannot recall.

8 Q. -- or to stress positions?

9 A. Again, I cannot recall if they did or did not.

10 Q. Now I want to move, please, to that second function that
11 you had from, I think, 28 March through to 11 April.
12 What was your task more specifically here?

13 A. The Differentiation --

14 Q. Forgive me stopping you -- I am sure you are aware that
15 we are not using names in certain circumstances and that
16 ciphers are used instead. If you have a doubt about
17 whether a name should be used, please pause and we will
18 provide you with a cipher list. Perhaps I can begin by
19 indicating -- you tell us in your statement that you
20 were advising S002.

21 A. That is correct. It started before that. If I could
22 just put it into context.

23 Q. Please.

24 A. Colonel Mercer and Major Christie deployed to Kuwait as
25 part of the advance party in January 2003. I was in

1 Germany as a senior S02 -- senior major. A request came
2 through for a legal adviser to attend a conference in
3 respect of intelligence matters. As a senior officer in
4 the office remaining and also with a background, I went
5 across to the United Kingdom to a conference where I was
6 introduced to S002, together with a number of other
7 people, and I formed a relationship with him from that
8 point in time.

9 Q. As the Inquiry knows, he was in charge of the JFIT.

10 A. He was -- S002 -- J2X or G2X from a land perspective --

11 Q. Yes.

12 A. -- responsible for all human intelligence operations.

13 Q. Did you have a role advising the JFIT?

14 A. Through S002, I did.

15 Q. Did that role involve, in any shape or form, advising on
16 what JFIT could or could not do in relation to
17 prisoners?

18 A. No, it did not.

19 Q. Did you visit the JFIT?

20 A. Yes, I did.

21 Q. Did you see prisoners at the JFIT?

22 A. Yes, I did.

23 Q. Did you ever see prisoners hooded at the JFIT?

24 A. No, I didn't.

25 Q. Can you help, please, about the dates of your first

1 visit to the JFIT? Would that have been on 28 March or
2 thereabouts?

3 A. No. Again, from having read the diary entry of
4 Colonel Mercer and from my own recollection, my first
5 visit to Um Qasr was on 29 March. A request had come
6 from Colonel Mercer for me to move from 1 (UK) Armoured
7 Division headquarters to Um Qasr specifically to assist
8 in the filtering process, so I flew via Chinook that day
9 to Um Qasr, and when I arrived at Um Qasr Colonel Mercer
10 had returned to 1 (UK) Armoured Div and so I was briefed
11 on the job in hand by Major Christie.

12 Q. And for how long were you then at Um Qasr?

13 A. I was then --

14 Q. Forgive me.

15 A. I would have been there until 6 April.

16 Q. Without a break, as it were, you remained there?

17 A. I was there continuously for that period of time.

18 Q. And in that period of time, Colonel Frend, did you not
19 see any prisoners hooded?

20 A. No, I didn't.

21 Q. When you went to Um Qasr, you were made aware, you
22 indicate through your statement, of a complaint that the
23 ICRC, the Red Cross, were making in relation to
24 treatment of detainees there.

25 A. That is correct.

1 Q. I think you say in your statement -- it need not be
2 turned up. The Inquiry has heard about it -- that the
3 complaint that was relayed to you was that the Red Cross
4 were saying that detainees were sat in high temperatures
5 in the sun, with no shade, with sandbags over their
6 heads.

7 A. Plastic sandbags.

8 Q. I wanted to ask you about that specifically. That is
9 what you remember as the complaint that was passed on to
10 you, do you?

11 A. Sir, yes. My recollection -- my knowledge of the
12 complaint came from S002 over radio communications. He
13 conveyed to me that the essence of the complaint -- for
14 I never saw the complaint -- was that they had been seen
15 in the sun, sitting -- or seen in the sun, sitting, with
16 plastic sandbags over their heads.

17 Q. So was a meeting convened at which the Red Cross and
18 others were to debate this issue?

19 A. Yes, on 6 April.

20 Q. Prior to that meeting, did you take matters up with
21 S002?

22 A. We discussed it because, whilst I was at Um Qasr, there
23 had clearly been some discussions between S002 and other
24 elements within 1 (UK) Armoured Division and also
25 between S002 and Major Davies up at NCHQ in Qatar.

1 Q. Yes.

2 A. So when I spoke to S002, those debates and discussions
3 had already been ongoing, which I wasn't party to, and
4 I was effectively back-briefed on what had been going on
5 by S002 over the radio.

6 Q. I want to ask you just some specifics, if I may, from
7 that discussion or discussions that you had with S002 --
8 forgive me, that should be "S002" and recorded in that
9 way, whatever may be said, if you wouldn't mind. Thank
10 you. It is my fault.

11 A. I think it is my fault as well. I think I slipped into
12 saying "S02". I mean "S002".

13 Q. You mean "S002" and in shorthand it should be "S002".

14 THE CHAIRMAN: We will be clear by saying "S002".

15 A. Yes, sir.

16 MR ELIAS: Forgive me.

17 I just want to ask you some of the specifics from
18 that conversation, if you can remember them. Did S002
19 say anything to you about the rights and wrongs of using
20 plastic sandbags?

21 A. Yes. He said it was wrong and that he'd stopped it.

22 Q. Did he draw any distinction between plastic and any
23 other sandbags?

24 A. I gained the impression that he felt that a plastic
25 sandbag was inappropriate, as opposed to a hessian

1 sandbag which wasn't.

2 Q. So he was saying a hessian sandbag could be used?

3 A. That was my understanding, yes.

4 Q. Did he say anything as to the circumstances in which it
5 was appropriate to use a hessian sandbag on a prisoner?

6 A. Yes because I questioned him. When he explained the
7 complaint, I said "Was this -- was it part of normal
8 procedure?" He then explained the use of hessian
9 sandbags for the purposes of security was something
10 which they were taught and which they utilised.

11 Q. Did he explain what he meant or did you ask him to
12 explain what he meant by the term "security"?

13 A. Yes, I wanted to know what it was for, and it was to
14 protect both the interrogators and the guard force and
15 also to protect the prisoners from themselves in respect
16 of not being seen to be complicit or compliant with the
17 interrogators.

18 Q. What was your reaction when you were told that hooding
19 was, what, a standard practice, in effect, in these
20 circumstances for security purposes?

21 A. I was somewhat surprised because my first response, when
22 he explained the complaint, was "Was this proper
23 procedure?", and he then explained to me the basis upon
24 which he thought it was proper procedure.

25 Q. Did you accept that from him?

1 A. Yes, I did.

2 Q. You didn't question it further?

3 A. At that stage, as far as I could recall, the decision
4 for a moratorium on hooding had been made pending the
5 discussion with the Red Cross on 6 April, so in the
6 context of -- I didn't really inquire into any further
7 details. It was just the issue of whether hooding per
8 se was permissible or not.

9 Q. So when you say a "moratorium on hooding", what, you
10 mean it wasn't being used pending the meeting?

11 A. That was my understanding, yes.

12 Q. The Inquiry has heard evidence, Colonel Frend, and quite
13 recently, that prisoners perhaps on 28 and 29 March were
14 still hooded and out in the sun. Is that possible?

15 A. It could be possible, sir. I arrived late -- or late
16 afternoon/early evening on the 29th by a Chinook, and
17 because I had been sent there for a specific purpose of
18 engaging in the filtering process, as I recall I spent
19 most of that evening with Major Christie and
20 Captain Bowman, another Army Legal Services officer,
21 discussing what the process was that Major Christie had
22 devised. So that was my role and responsibility.
23 I hadn't been asked or told to go to the JFIT at that
24 stage.

25 Q. I follow. But at all events you believe anyway that

1 from more or less the time that you arrived, therefore,
2 at least, there was, as you describe it, a moratorium in
3 place such that hooding was not going on?

4 A. That was my understanding because of continued debate
5 between NCHQ and 1 (UK) Armoured Div as to what the
6 proper procedure should be.

7 Q. Were you told anything by S002 about where he had
8 learned that sandbags might be used for security
9 purposes in the way you described?

10 A. I believe it was from his training at Chicksands.

11 Q. Did he tell you that?

12 A. I cannot now be sure, but that was the impression that
13 I gained from my discussion with him.

14 Q. You tell the Inquiry in paragraph 56 of your statement
15 that you were of the view that hooding was not unlawful
16 per se.

17 A. That's correct.

18 Q. Can we understand that, please? Do you mean that that
19 was your view before you went to the camp at Um Qasr?

20 A. No, I hadn't even considered the issue.

21 Q. So what informed your view that hooding was not unlawful
22 per se?

23 A. After the conversation with S002, I obviously discussed
24 the matter with Major Christie. Both he and I looked
25 through the publications we had available to us, which

1 was JWP 1-10 and also Geneva Conventions, trying to see
2 and ascertain what basis there would be. We found no
3 specific reference to it in JWP 1-10 and we saw no
4 specific prohibition in the Geneva Convention III and we
5 particularly focused on Articles 13, 14 and 17. It was
6 on the basis that there was no specific prohibition and
7 that clearly it was being used for purely security
8 reasons that it would be, for those reasons, permissible
9 if absolutely necessary.

10 Q. Did you satisfy yourselves that it was being used for
11 what you described as "purely security reasons"?

12 A. At that stage there was a moratorium. I did not go back
13 into the circumstances within which it had actually been
14 used up until that point in time, no.

15 Q. So from what you were told, you accepted that fact?

16 A. I accepted the information I was provided, yes, sir.

17 Q. Did you, for example, Colonel, consider whether there
18 might have been ways, other than by hooding, that such
19 security concerns could be overcome?

20 A. That formed part of the discussions, yes.

21 Q. Did you come to any conclusion as to that?

22 A. The use of blindfolds and the use of blacked-out goggles
23 were two concepts which were discussed in addition to
24 better facilities, as in brick buildings where you can
25 clearly isolate an individual far more readily so as to

1 protect all the persons concerned.

2 Q. Although separation -- protection, as you put it --

3 would not necessarily only be achieved by brick

4 buildings, would it?

5 A. No, it wouldn't.

6 Q. Did you consider whether hooding a prisoner was humane

7 or inhumane?

8 A. Yes. I mean, it's -- part of the deliberation process

9 is to -- for what purpose it's being used and the

10 justification. I satisfied myself, based on my

11 interpretation of the relevant instruments, that for the

12 purposes it was being used it would be appropriate and

13 would not be inhumane. However, one could see that that

14 could be easily abused and could become inhumane.

15 Q. Would you agree that the purpose for which hooding may

16 have been employed cannot overcome the inhumanity of

17 using it if it is inhumane to start with?

18 A. No, I didn't think that it was inhumane per se. I felt

19 it could become inhumane by the manner in which it's

20 deployed.

21 Q. So did you give any consideration or have any

22 discussion, for example with S002, in what I will call

23 the preliminary discussions before the meeting on

24 6 April -- did you give any consideration to, for

25 example, the length of time during which a prisoner

1 might be hooded without it becoming inhumane?

2 A. No, not in the sense of categorising minutes or hours.

3 By that stage, my understanding -- the discussion was

4 kind of the principle itself. So the advice was "as

5 short a time as absolutely necessary" with no

6 prescription given to timings. I think the view was

7 that that would follow through with policy advice once a

8 decision had been taken as to whether or not a form of

9 sight deprivation would be permissible.

10 Q. So it follows, does it, from that answer, that if the

11 view was taken that for security reasons a prisoner had

12 to be hooded for twelve hours or 24 hours or 48 hours,

13 that was, as it were, the trump card?

14 A. I wasn't aware of those timings and I appreciate they

15 come from Major Davies' email --

16 Q. I wasn't putting it specifically from that, but you have

17 seen that. I am asking you the question rather more

18 generally.

19 A. I think I would find it difficult to accept that there

20 was no other method which could intervene beyond getting

21 to beyond, say, a few hours. By that stage, the camp

22 was being better facilitated with logistics, the

23 provision of more tentage and other methods of

24 separating prisoners would have been available. So

25 I think I would have had concern if it had been

1 elongated.

2 The movement of people between locations and the
3 temporary remaining of them with a hood on their head
4 whilst they await initial screening, I could foresee
5 a couple of hours maximum. But if it went beyond that,
6 I feel that there would have been sufficient resources
7 in place by that stage for other methods to be utilised
8 to provide the security requirement.

9 Q. Would hooding afterwards for more than two hours be
10 inhumane in your view?

11 A. It is difficult to state categorically when something
12 crosses a rubicon. I think the circumstances -- the
13 temperature, the situation, the freedom of -- you know,
14 how the hood is put on somebody -- would all dictate as
15 to whether or not something is inhumane. The pure level
16 of time of itself would not necessarily dictate it.

17 Q. No. Would you therefore agree, Colonel, that it may
18 be -- depending entirely upon the circumstances, of
19 course -- that hooding an individual is inhumane from
20 the start, whatever the reason for it?

21 A. It follows from what I have just said, yes. If timing
22 of -- if timing is not the determining factor, but other
23 factors are also included, then, yes, it would be an
24 influence on that.

25 Q. Now you tell the Inquiry in your statement that you took

1 back to Lieutenant Colonel Mercer the product of those
2 discussions that you had had with S002.

3 A. That's correct.

4 Q. I think we know from his own evidence that he was of the
5 view and told you, did he, that hooding in any
6 circumstances was off limits as far as he was concerned?

7 A. That's correct.

8 Q. He told you his view that hooding in any circumstances
9 was contrary to the Geneva Conventions and unlawful?

10 A. That is correct.

11 Q. As you put it in your statement, he would brook no
12 argument on that?

13 A. That is correct.

14 Q. Did you understand, Colonel Frend, that the matter was
15 then, if you like, still being debated in what I might
16 call the upper echelons in Iraq, perhaps going higher
17 back to PJHQ?

18 A. Yes. I mean, obviously I was present at the meeting
19 with the ICRC -- sorry, my conversation with
20 Colonel Mercer took place on about 8 April, so two days
21 after --

22 Q. I follow.

23 A. -- so I was already aware that the matter had reached
24 a high level by virtue of the level of attendance at
25 that meeting of S034.

1 Q. If I may summarise the evidence that the Inquiry heard
2 yesterday -- I hope not inaccurately -- from
3 Lieutenant Colonel Mercer, there was then an
4 expectation, was there, that the argument over the
5 lawfulness or legality of the use of hoods was something
6 about which an answer was expected -- can I put it this
7 way -- from on high in due course?

8 A. Absolutely. For my own purposes I wanted to know what
9 the legal and policy position was from a UK perspective
10 because of the significance of what had occurred and
11 obviously to give confidence to those people in the JFIT
12 as to whether or not what had happened was inappropriate
13 or wrong.

14 Q. And the nature of the difference of opinion, even
15 between the lawyers, was sharp, wasn't it?

16 A. There were some fairly firm views, yes.

17 Q. How far up the chain -- can I put it that way -- did you
18 anticipate that matters would go to get the firm
19 decision on this?

20 A. I expected Whitehall -- when I say "Whitehall",
21 I expected the Ministry of Defence legal advisers to be
22 engaged.

23 Q. Now the meeting took place on 6 April, you tell us in
24 your statement. Can we look at paragraph 57, please, at
25 BMI2901? Can I ask you, please, to be careful again

1 about names. You refer to the meeting there. You
2 recall Major Davies coming, S034 present, senior civil
3 servant and policy adviser.

4 A. Yes, that's right.

5 Q. You say she took the lead at the meeting as the senior
6 British representative.

7 A. That's correct.

8 Q. Can you remember whether Colonel Mercer was present at
9 this meeting?

10 A. Yes, he was.

11 Q. And the issue that had been raised as the complaint that
12 we dealt with a little while ago, that was the main
13 topic of the meeting, was it?

14 A. Yes, it was.

15 Q. Over the page in this paragraph, please, you record the
16 fact that blackened goggles, blindfolds or ear muffers
17 were also debated at the meeting as alternatives to
18 hooding.

19 A. That is correct.

20 Q. As you say in your statement, the Red Cross
21 representative says that it was not for them to endorse
22 any particular alternatives.

23 A. That is correct.

24 Q. Was there, at this meeting, the security explanation put
25 forward as to why hoods should be used?

1 A. Yes, it was.

2 Q. Again being careful about names, please -- use ciphers
3 if necessary -- can you remember who at this meeting was
4 arguing for the continuation of the use of hoods for
5 security purposes?

6 A. The -- as I say, the lead was S034, who stated the UK's
7 position.

8 Q. Can I just understand that in a nutshell? Stating the
9 UK position, was that that it was necessary to use
10 hooding for security purposes?

11 A. Stating the general position that some sensory
12 deprivation -- ie sight deprivation -- was permissible
13 for the purposes of security.

14 Q. S034 was saying that?

15 A. Yes. Now, there was an acceptance that, because of the
16 nature of the complaint, as I say, about plastic
17 sandbags -- the sensitivity of the use of sandbags, in
18 whatever guise, was obviously live, so the UK were
19 looking for alternative methods. So that's what S034
20 led with. The explanation from a legal perspective was
21 given by Major Gavin Davies, as the NCHQ -- the senior
22 headquarters -- legal adviser, and the substance of the
23 requirement, the security risks, was given by S002.

24 Q. Is it the case that at this meeting Colonel Mercer said
25 nothing?

1 A. As I recall, he said nothing, no.

2 Q. Do you recall him walking out of the meeting?

3 A. I don't recall that. He may have done. It was
4 a three-hour meeting, a number of hours. I believe it
5 was three. People may have stopped for coffee. I don't
6 recall.

7 Q. You tell us -- and it's right, is it, and I don't want
8 to expand upon it -- that you have no recollection of
9 stress positions being mentioned at this meeting?

10 A. No -- not specifically, no.

11 Q. Or indeed any other conditioning techniques?

12 A. No.

13 Q. Thank you. You say at paragraph 60 -- can we have that
14 on the screen, please at BMI02902?

15 "... as far as I am aware there was already a ban on
16 all hooding in place when I arrived at Camp Freddie and
17 I certainly did not see anyone hooded when I was there."

18 Are you referring there to the moratorium or to some
19 order that had already been given?

20 A. To the moratorium.

21 Q. You were aware, were you, of an order banning hooding?

22 A. Yes, I was. I mean -- sorry -- S002 told me -- I wasn't
23 aware that hooding was occurring, so I would therefore
24 not be aware that there was an order banning it.
25 I first became aware of the whole issue of hooding when

1 I spoke to S002 and part of his explanation to me was
2 that there was a stop on hooding at that stage.

3 Q. Did you become aware of the GOC's order banning hooding?

4 A. I became aware that the order became firmer, if I
5 can put it like that -- it went from a moratorium to
6 a prohibition -- but how that was conveyed, I can't
7 categorically recall.

8 Q. What you say at paragraph 61 on the screen is that you
9 assume that the order had come verbally from one of the
10 GOC's daily conference calls.

11 A. Yes, that is an assumption based on the fact that these
12 conference calls happened twice daily. An issue of this
13 nature, again I have little doubt that it was briefed
14 verbally over the radio net on what they class as
15 a "Charlie Charlie call" to all components, all
16 elements, so that there was no doubt about the order.

17 Q. It is interesting that you use that phrase "no doubt
18 about the order" because you go on to say, don't you, in
19 this statement, that you are surprised that there's no
20 document recording it.

21 A. I am.

22 Q. What causes you surprise that there's no document
23 recording the ban? Because it was such an important
24 matter?

25 A. Well, clearly -- the issue had caused obviously a number

1 of discussions, both at Um Qasr, at 1 (UK) Armoured Div
2 and at NCHQ. As I said, one would anticipate the matter
3 be raised at a higher level, back into PJHQ and to
4 Whitehall, and in those circumstances and on the basis
5 of there being a meeting with the ICRC, it would seem to
6 me that an order -- a written order of some effect or
7 some documentary evidence of an order being given would
8 have been kept. That's why I base my surprise that
9 there isn't one.

10 Q. Would you go as far as to say there should have been
11 a written order for such an important matter if indeed
12 it had been effectively an SOP hitherto?

13 A. I think, with hindsight, that's something we can say.

14 Q. You go on in your statement to refer to the conversation
15 that you had with Colonel Mercer, which I think you said
16 happened on 8 April --

17 A. That's correct.

18 Q. -- when he told you his view about hooding and the fact
19 that it was not to be countenanced.

20 A. That is correct.

21 Q. But you say to the Inquiry that you told Colonel Mercer
22 that it had been premature to impose a blanket ban on
23 hooding. Why did you take that view?

24 A. I felt that there needed to be a better understanding as
25 to why -- why -- where it came from, where did the

1 background for this particular process come from, you
2 know, what was the history to it and, you know, what was
3 the UK's kind of view on it from a historical
4 perspective. I just felt that it was a significant
5 issue that had led to the ICRC situation and I just felt
6 that it was a national issue, not a component command
7 issue.

8 Q. So on the one hand you expected it, as you have told us,
9 if I can use the shorthand, to go to Government for
10 decision --

11 A. Correct.

12 Q. -- but should the Inquiry also understand that your
13 concerns, expressed indirectly perhaps in a conversation
14 with Colonel Mercer, were that the practicalities of the
15 situation on the ground had also to be considered?

16 A. I just -- yes, I didn't think it had been given --
17 I don't think -- I didn't think it had been given the
18 considered thought that it deserved to have been given.

19 THE CHAIRMAN: Sorry, do you mean the practicalities hadn't
20 been given --

21 A. The whole thing.

22 THE CHAIRMAN: The whole --

23 A. Hooding as a concept or sight deprivation as a concept.

24 MR ELIAS: It had not been thought through enough?

25 A. That was -- I think, the underlying sentiment of my

1 concern was that this was a serious issue and clearly
2 a precipitative decision can set a precedent and without
3 proper thought people can be stymied by what decisions
4 are taken in those circumstances.

5 Q. I understand and I think the Inquiry will understand
6 that answer that you give. I was just seeking to take
7 it, if you can help us, a stage further. Don't agree
8 with what I am putting to you if it's not correct, but
9 was one of your concerns about this the
10 practicalities -- security issues, for example -- were
11 not necessarily being taken into consideration
12 sufficiently in issuing what you describe as a "blanket
13 ban"?

14 A. I did feel that they were being exposed. You know,
15 I was concerned for the organisation and for what it was
16 doing and so, yes, the security issues were prevalent
17 and continuing. No alternative had come to light.

18 Q. I mean, whatever your own view of the situation may have
19 been -- and you have told us that -- would it be fair to
20 categorise this as being, if you like, the legal issue
21 standing against the practicalities of security? Is
22 that in a nutshell how you might have seen it?

23 A. Yes.

24 Q. So between 28 March -- just to clarify this, I am moving
25 on now from those concerns -- and 11 April, did you ever

1 see any prisoner hooded --

2 A. No, I didn't.

3 Q. -- or in anything that could be described as a stress

4 position?

5 A. No, I didn't.

6 Q. Did you see prisoners kneeling?

7 A. I probably would have done throughout the prisoner of

8 war camp. You -- I was there for a period of time and

9 they were in all different positions.

10 Q. I follow. In any of the discussions that you had with

11 S002 or indeed anyone else at Um Qasr, was there ever

12 reference made to double hooding, the use of more than

13 one bag, in other words?

14 A. Not that I recall.

15 Q. Was there ever any reference made to the use of a hood

16 in a way that it would be folded back so that it did not

17 impair breathing?

18 A. Not that I recall.

19 Q. In the time that you were there, did you ever see

20 prisoners arriving at the camp?

21 A. Not arriving, but I certainly did go to the

22 processing-in location.

23 Q. Were prisoners hooded when they were brought --

24 A. No, not that I saw.

25 Q. You didn't see any prisoners hooded brought. Did you

1 ever see or hear of prisoners who had any injury on
2 being brought --

3 A. No.

4 Q. -- to the JFIT?

5 A. No, that issue wasn't brought to my attention.

6 Q. It isn't the case, is it, Colonel Frend, that in fact
7 you saw more of the JFIT than you have told the Inquiry;
8 that is to say that you did see hooding or the use of
9 stress positions?

10 A. No, sir. If I can again put it into context, the role
11 that I went there to perform is to do the filtering
12 process, which took from early in the morning until
13 5/6 o'clock in the evening. Myself, Major Christie and
14 Captain Bowman would then return to the headquarters of
15 PW handling organisation to write up reports. There
16 would then be the O Group -- the orders group --
17 conference call with division.

18 Then at about 11/11.30 I would go down to the JFIT
19 to speak to both S014 and S040 -- different times,
20 different people -- just to see whether there were any
21 issues for me to be aware of. At that stage very little
22 was happening that I saw, so I only went there for maybe
23 half an hour at a time at the end of the day.

24 Q. We are not talking about a massive compound, are we?

25 A. No, we are not. It's small.

1 Q. And you did see prisoners?

2 A. I did see prisoners.

3 Q. To the extent to which you supported, if I can use that
4 shorthand, the use of hooding for security purposes, as
5 you did in conversation with S002, as you tell us, do
6 you think now, looking back on it, that you were wrong,
7 that that indeed is inhumane?

8 A. I think that there is a legal argument for the use of
9 sight deprivation for the limited purposes of security.
10 I suspect that, because of what's happened since,
11 a clear discussion of that point is probably no longer
12 possible.

13 Q. Finally then this: prior to deployment to Iraq, had you
14 ever heard of what is sometimes called the "Heath
15 statement to Parliament"?

16 A. No, I hadn't.

17 Q. You were just not aware of it, were you?

18 A. I wasn't aware of that.

19 MR ELIAS: Thank you very much.

20 THE CHAIRMAN: If you would just wait there a moment,
21 please, you are going to be asked some questions by
22 other counsel. I am sure you understand that.

23 A. Yes, sir.

24 THE CHAIRMAN: Yes, Mr Singh.

25 Questions by MR SINGH

1 MR SINGH: Colonel Frend, I want to start with your
2 training.

3 A. Yes.

4 Q. You referred to training in the law of armed conflict.
5 Does that include the law relating to occupation?

6 A. Yes, it does, but I have to say that before I deployed
7 to Germany as an augmentee my -- the law of occupation
8 was probably one of the least things that I had been
9 exposed to.

10 Q. Were you aware, when you were in Iraq, as a result of
11 your training, that the law of occupation applies not
12 just to prisoners of war but also to civilian detainees?

13 A. I was, yes. I -- Colonel Mercer had brought with him
14 publications in respect of occupation law which we were
15 all using as our source material.

16 Q. Thank you. Were you aware from your training of the
17 distinction between international humanitarian law on
18 the one hand and human rights law on the other?

19 A. Yes, sir, I was.

20 Q. Did you give any consideration to the question of
21 whether human rights law was applicable to British
22 forces in Iraq?

23 A. Yes, I did, but that particular issue, which was
24 a pertinent issue, was an issue which Colonel Mercer was
25 dealing with with NCHQ and PJHQ. So I just slipped in

1 behind him in respect of it.

2 Q. Were you aware, from your training or otherwise at that
3 time, of a judgment of the European Court of Human
4 Rights in a case called Ireland v UK?

5 A. No, I wasn't.

6 Q. You had, at one time, been legal adviser in Northern
7 Ireland, you told us.

8 A. I had.

9 Q. In that context, had you ever come across there being
10 a ban on certain techniques such as hooding and stress
11 positions?

12 A. No, I wasn't aware of that. It wasn't something that
13 came up.

14 Q. In your statement to this Inquiry at paragraph 13 -- if
15 we can have that, please, at BMI02888 -- you say in the
16 middle of that paragraph:

17 "I have always been aware that they [that is stress
18 positions] are something that cannot be used."

19 A. That is correct.

20 Q. On what legal basis did you form that view?

21 A. On the basis that deliberate infliction of pain is
22 clearly inappropriate and is clearly inhumane.

23 Q. So therefore it would be a breach of Geneva Conventions?

24 A. Certainly -- Articles 13, 14 and 17.

25 Q. Can I ask you about hooding and your understanding of

1 that when you were, as I understand it, adviser to
2 S002 -- is that right?

3 A. Yes. It is.

4 Q. Can I ask, please, for a document to be put on the
5 screen, which is MOD022122. Now if we can please,
6 first, look at the following page to see the author of
7 this document. Can you read, Colonel, that it's got
8 "Gavin R Davies" at the end?

9 A. Yes, I can see that.

10 Q. Have you seen this before?

11 A. The first time I saw the second page of that particular
12 document was last summer when I was asked to provide
13 a statement under Rule 9.

14 Q. I see. And the first page ...?

15 A. Some time later when I asked Treasury Solicitors to
16 obtain the first page.

17 Q. All right. The first thing that I want to ask you about
18 is on the first page, MOD022122. In the middle of
19 that -- perhaps we can just have that enlarged a little
20 bit, the paragraph which begins "The length of time":

21 "The length of time spent hooded depends on the
22 number to be vetted and their place in the order of
23 those to be assessed. Those assessed first will only be
24 hooded for an hour or so, but if there are large numbers
25 of potential HVI [I think that's high value

1 intelligence] prisoners those assessed last have on
2 occasion been hooded for a considerable period of time.
3 Those assessed as HVI prisoners remain hooded for
4 a further period prior to interrogation. S002 assesses
5 that during particularly busy periods a total of about
6 ten HVI PW have been held in hoods for up to 24 hours."

7 Were you aware of that kind of period from
8 discussions you had had with S002?

9 A. I wasn't, no. The length of time -- I certainly didn't
10 think it was anything like that and I have to say I was
11 quite shocked by the length of time.

12 Q. Are you sure -- you are telling the truth to the
13 Inquiry, are you?

14 A. No, absolutely. I wasn't at the same location as S002.

15 THE CHAIRMAN: Just remind me, please, somebody, the date of
16 that is ...?

17 MR SINGH: Sir, the exact date is not known, but we will see
18 in a moment that it must be just prior to the ICRC
19 meeting --

20 THE CHAIRMAN: I remember asking the question now yesterday.

21 MR SINGH: It's a briefing for that meeting, it would seem.

22 THE CHAIRMAN: All right.

23 MR SINGH: Can we just look at the next page?

24 That, of course, is 6 April, Sir.

25 Just to get that point, Colonel, perhaps you can

1 just look with me at the final passage just before
2 Gavin Davies' name appears. It does seem to us that
3 that would be a briefing for the purpose of the
4 forthcoming meeting with the ICRC. But I want to ask
5 you about another paragraph, if I may. In the middle of
6 that page, if we can have enlarged the paragraph which
7 begins "I am hoping ...", Major Davies there says:

8 "I am hoping to speak to Maj David Frend (Army Legal
9 Services) who provides legal advice to the JFITs and is
10 currently at the PWHO ... for his assessment of the
11 situation from a legal viewpoint, but I am thus far
12 completely happy with S002's assessment of the
13 situation. I will provide an update immediately I have
14 more information."

15 To your recollection, Colonel Frend, did that
16 conversation take place?

17 A. Major Davies and I did speak, yes.

18 Q. Can you remember what the content of that briefly was?

19 A. I think it was just a discussion over Colonel Mercer's
20 position in respect of the unlawfulness of hooding and
21 whether or not the concept was unlawful per se. That
22 was the nature of our conversation.

23 Q. Did Major Davies not convey to you in that context
24 S002's assessment of the situation?

25 A. No, I -- as I say, I wasn't aware of the timelines.

1 Q. Were you ever aware that hooding could be used, at least
2 in part, for the purpose of maintaining the shock of
3 capture?

4 A. I was aware that that was obviously one of the effects,
5 so therefore that causes great consternation and
6 consideration as to why it is being used in the first
7 place.

8 Q. That leads me on to my next topic. At paragraph 62 of
9 your statement to this Inquiry -- that is BMI02903 -- it
10 is the tail end of paragraph 62, do you see, at the
11 top of the page there -- you refer to this issue,
12 as you have indeed described it this morning to us, as
13 "... an issue of significant national importance which
14 required the highest level direction and guidance from
15 the Ministry of Defence in the UK". To your knowledge,
16 Colonel Frend, did that guidance and direction ever
17 come?

18 A. I'm not aware. My only knowledge of the UK's national
19 position was that provided by S034 in the meeting with
20 the ICRC.

21 Q. From your knowledge, Colonel Frend, are you aware of any
22 reason why such guidance at a national level and
23 direction from Whitehall should not have come?

24 A. I don't know.

25 THE CHAIRMAN: That is perhaps a little beyond his rank at

1 the time.

2 MR SINGH: Indeed, yes.

3 A. Quite so, Sir.

4 Q. I want to finish with this topic, if I may. It is your
5 statement at paragraph 49 at BMI02898. You say that:
6 "I was never asked to advise on how they could and
7 could not treat detainees."
8 This is JFIT.

9 A. Yes.

10 Q. "Although I did not see the JFIT questioning anyone,
11 from what I was told the interrogators had a variety of
12 approaches to questioning ..."
13 Who are you referring to when you say "what I was
14 told" -- and bear in mind that names may not be
15 appropriate. Ciphers are fine if that is necessary.

16 A. No, no, I can't recall specifically, but it would have
17 been a combination of S002, S014 and S040.

18 Q. It is right, is it, what you there summarise, that "...
19 none of it involved more than what I considered to
20 amount to an angry cross-examination"?

21 A. That was the impression I gained, yes.

22 Q. Did they use that phrase?

23 A. No, no, that's my interpretation. I mean "shouting
24 angrily" would have been probably their phrase.

25 Q. Swearing?

1 A. I don't know.

2 Q. Did you ask?

3 A. No, I didn't.

4 Q. Threats?

5 A. No, that would be inappropriate.

6 Q. Did you ask?

7 A. No.

8 MR SINGH: Thank you very much.

9 Sir, those are my questions.

10 THE CHAIRMAN: Thank you.

11 Ms Dobbin, do you want to ask some questions?

12 MS DOBBIN: No, thank you.

13 THE CHAIRMAN: Thank you very much. Ms Edington, do you

14 want to ask some questions?

15 MS EDINGTON: Please, Sir, if I may.

16 Questions by MS EDINGTON

17 MS EDINGTON: Colonel Frend, today you said that you went

18 down on 28 or 29 March to the JFIT; is that right?

19 A. It would have been the 29th if Colonel Mercer's diary is

20 contemporaneous.

21 Q. Colonel Mercer had been down at the JFIT that morning,

22 had he not?

23 A. That's my understanding, yes.

24 Q. Had you seen him in the intervening time between him

25 coming back and you going down?

1 A. No. A radio message was received to me from him from
2 Um Qasr, directing me to travel down by the fastest
3 possible means to Um Qasr.

4 Q. Did you not think to ask him as to why he wanted you to
5 go down in the fastest possible means on 29 March?

6 A. He made it clear. It was to be there in order to start
7 the filtering process on the Sunday.

8 Q. Were you aware that that was the day that he then wrote
9 to the general officer commanding about both the
10 tribunals and the fact that he had seen hooding and
11 stress positions in the JFIT?

12 A. No, he did not mention that to me on the radio.

13 Q. When did S002 then tell you that there was a moratorium
14 on hooding?

15 A. It would have been over the next few days. I can't
16 recall exactly, but it was very soon after I arrived.
17 It wasn't the day I arrived, but it would have been soon
18 thereafter.

19 Q. And do you know who imposed that moratorium, so far as
20 you are aware?

21 A. No, I -- the message was conveyed to me by S002.

22 Q. And were you party to anything to do with S002's
23 memorandum to Colonel Mercer on 30 March?

24 A. No, I wasn't. I saw that subsequently.

25 Q. The pre-deployment conference that you went on, where

1 you met S002 prior to your deployment to Iraq, had he
2 given you any impression that blindfolding was
3 acceptable at that stage?

4 A. No. There is a matter I would like to speak about,
5 which I can't speak in public, just to put into context
6 what my role was. But issues of that nature were not
7 part of what discussion was about.

8 MS EDINGTON: Thank you. I need go no further at that
9 stage. But Colonel Mercer wasn't at that meeting. It
10 was merely you because Colonel Mercer and Major
11 Dick Christie had gone to Kuwait.

12 A. Yes, and the PJHQ lawyer, Colonel Clapham, was also
13 present.

14 Q. Thank you very much.

15 It would be fair to say that Colonel Mercer's
16 attitude to hooding and blindfolding was much the same.
17 It was prohibited in any event.

18 A. That is correct.

19 Q. And he's never waived from that in your discussions with
20 him, has he?

21 A. No, no -- as far as I'm aware, no.

22 Q. Basically, the first moment the discussion came up, he
23 said it was a complete no-no?

24 A. Yes.

25 Q. You were aware obviously through your discussions with

1 Major Christie and you had a view, having been spoken to
2 by S002. Would you say you were influenced by S002's
3 attitude to blindfolding and hooding?

4 A. No, I felt that my position was -- as a legal adviser
5 was to listen to the information, the justification, the
6 explanation and then to form a basis -- a view based on
7 the information I'd received looking at the instruments.

8 Q. But you didn't see fit to talk to Colonel Mercer about
9 it until after the ICRC meeting on 6 April, on 8 April?

10 A. There was no real -- there was no ability to speak to
11 him about it.

12 Q. Were you aware that the general officer commanding
13 1 (UK) Div banned hooding on about 3 April via a Charlie
14 Charlie radio message?

15 A. I became aware. I assumed that was the methodology that
16 he used.

17 MS EDINGTON: Thank you very much.

18 THE CHAIRMAN: Thank you.

19 Mr Garnham?

20 Questions by MR GARNHAM

21 MR GARNHAM: Thank you, Sir. May I have on the screen,
22 please, paragraph 49 of this witness' statement?

23 Colonel Frend, you will see that the early part of
24 paragraph 49 has been redacted.

25 A. That is correct.

1 Q. I don't want you, in answering the question that
2 follows, to reveal what's underneath that redaction.
3 A. I understand.
4 Q. You have said that part of your duties were to advise
5 S002.
6 A. That is correct.
7 Q. Was that solely -- and a "yes" or "no" answer will do
8 for these purposes, I think -- in relation to his duties
9 at Um Qasr?
10 A. No.
11 Q. You were also advising him in relation to other duties
12 unconnected with that detention facility?
13 A. That is correct.
14 Q. Where was S002 based?
15 A. 1 (UK) Armoured Division main headquarters.
16 Q. Which was where at the time?
17 A. At the time -- 28 March -- it would have been 70-odd
18 kilometres or miles -- I don't know -- to the west of
19 Um Qasr, quite a distance.
20 Q. In the desert?
21 A. In the middle of nowhere, yes.
22 Q. When you were based for those -- was it six days at
23 Um Qasr --
24 A. Yes, it would have been.
25 Q. -- when you were based at Um Qasr for that period, where

1 did you sleep?

2 A. I slept in the British forces accommodation to the
3 north-west of the compound with the guard force and
4 other personnel.

5 Q. So in the prisoner of war camp not the JFIT?

6 A. No.

7 Q. Is the answer to my question "yes" in fact? Are you
8 agreeing with me?

9 A. I am agreeing with you. I apologise.

10 Q. Where were you spending your working day?

11 A. To the east --

12 Q. Which of the two parts --

13 A. Sorry.

14 Q. -- of that site, the JFIT or the prisoner of war camp?

15 A. The prisoner of war camp, at the very bottom of it where
16 we had the tent for the filtering process.

17 Q. How much time each day were you spending in the JFIT?

18 A. No more than half an hour at the very end of the day.

19 Q. And what was the purpose of your visits to the JFIT?

20 A. To ensure or to see how things were going and to see
21 whether there were any issues that had arisen and also
22 to see whether there were any matters upon which my
23 advice was required, primarily connected with my
24 overarching responsibility towards S002.

25 Q. Where were you spending your time when you spent half an

1 hour? What part of the JFIT were you --

2 A. The operation command tent.

3 Q. How much time would you spend walking around the JFIT?

4 A. The time it took me to get from the gate to get into the

5 tent.

6 Q. What was visibility of the JFIT like from the prisoner

7 of war camp?

8 A. There was quite a high berm round it, with the only

9 entrance that I ever saw through a barrier which faced

10 the command centre of the PW handling organisation.

11 Q. What was the lighting like at night-time in the JFIT?

12 A. There was lighting, but it wasn't great.

13 Q. What time was dusk?

14 A. It would have been 5.30/6 o'clock.

15 Q. And what time were you visiting?

16 A. 11.30/12 at night -- midnight.

17 Q. What was the temperature, can you remember, in rough

18 terms, in that part of Iraq at the end of March?

19 A. During the day it would have been between 35 and

20 40 degrees outside of the shade.

21 Q. And at night?

22 A. 20-odd degrees.

23 Q. Similar for the first week of April?

24 A. Similar, yes.

25 Q. You have told us some of the factors which, in your

1 view, were relevant to the question of whether hooding
2 per se was lawful or inhumane.

3 A. Yes.

4 Q. You have included at different times during your answers
5 to Mr Elias considerations of temperature --

6 A. Yes.

7 Q. -- the period of time the hood was in place --

8 A. Correct.

9 Q. -- and whether the prisoner was otherwise free to move
10 about.

11 A. Correct.

12 Q. Were there any other considerations, any other factors,
13 which you regarded relevant to the question of whether
14 or not hooding was unlawful per se?

15 A. Who else would have been around at the time, the
16 interrogators.

17 Q. You said, in that concluding answer to Mr Elias, that
18 the debate on hooding concerned the legal issues against
19 the practicality of security. You agreed with an
20 assertion from Mr Elias to that effect.

21 A. I did.

22 Q. Did you regard the practicalities of security as
23 themselves relevant to the legal issue?

24 A. Yes.

25 Q. Finally this -- and I don't propose to spare your

1 blushes -- did you receive a reference from
2 Colonel Mercer at the conclusion of your detachment with
3 him?

4 A. An insert slip, yes.

5 Q. Did that reference or that report conclude with these
6 words, "Major Frennd has had an outstanding tour.
7 Resourceful, intelligent and with boundless energy, this
8 officer has considerable potential for the future"?

9 A. Yes.

10 Q. Did you, at any stage, ever receive criticism for your
11 conduct from Lieutenant Colonel Mercer?

12 A. No, we had discussions -- heated discussions at times,
13 but never criticism.

14 MR GARNHAM: Thank you very much. Thank you, Sir.

15 THE CHAIRMAN: Yes.

16 Further questions by MR ELIAS

17 MR ELIAS: Just this Colonel. Forgive me if I didn't quite
18 follow. You were asked what other circumstances -- what
19 other factors -- may affect, as I understood it, whether
20 putting a hood on a prisoner was inhumane. Mr Garnham
21 put to you temperature, time and free to move about, as
22 you had already said. But you added to that list who
23 else would be around at the time. What did you mean by
24 that?

25 A. I mean the interrogators themselves -- clearly their

1 identity is of concern, if somebody is to see who they
2 were and likewise the other prisoners.

3 Q. Well, that's the security issue.

4 A. Yes. I am probably conflating issues.

5 Q. That doesn't go to the question of inhumane or not, does
6 it?

7 A. No, no, sir.

8 MR ELIAS: Thank you very much. Thank you.

9 THE CHAIRMAN: Well, I have no questions for you, Colonel.
10 Thank you very much for coming to the Inquiry and giving
11 your evidence. Those are all the questions that you are
12 going to be asked and you are now free to go with my
13 thanks.

14 A. Thank you, Sir.

15 THE CHAIRMAN: Thank you.

16 MR ELIAS: Sir, the next witness will be with us at
17 2 o'clock.

18 THE CHAIRMAN: Yes, well, two days running we have had a
19 longer lunch break, but I will have to bear that with as
20 much fortitude as I can.

21 (12.44 pm)

22 (The short adjournment)

23 (2.00 pm)

24 THE CHAIRMAN: Yes.

25 MR ELIAS: Sir, I call David George Christie. Mr Christie,

1 please.

2 THE CHAIRMAN: Yes. Would you be kind enough to stand up?

3 Thank you. I will ask that you take the oath please.

4 DAVID GEORGE CHRISTIE (sworn)

5 THE CHAIRMAN: If you would be kind enough to sit down now,

6 Mr Christie, and speak into the microphone. In that way

7 we will all be able to hear you.

8 Thank you.

9 Questions by MR ELIAS

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

11 please?

12 A. David George Christie.

13 Q. I think it's right to say that you left the army in

14 October 2003.

15 A. Correct.

16 Q. Mr Christie, would you please have a look at the folder

17 which I hope is to your right. You should find there

18 copies of the two statements that you have made to this

19 Inquiry. If you look, please, at the first and to the

20 last page of that, which is our BMI04869, do you find

21 your signature above the date 7 September of last year?

22 A. Yes, that's my signature.

23 Q. Then, as to the second statement, BMI07216, do we find

24 your signature above the date of 16 February?

25 A. That's correct.

1 Q. When you signed those statements, Mr Christie, were you
2 attesting that the contents of them were true to the
3 best of your knowledge and belief?

4 A. I was.

5 Q. Thank you. I would like to put them aside for a moment,
6 please. The Inquiry has read those statements and
7 I don't propose by any means to go through every dot and
8 comma that is contained in them, but to take you to
9 certain aspects of matters that you can help us with.

10 First of all, dealing very briefly with your
11 background, I think you joined the army, you tell us, in
12 February 1999.

13 A. That is correct.

14 Q. Appointed to the rank of captain?

15 A. Yes.

16 Q. You attended the professionally qualified officers'
17 course at Sandhurst.

18 A. Yes.

19 Q. What professional qualification did you have?

20 A. I was a solicitor.

21 Q. You were then attached to an infantry unit for three
22 months, 1 QLR, then based in Northern Ireland.

23 A. Yes.

24 Q. Your first legal posting, you tell us, was to the Army
25 Prosecuting Authority in Uxbridge in September 1999.

1 A. That's right.

2 Q. In March of 2002, you were posted to HQ 1 (UK) Armoured
3 Division as SO2 legal ops.

4 A. That's correct, yes.

5 Q. At that time were you promoted to acting major?

6 A. Yes.

7 Q. Was that the position that you retained until you left
8 the army in October of 2003?

9 A. It was.

10 Q. Thank you. Your role in Iraq in 2003, what was your
11 role there?

12 A. I deployed initially as one of the legal advisers to
13 1 Div. The initial deployment was Lieutenant
14 Colonel Mercer, who was my CO, and myself on the legal
15 side. We were there to advise the division on legal
16 issues.

17 Q. Were you, as it were, directly answerable to
18 Colonel Mercer?

19 A. I was, yes.

20 Q. And you worked alongside, did you, the last witness,
21 David Frend, amongst others?

22 A. David Frend was one of the other SO2s that deployed out
23 to theatre, I think slightly later than myself and
24 Colonel Mercer.

25 Q. When did your tour of duty in Iraq come to an end?

1 A. I can't remember the exact date, but it was towards the
2 end of May of 2003.

3 Q. And at that stage you left Iraq, did you, entirely?

4 A. Yes. I went back to Kuwait and flew immediately back to
5 Germany via Cyprus.

6 Q. Can I just ask you a little about your day-to-day role,
7 if you like, in Iraq? If we look at paragraphs 33 and
8 34 of your first statement at BMI04850, you say you were
9 the legal adviser to the prisoner of war handling
10 organisation with no formal command responsibility in
11 your role. You were assigned a number of administrative
12 assistants.

13 A. That is correct, yes.

14 Q. Did you provide advice -- legal advice -- in relation to
15 the physical, if you like, handling of prisoners?

16 A. My advice in that role was to the PWHO in general --

17 Q. I don't know whether you are just slightly off the
18 microphone. I wonder if I could ask you to sit a little
19 closer to it or just move it, but your voice I don't
20 think is carrying.

21 A. I will do my best. With your guidance, I will hopefully
22 speak up a little.

23 Q. I think you can move the microphone a little towards you
24 or up or down or whatever you need, if you wish to.

25 A. My role at the PWHO was to provide legal advice in

1 relation to all aspects of its function. It was, as
2 I describe in my statement, a unit -- a rather ad hoc
3 unit -- that was generated during the build-up to the
4 invasion of Iraq. Therefore, I would provide legal
5 advice as and when required.

6 In terms of handling prisoners, certainly I provided
7 advice consistent with GC III, that prisoners should be
8 treated humanely. I recall observing some training that
9 was given by the MPS -- the military provost staff -- in
10 terms of the physical handling of prisoners and assuring
11 myself that they were adopting the appropriate -- well,
12 certainly following the advice that all use of force
13 should be proportionate by way of an example.

14 Q. Mr Christie, you are helpfully running ahead of my
15 questions I think --

16 A. I do apologise.

17 Q. It is no problem. Just let me come back to one or two
18 of the matters we have touched on.

19 You tell us in your statement -- and I don't want to
20 go into it. I don't think it is relevant to this
21 Inquiry's concerns anyway -- that, for example, part of
22 the matters that you advised on was a potential or
23 perhaps actual agreement between the UK and US
24 governments on the handling of prisoners, matters of
25 that kind.

1 A. Yes.

2 Q. So your responsibilities went certainly much wider from
3 your statement than, for example, advising on what might
4 be called the day-to-day on-the-ground handling of
5 prisoners physically, as it were?

6 A. Very much so. There was a lot of build-up prior to
7 deployment.

8 Q. I think the Inquiry understands that. You yourself were
9 LOAC trained, were you?

10 A. I received the usual training that anybody in the army
11 receives -- the ITDs or individual training directives.

12 Q. On an annual basis?

13 A. Indeed.

14 Q. Did that include training in the law of armed conflict?

15 A. It did, yes.

16 Q. Was there any specific message that you gained from that
17 in relation to the handling of prisoners?

18 A. Generally the overarching message was that prisoners
19 should be treated humanely and that the nature of the
20 LOAC training in terms of the ITD training was generally
21 at that sort of high level.

22 Q. Were you, in Iraq, yourself one of those who gave LOAC
23 training to the troops on the ground?

24 A. I was. The training that was provided came from
25 division, I think. Colonel Mercer wanted to roll out as

1 much training as possible to all of the units that were
2 going forward. I believe that the legal officers
3 attached to division were responsible for training the
4 frontline units, if I can term them that. My
5 responsibility was to provide that same training to the
6 PWHO, so all of the units that were attached to the
7 PWHO. So I didn't travel around and do any additional
8 training, but concentrated on the troops there.

9 Q. And the troops at PWHO, would you have given them that
10 core message that you had yourself obtained from LOAC
11 training, humane treatment of prisoners?

12 A. Yes. I did that in verbal briefings to ensure that
13 everybody had received that face to face, as it were,
14 and also I drew up a written -- a short-form summary of
15 GC III.

16 Q. Did you have any reason to believe that those who you
17 were training did not understand the message that you
18 were giving them in relation to LOAC and humane
19 treatment?

20 A. No reason, no.

21 Q. You touched on training -- and the Inquiry heard about
22 this this morning from another witness, as you may
23 know -- by the MPS. Were you actually present when that
24 training was given on any occasion?

25 A. From my recollection, I certainly didn't undertake the

1 training myself or sit in through an entire session, as
2 far as I can recall. I can remember the MPS either
3 running through some of the training or maybe me
4 catching part of a session and I had quite a close --
5 a good working relationship with their OC,
6 Captain Neil Wilson. But sitting here seven years --
7 that's as much as I can remember.

8 Q. Time has flowed and I understand it. Please say if you
9 don't remember, but did any of the training that you may
10 have heard or overheard, if you like -- did any of the
11 training from the MPS cover issues such as the use of
12 hoods for prisoners or the use of stress positions, do
13 you remember?

14 A. Certainly not -- nothing of that nature, no. The only
15 restraint that I recall their training covering was the
16 use of plasticuffs.

17 Q. Had you, prior to deployment to Iraq, been trained in
18 the use of any of the techniques that this Inquiry has
19 been concerned with; that is to say hooding of prisoners
20 or the use of stress positions?

21 A. No, none of the techniques at all.

22 Q. So is this correct -- and please don't accept it because
23 I say it -- do you tell the Inquiry that you were not
24 trained, as it were, that hooding was or was not
25 permissible, that stress positions could or could not be

1 used; the issue simply wasn't addressed with you at any
2 stage in any way?

3 A. No, I don't recall receiving any training on
4 interrogation whatsoever. Therefore how interrogation
5 may or may not be conducted was something that simply
6 wasn't touched on in my training.

7 Q. From your answer, should the Inquiry understand that you
8 regard the use of hooding or stress positions or indeed
9 perhaps sleep deprivation and other conditioning
10 techniques as being tied to interrogation?

11 A. I think that's probably my understanding of the
12 Inquiry's concern. I think, of course, you could use
13 any technique in any situation and you go back to GC III
14 and the overarching principles of treating people
15 humanely outside of those issues.

16 Q. Yes. Can you recall this? At the time of your
17 deployment to Iraq, would the term the "shock of
18 capture" have meant anything to you?

19 A. I think I mention in my statement that I was only aware
20 of that through general military literature, that type
21 of -- those type of books. I hadn't been trained in it.
22 I don't think -- certainly I don't recall it being
23 mentioned to me as an issue prior to my deployment to
24 Iraq.

25 Q. Were you aware at that time -- I am not suggesting you

1 should have been, but simply asking -- were you aware at
2 that time, your deployment to Iraq, that quite a number
3 of years before the Government had banned the use of the
4 techniques that we have just been talking about?

5 A. I really can't recall whether I was or I wasn't. It
6 certainly was not high on my priority list -- I can
7 certainly say that -- and I don't recall ever having
8 received specific training in those -- in that
9 particular issue.

10 Q. What you do tell us from your statement -- I don't think
11 we need to go to it, at least not for my purposes, in
12 detail -- you do say that you had received, through
13 courses in the law of armed conflict, which Army Legal
14 Service personnel in particular would attend, quite
15 detailed tuition in elements of treatments of prisoners
16 bringing in the Geneva Convention and matters of that
17 kind.

18 A. I went on two specific courses which were open only to
19 ALS officers, Army Legal Service officers. One was at
20 the University of Nottingham -- and that was
21 a week-long-course -- and the other was at San Remo, the
22 Institute of Humanitarian Law. So those were focused
23 directly at army lawyers or military lawyers and
24 therefore would go into military law in more detail than
25 the ITDs or the annual training did.

1 Q. Yes. Now I want to move to your deployment and directly
2 to Um Qasr. When you went to Um Qasr, do you remember
3 when it was?

4 A. I remember that the PWHO was due to move to Um Qasr in
5 two stages. The first stage was very much to put a foot
6 on the ground and ensure that the actual camp location
7 was secure. The majority of the headquarters were due
8 to move forward slightly later on, once that had been
9 established.

10 I think the advance party went in under the cover of
11 the MEF, Marine Expeditionary Force, the US forces that
12 were --

13 Q. Were you part of the advance or were you the second
14 wave?

15 A. I fell between the two, in fact. I was due to be part
16 of the second wave, but then, when the advance wave
17 arrived, there were prisoners already there, civilians
18 there, and I was called forward to join the advance wave
19 to provide advice on how they ought to be dealt with.

20 Q. You say in your statement to this Inquiry that when you
21 arrived at the PWHO in Um Qasr for the first time, there
22 were already 500 prisoners there being or waiting to be
23 processed.

24 A. Approximately so.

25 Q. And the Inquiry has heard some evidence -- I am not

1 going to take you through any detail of this, but some
2 evidence -- that putting it perhaps mildly, things were
3 in a state of relative unpreparedness for that.

4 A. I think that's a fair comment. I recall that there was
5 meant to be a 24-hour moratorium on the PWHO receiving
6 any prisoners of war to allow it to set up because, of
7 course, the whole camp was being set up from scratch.
8 So to deal with prisoners whilst actually building the
9 camp in which to contain them would -- was a difficult
10 task.

11 Q. It obviously posed problems.

12 A. Indeed, indeed.

13 Q. Now, did you remain at the camp at Um Qasr, having
14 arrived there?

15 A. I was based there throughout my time.

16 Q. Yes.

17 A. Yes.

18 THE CHAIRMAN: I don't think you told us what date you
19 actually arrived at Um Qasr. Can you remember?

20 A. Sir, I am struggling on the exact date, but I think it
21 was -- with reference to the invasion -- probably D
22 plus 1, possibly D plus 2.

23 THE CHAIRMAN: "D" being 17 March, is it?

24 A. I think it was a little later than that. My
25 recollection is I think it was around the 20th, but

1 I can't be exact.

2 MR ELIAS: All right.

3 At all events you were there, were you, when the

4 JFIT arrived at the camp?

5 A. I certainly would have been based at the camp when they

6 arrived. I can't recall the exact timing as to when

7 they came.

8 Q. But you can remember them setting up their camp within

9 a camp, if you like, can you?

10 A. Certainly I can remember that being created, yes.

11 Q. And the purpose of that? Was that to -- can I use the

12 term -- hive off the high value prisoners --

13 A. Yes, I think that's fair --

14 Q. -- for interrogation?

15 A. Their role was to interrogate prisoners and, therefore,

16 they had the segregated unit within the camp to do that.

17 Q. Did your role involve in any way advising the JFIT

18 element of that operation?

19 A. The advice that I provided to JFIT was just the same

20 advice that I provided to all of the members of the

21 PWHO, giving them the generic briefing on GC III and law

22 of armed conflict.

23 Q. Humane treatment?

24 A. Indeed. I didn't give any advice on how they were to

25 conduct their own processes, specifically interrogation,

1 because that was something that I hadn't been trained on
2 myself.

3 Q. So before arriving at Um Qasr -- if we could take you
4 back to that time -- had you received any training or
5 did you have any view about the rights and wrongs of
6 hooding prisoners/detainees?

7 A. No. At the time we deployed I wasn't aware that was
8 going to be an issue at all, so consequently the
9 specific issue of that hadn't, I would say, been
10 considered.

11 Q. So it was never an issue that had been raised with you
12 about which you had been trained or for which indeed you
13 had been prepared in any way?

14 A. No, that is correct.

15 Q. Would the same apply to the use of stress positions?

16 A. Yes, that would.

17 Q. You know what I mean by "stress positions"?

18 A. Again, only from my reading of military fiction and the
19 like.

20 Q. So, again, you had not been given any instruction --

21 A. No.

22 Q. -- in that context?

23 A. Nothing at all.

24 Q. Did you ever see prisoners hooded?

25 A. I can recall seeing prisoners -- on one occasion seeing

1 prisoners hooded between their transport and them being
2 led to the JFIT. That's the recollection that I have of
3 seeing people with hoods on.

4 Q. So was that something that you saw on one occasion or
5 was that, as it were, what happened when prisoners
6 arrived?

7 A. I can't recall seeing prisoners arrive on a regular
8 basis. I was often located away from the main entrance
9 to the camp and I don't think that I saw that on more
10 than one occasion. It could have been a small number of
11 times, but I can't really remember that far back.

12 Q. And this was a number, was it, on the one occasion that
13 you perhaps can clearly remember, if I understand your
14 evidence correctly?

15 A. As I recall, it was a number. I am afraid I can't put
16 an estimate on that number, but certainly more than one
17 or one or two. Maybe half a dozen, but it could be more
18 than that.

19 Q. Was this the first time you had ever seen men hooded in
20 this fashion?

21 A. That was the first time I had seen it.

22 Q. What effect did it have on you?

23 A. It was something that obviously I hadn't come across
24 before. I had to make an assessment of it and needed to
25 understand why it was being done.

1 Q. Did it shock you?

2 A. I don't recall being shocked, and certainly the way the
3 prisoners -- my recollection of the way the prisoners
4 were being handled, aside from the hood, was that they
5 were all very compliant, there was no use of force or
6 any behaviour towards the prisoners that caused concern
7 aside from the use of hoods itself.

8 Q. What were they hooded with?

9 A. Hessian sandbags.

10 Q. Were they restrained in any other way apart from hoods?

11 A. I can't now recall, but I know that prisoners were -- or
12 had been -- restrained by plasticuff on occasions when
13 deemed necessary at the prisoner of war camp, so I can't
14 recall whether this was the case here or not.

15 Q. What, you had seen prisoners plasticuffed, had you, from
16 time to time?

17 A. I had, yes.

18 Q. You can't remember whether these were or not?

19 A. I can't, no.

20 Q. On this occasion that you saw the hooded prisoners
21 arriving, as I understand it, and being taken within the
22 JFIT -- correct?

23 A. Correct.

24 Q. -- that was something that would have been seen, would
25 it, by anyone who happened to be passing by?

1 A. It certainly wasn't done in any covert --

2 Q. It wasn't a furtive action?

3 A. Indeed not, no.

4 Q. When you saw it, did you consider from the legal

5 standpoint whether this was lawful?

6 A. I know I did at some point very shortly thereafter.

7 I can't now remember the exact sequence of events

8 because obviously other people saw hooding around and

9 about, I would presume, the same time and the issue got

10 raised a little bit more widely than my own knowledge.

11 Q. And you were aware of the Red Cross issue, were you?

12 A. I was aware the issue came up with -- both inside the

13 PWHO with -- I think it's S009 and also Colonel Mercer

14 at division and then the Red Cross as well raised their

15 concerns.

16 Q. When you saw it, given the training that you had had

17 through the ITDs, through LOAC, did you consider that

18 hooding might be inhumane?

19 A. I did go back and try and look into the issue a little

20 more widely with the resources that I had available to

21 me.

22 Q. Forgive me, I am going to come to that, what steps you

23 may have taken and what authority, as it were, you may

24 have consulted --

25 A. Mm-hm.

1 Q. -- but when you saw it yourself, did you consider that
2 this might be inhumane?

3 A. I don't recall exactly. I don't think I had a violent
4 reaction -- because I'm sure I would have remembered
5 that -- to feel the need to rush up and stop or perhaps
6 intercede at that particular time. I think it gave me
7 a concern to see whether this was a legitimate activity
8 and therefore whether it's legitimate within GC III,
9 whether it would be humane or not. But that was
10 probably part and parcel of the then research or then
11 digging about that I did following that incident.

12 Q. So it was enough to raise questions in your mind, was
13 it?

14 A. I think it raised a concern that this needed to be
15 looked into. It certainly didn't give me the impetus to
16 rush across and stop it immediately, if that assists.

17 Q. You say in your statement to the Inquiry that the
18 short-term use of sandbags in this way did not seem
19 inhumane.

20 A. That was my conclusion after I had spoken to the people
21 who were using the sandbags or -- I think -- I don't
22 know how that information came out, but I became aware
23 of the use that they were being put to and also my
24 research in terms of documents I had.

25 Q. What did you mean when you said to the Inquiry

1 "short-term use of sandbags did not seem inhumane"?

2 What did you mean by "short-term"?

3 A. I think if there was a need to protect operational
4 security for a short period of time, then it would be
5 permissible for blindfolds to be used. If the only
6 practical means of blindfolding somebody was to use
7 a sandbag as a hood, then that would be an appropriate
8 and therefore not an inhumane approach to take.

9 Q. Just to take two points from that answer, if I may.
10 Does it follow that if security required a prisoner to
11 be hooded for two hours, that you would regard that as
12 being appropriate?

13 A. Yes, I think I probably would.

14 Q. And if it was six hours?

15 A. Again, depending on the circumstances, I would need to
16 know more information -- food, watering, breaks, ability
17 to breathe, that sort of information. The longer the
18 time goes on, the more concern, of course, you have that
19 the appropriate -- the technique is not becoming -- or
20 not being used appropriately.

21 Q. Would you agree that it may be inhumane to hood from the
22 first minute? Whatever the purpose of it, it may be
23 nonetheless inhumane?

24 A. I think if that was -- if that was a rule or that had
25 been laid down by the Convention, then my

1 understanding -- my interpretation of the Convention was
2 not aligned with that.

3 Q. I am not really asking for the interpretation of the
4 Convention at the moment, but your view about it, your
5 view as to what you saw.

6 A. No, I thought that, appropriately used, sandbags would
7 not be regarded as inhumane and therefore not from the
8 first minute.

9 Q. Do you know whether, when you saw detainees hooded, they
10 were hooded with one bag or more than one?

11 A. I assumed it was one, but that's only an assumption
12 because I didn't see them sufficiently close up to see
13 the details.

14 Q. You can't help, can you, as to whether bags were ever
15 folded in two, as it were?

16 A. It is not something that I can recall, no.

17 Q. Now you told us a moment or so ago that from what you
18 understood -- if I can paraphrase what you were
19 saying -- hoods were being used for security.

20 A. That's correct.

21 Q. Bearing in mind, please, a caution you will have been
22 given, I am sure, about the use of names and the use of
23 ciphers -- if you have any doubt about matters, please
24 pause -- who was it who told you that sandbags were
25 being used for security purposes?

1 A. I can't now recall the specific conversation, but I do
2 know that I discussed the issue with S009,
3 Colonel Mercer, and I may also have discussed it with
4 another soldier who has a ciphered name.

5 Q. Do you have a list of ciphers there? If not, I will ask
6 that the usher bring it to you.

7 A. I don't, I am afraid.

8 Q. Let the witness, please, have the list. Thank you for
9 taking care with that. (Handed)

10 A. Yes, S040.

11 Q. So from these sources -- is this a fair summary -- you
12 understood that hooding had been adopted for security
13 purposes?

14 A. That's correct, yes.

15 Q. Did you actually raise any questions as to how long
16 hoods may be employed in respect of any particular
17 prisoner for security purposes?

18 A. I can't recall now whether that was a question that was
19 asked or not.

20 Q. In any of the discussions that you had with those
21 persons who you have named or ciphered, was there any
22 other explanation ever put forward other than security
23 purposes as the reasons for hooding?

24 A. Not to me, no.

25 Q. Did you ever hear any discussion about prolonging the

1 shock of capture by hooding?

2 A. Not that I can recall, no.

3 Q. Did your researches -- you told us you went and made
4 inquiries and ferreted around -- did they disclose any
5 doctrine which justified the use of hoods?

6 A. The only reference -- or the reference that I found that
7 I thought was most relevant was in a JSP -- joint
8 service publication -- 383. That made a reference to
9 blindfolding being acceptable in certain situations
10 generally, I think -- well, specifically for where there
11 were security concerns.

12 Q. Can we have a look, please, at MOD036433? This is
13 a document which I think we looked at yesterday. It is
14 JSP 383, the document to which you just referred, part
15 of it, "Manual of the Law of Armed Conflict". If we go
16 down to 8.34, we see under the heading
17 "Interrogation" -- do you see that heading?

18 A. Yes.

19 Q. If we go over the page, please, to 8.34 and to look
20 particularly at 8.34.2:

21 "Blindfolding and segregation may be necessary in
22 the interests of security, the physical restraint of
23 prisoners of war or to prevent collaboration prior to
24 interrogation, but these discomforts must be truly
25 justified and be for as short a period as possible."

1 Was that the passage that you had in mind?

2 A. I think this is the 2004 version.

3 Q. It is.

4 A. So I would have been working from a different version.

5 Certainly that's the thrust of the passage that I recall

6 finding.

7 Q. And the true justification for, for example, using

8 sandbags over the head, as opposed to perhaps cutting

9 them into strips and using them as blindfolds, what was

10 that, in your view?

11 A. My recollection is that blindfolds or strips of material

12 could slip and therefore not actually fulfil the

13 function that they were designed to do, to prevent the

14 prisoner from seeing. Therefore, from a pragmatic view,

15 given the timing very early on in the piece, sandbags

16 were thought to be the effective approach to

17 blindfolding.

18 Q. So presumably that was something that you were being

19 told by those who were operating the system?

20 A. Absolutely. One can only advise on instructions, as it

21 were, and those were the instructions that I was

22 receiving.

23 Q. So should the Inquiry understand that those would have

24 been the explanations given to you, what, by S040, S014,

25 those who were --

1 A. I think, to be fair, they could have either come from
2 S040, who was the person who was co-located obviously at
3 the prisoner of war camp. I can't be sure whether they
4 were also mentioned in subsequent discussions, for
5 example, when the Red Cross met and discussed the issue
6 more widely.

7 Q. We have been told of a Red Cross meeting on 6 April.
8 Were you present at that meeting?

9 A. I certainly recall being present at one meeting with the
10 Red Cross, but I can't remember what date that
11 particular meeting was.

12 Q. Again, being careful about names and ciphers, if you
13 will, can you remember who else was present at whatever
14 meeting you were at with the Red Cross?

15 A. The people who were present that I recall -- and
16 I think, being a lawyer, I probably over-emphasise my
17 own memory in terms of the other lawyers that were
18 present -- I recall Colonel Clapham from PJHQ being
19 present, Major Gavin Davies from the NCC being present.
20 I think Colonel Mercer was present. There were
21 obviously representatives from the ICRC and there were
22 other military representatives, as it were, from both
23 PWHO, but I can't recall any other persons that were in
24 the tent.

25 Q. At paragraph 81 of your statement to this Inquiry -- can

1 we have that on the screen, please at BMI04863 -- you
2 say:
3 "However, the practice was stopped at some point,
4 following the intervention of the ICRC."
5 That's the practice of hooding, isn't it?
6 A. That's correct.
7 Q. "I cannot now recall the date that this occurred,
8 although it would have been prior to the camp being
9 handed to the US forces. I recall that the issue was
10 raised by ICRC; that they were not happy that the use of
11 a bag over the full face was appropriate and that
12 blindfolding for tactical reasons could be achieved by
13 a less intrusive method."
14 A. Correct.
15 Q. The meeting that you attended, was that the issue, do
16 you recall?
17 A. The issue was very much the cessation of hooding by UK
18 forces.
19 Q. Did you accept the use of hooding for security purposes
20 and accept it as a lawyer?
21 A. I accepted it as a lawyer.
22 Q. Did you discuss that matter with Colonel Mercer?
23 A. I did.
24 Q. And his view was quite the opposite, wasn't it?
25 A. He was very strongly of the view that hooding shouldn't

1 be used at all.

2 Q. That it was unlawful and couldn't be used for any
3 purpose?

4 A. Yes.

5 Q. Would it be fair to say, Mr Christie, that there was, as
6 between the lawyers -- on either side, army officers
7 practically trying to do the job on the ground -- as
8 between the lawyers there were differences of opinion
9 over the legality or otherwise of the use of hoods for
10 whatever purpose?

11 A. There were. I think the differences of opinion were
12 focused on the use of hoods for security purposes,
13 rather than anything more wide than that.

14 Q. Yes. Did you understand the matter was being staffed up
15 to higher authority?

16 A. I did. It gained momentum obviously with the ICRC
17 involvement as well, but certainly prior to that it had
18 started to go up the levels.

19 Q. And how far up the levels did you expect it to go before
20 a decision would be forthcoming?

21 A. I think certainly it would have gone out of theatre back
22 to the UK, so PJHQ plus. I do not know from where and
23 probably didn't have much sight as to what
24 decision-making processes were employed at that level.

25 Q. I asked the question, really, so that we can

1 understand -- this wasn't, as it were, some minor
2 difference of opinion in one area of Iraq that mattered
3 nothing to anyone else, was it? This was rather a large
4 matter of principle.

5 A. I think so. It was obvious that hooding was being used
6 and there was a certain -- certainly a divergence of
7 opinion as to its legality.

8 Q. At the end of your paragraph 81, do you perhaps set the
9 dilemma out in one line, if you like? Can we go over
10 the page? The paragraph goes on:

11 "... one consideration was that there would be
12 a lack of practical alternative."

13 A. I think --

14 Q. Does that really sum up the real dilemma? The law may
15 have been saying one thing, but security and the lack of
16 any other practical alternative appeared to be, as it
17 were, standing in its way?

18 A. Well, I think -- I don't know about the law saying one
19 thing. I think -- my view was that reading the
20 Convention, reading the guidance, if you only had
21 a sandbag as a practical blindfold in that particular
22 circumstance, then it would be lawful to use it. So
23 certainly the practical alternative -- had there been
24 custom-made blindfolds available -- I don't know even if
25 they exist -- then that would have ruled out the use of

1 sandbags in my mind.

2 Q. If they were not inhumane, why was there a need to rule
3 them out at all?

4 A. I think because the whole tenor of using blindfolds was
5 that they should only be used for the shortest period
6 possible, so that there was an overriding need to make
7 sure any interference with the prisoner was kept to an
8 absolute minimum. If you could achieve the same ends
9 with a less intrusive item than a sandbag, then that
10 would be within the -- following the spirit of the
11 guidance and ultimately the Convention.

12 Q. And you would have regarded, would you, blacked-out
13 goggles, for example, as being less intrusive?

14 A. I think I would have done. I don't recall that they
15 were available at the time --

16 Q. No, that's another issue. But you would have regarded
17 them as being less intrusive?

18 A. I think that stands to reason, yes.

19 Q. Can you recall in any of this debate -- whether
20 internally with the lawyers or indeed elsewhere -- the
21 question being raised as to whether there was any danger
22 so far as breathing is concerned involved in the use of
23 hoods and hooding?

24 A. Certainly hoods couldn't be allowed to in any way
25 interfere with breathing. That would be absolutely

1 wrong.

2 Q. Self-evidently.

3 A. Indeed.

4 Q. My question to you was whether there was any discussion
5 about it, as you recall.

6 A. I am trying to recall that. I can't specifically recall
7 any discussion on that topic.

8 Q. Thank you. Can we just go to the end of paragraph 82,
9 please, on this point, the last four or five lines:

10 "I recall that the outcome of the meeting with the
11 [Red Cross] ... was that there was a pragmatic decision
12 not to continue hooding, but I cannot recall whether
13 a firm decision was reached regarding a UK view on the
14 legal position of the use of sandbags in this specific
15 context."

16 Just taking that, the Inquiry has been told that on
17 or about 3 April it seems an order was issued by
18 General Brims. Were you aware of that?

19 A. Yes. That was the -- my understanding of how this issue
20 was resolved on a local basis, if I can term it that.

21 Q. Yes. Did you understand the order to be a ban on
22 hooding or a ban on the use of anything that deprived
23 sight?

24 A. I can't recall exactly now. It certainly was a ban on
25 hooding. I don't know whether it went any wider than

1 that.

2 Q. You said "It certainly was a ban on hooding". Where did
3 you learn that from?

4 A. Again, it's difficult to recall exactly where
5 I personally learnt it from. I was involved in the
6 debate leading up to that decision and therefore
7 I suppose I was an interested party in its outcome.
8 I can't now recall whether it was briefed through formal
9 channels in terms of whether it came out of an O Group
10 that PWHO sat in or anything of that nature. I can't
11 remember now.

12 Q. Would you agree -- and if, Mr Christie, you feel unable
13 to comment, please say so -- that perhaps an order as
14 important as this was, dealing with the principle as we
15 have already discussed -- that an order of this kind
16 ought to have been disseminated in writing so that there
17 was no doubt about it?

18 A. I think that would be very sensible to have done that.

19 Q. It never was disseminated in any form in writing that
20 you saw, was it?

21 A. Not to my recollection, no.

22 Q. And the second part -- if we just go back to
23 paragraph 82, forgive me. If we can have it on the
24 screen, the last two lines -- you say you can't recall
25 whether a firm decision was reached regarding a UK view

1 on the legal position after this debate internally and
2 it being staffed up. Is it the position that you never
3 received what might be called a "UK Government defined
4 position"?

5 A. As far as I can recall, no. I think that was something
6 that I flagged up right at the end of my tour.

7 Q. Were you ever aware, when at Um Qasr, of hoods being
8 used as, if you like, an aid to interrogation, part of
9 a conditioning process?

10 A. No, I wasn't.

11 Q. Or stress positions being used for that purpose?

12 A. I wasn't.

13 Q. I think in your second statement to this Inquiry in
14 particular you refer to a report on prisoner-handling
15 during Op Telic.

16 A. That's correct.

17 Q. Can we have a look at that, please, at MOD052186? If we
18 go to the last page at MOD052199, the foot of page, we
19 see it's your report and it has the date of 7 May 2003
20 on it.

21 A. Yes.

22 Q. Who was the report written for?

23 A. As far as I can recall, it was written by me shortly
24 before I left theatre, so it was designed to capture my
25 knowledge. The only person that I would be reporting to

1 would be Colonel Mercer.

2 Q. So you would have been producing this report for
3 Colonel Mercer; is that what the Inquiry should
4 understand?

5 A. That's my best recollection, yes.

6 Q. If we go back to the first page, we can see it's headed
7 "Report on prisoner of war handling during Op Telic".

8 A. Yes.

9 Q. Was this intended to be, if you like, an assessment of
10 what had gone right and what had gone wrong in your
11 view?

12 A. I think it was an attempt by me to highlight the areas
13 that had caused concern or caused issue and would form
14 part of possibly a lessons learned document later on in
15 the piece.

16 Q. So we can see under "Introduction", "This report was
17 prepared ..." -- forgive me, I should deal with this.
18 We can see on page 1, and indeed as we go through the
19 report, that there are what I think we refer to as
20 "track changes" to the document --

21 A. Indeed.

22 Q. -- those parts that are underlined. Those are not, if
23 they have been changed, the underlined parts, changes
24 made by you, are they?

25 A. So far as I can recall, no. It looks like somebody else

1 has gone into the document that I created and then made
2 some suggestions of their own.

3 Q. So where, for example, we see passages struck through
4 but still remaining in the document, those are likely to
5 be yours, but the underlined passages may well be new
6 passages in their entirety; is that the position?

7 A. I think that's the position, yes.

8 Q. Thank you.

9 "This report was prepared [is written] by Major
10 "Christie ... [then] legal adviser ... with primary
11 responsible for prisoner of war issues within
12 Kuwait/Iraq."

13 There is a reference to where you were initially
14 deployed and so on.

15 "Part 1 -- pre-conflict issues", just the last
16 paragraph on that page:

17 "During February it became clear that an increasing
18 commitment for legal advice was required on the prisoner
19 of war issue. In mid-February a re-organisation of the
20 1 Div legal staff officers was conducted with
21 Major Christie formally moving from Division Main to
22 become legal POC for prisoner of war issues initially
23 based within DSG."

24 If we go over the page, please, to 2 and "Chain of
25 command", just the first couple of lines, you say

1 this -- I am accepting that there is some track changing
2 here, but what it appears to say is:

3 "The chain of command for the development of
4 prisoner of war policy was at times not clear due to the
5 lack of identity for the PWHO, its relationship with div
6 and the US chain of command."

7 Does it mean that you were writing that the chain of
8 command for the development of prisoner of war policy
9 was not clear?

10 A. I think I was making reference to the fact that the PWHO
11 comprised of many different units that came together at
12 short notice, each of whom had their own chains of
13 command -- that I think caused confusion -- and also the
14 fact that there was a degree of confusion with the UK
15 and US positions.

16 Q. I am not so much concerned with the UK and US, as you
17 will appreciate, I think. Were you reflecting there any
18 concern about the clear chain of command that, for
19 example, it might have been thought that the JFIT was,
20 to some extent anyway, within the PWHO, a law unto
21 itself?

22 A. Certainly the JFIT were answering through their own
23 chain of command, as I understand it. They reported
24 back to the J2X and division.

25 Q. And did you see any problem with that?

1 A. At the time I think that was reasonably reflective of
2 the -- quite a few of the units that had been thrown
3 together. I was reporting to Colonel Mercer, the MPS
4 staff reported back through the Military Police chain of
5 command and I think it was a case of just getting on and
6 dealing with it on the ground. But certainly with
7 hindsight then, yes, that clarity would have assisted
8 immensely had we had it before we went into Iraq.

9 Q. Can I take you on, please, to 4, under the heading
10 "Discipline", just to ask this: is discipline here
11 relating to discipline of the prisoners of war?

12 A. I have just lost "Discipline".

13 Q. Forgive me, the bottom paragraph on screen.

14 A. It is paragraph 4.5. I see it now. Yes, it related to
15 if there was consideration for a disciplinary regime to
16 be implemented within the camp.

17 Q. Right. Well I won't trouble you with that. Can we go
18 over the page, please, to either paragraph 6 or 9, the
19 heavy redaction towards the bottom. I just want to ask
20 you about two lines here. You talk about initial
21 meetings with the Red Cross, you say they were held, and
22 then there is a redacted passage. Then this:
23 "... although CO Queen's Dragoon Guards was
24 undoubtedly driving the project in his chosen
25 direction."

1 Do you remember, did you say that and what did you
2 mean?

3 A. It's difficult to put it behind -- or not look behind
4 the redactions in giving that a context. I think my
5 view of CO QDG was that that individual had the ability
6 to drive projects in a particular direction because of
7 his personality. This is in my report, therefore
8 I assume that that's something that I did say and did
9 feel at the time, but I can't recall now in what context
10 that comment was made.

11 Q. Did you mean that he was, if I can put it in another
12 way, doing his own thing regardless of anyone else?

13 A. I think he certainly had his own agenda which he would
14 follow, but I'm slightly at a loss to work out the
15 context just of that comment.

16 Q. And I think, in fairness, there is a lot of redaction
17 there and I am not going to take it any further than you
18 have endeavoured to do. Thank you.

19 THE CHAIRMAN: You judged him a fairly forceful character?

20 A. He was a forceful character, Sir, yes.

21 THE CHAIRMAN: I understand.

22 MR ELIAS: Over the please to the foot of the next page,
23 I think it is. On again please. That's the page. At
24 the very foot of page, "Documentation". It was 10 and
25 it's now 16, perhaps. Just to record that you say:

1 "This has also been a major issue during this
2 operation. The majority of prisoners of war came into
3 the camp without any documentation as to where they had
4 come from, by whom they had been captured, or in what
5 circumstances the capture occurred."

6 A. That's correct.

7 Q. That was your experience, was it?

8 A. Yes. There was a lack of information as to -- of that
9 nature.

10 Q. All right. I don't dwell on that. But to go down to 17
11 and "Guarding" at the foot of the screen, you said this
12 about guarding, didn't you -- and this appears not to
13 have been altered:

14 "The guarding role for the prisoner of war camp was
15 not undertaken by specially trained units."

16 A. That is correct.

17 Q. "1 DWR was deployed at short notice (less than a week
18 before the war commenced."

19 I think the Inquiry has heard about that.

20 "The only specific training that they received was
21 from MPS on a train the trainer basis ... The escort
22 guarding duties were undertaken by a [battalion] from
23 12 Regiment RA. They had been allocated to the PWHO
24 earlier than 1 DWR and as such had time to conduct more
25 training with the coaches which were to be used for

1 prisoner of war transport. Again train the trainer
2 training was supervised by MPS and the actual training
3 conducted by the [battalion] themselves. The ability to
4 train was limited by the short notice people were given
5 before being detached to the Prisoner of War Handling
6 Organisation."

7 A. Yes.

8 Q. Did it follow, Mr Christie, that essentially the guards
9 for this purpose received no specialist training in that
10 task?

11 A. They received very, very limited training, as is
12 described there. The 12 Regiment RA detachment was
13 a battery, rather than a battalion, so a slightly
14 smaller formation. In terms of actually handling the
15 prisoners, the physical handling training was the MPS
16 training, which was delivered, it would appear, on
17 a train the trainer basis.

18 In addition, they would have got the generic LOAC
19 training that I delivered to all of the members. Even
20 that was -- going back to it -- was of a nature where
21 I was standing up and shouting the relevant passages of
22 GC III in suitably accessible language, I hope, to
23 a wide range of people in terms of sheer numbers sat in
24 front of me in the middle of the desert. So, yes, the
25 training was not ideal.

1 Q. Thank you. Can we come, perhaps, a bit more relevantly
2 to MOD052196, under the heading "c" and "JFIT", the
3 whole of that remaining page, can I just read this
4 through with you?
5 "JFIT. The [Red Cross] visited JFIT and saw that
6 prisoners within the JFIT compound were being hooded
7 with empty sacks."
8 "Sandbags" has been struck out. You probably wrote
9 "sandbags", did you?
10 A. Probably, sir, yes.
11 Q. "JFIT justified this on the grounds that the prisoners
12 within the compound were by definition of them being
13 there high value prisoners and that if they saw who else
14 was in the compound they could be intimidated and placed
15 in fear for their lives and their families' lives on
16 release."
17 A. Yes.
18 Q. Was that, as you understood it, the principal reason
19 being put forward?
20 A. I think my initial recollection was that there were
21 security concerns about prisoners seeing the way the
22 installation was -- or the PWHO was set up. They could
23 escape and use that information subsequently. But
24 clearly the issue that's set out in the report here is
25 slightly different to that and so that must have been

1 a legitimate concern that I had at the time or was
2 certainly briefed to me at the time.

3 Q. Because the other is not in this report.

4 A. No. I will take your word for that then.

5 Q. It's certainly not at this point in the report, is it?

6 A. Indeed.

7 Q. I read on:

8 "The use of blindfolds (which is what the sacks
9 [sandbags] were being used for) was, they said,
10 necessary as the design of the JFIT in field conditions
11 did not allow for sufficient interview rooms and other
12 accommodation to afford the separation of prisoners that
13 is normally required. The policy had been required by
14 JFIT as a necessary step, and it appeared to be in line
15 with UK doctrine."

16 There is a reference to JSP 383:

17 "This policy had been approved by J2X at division."

18 Was that something you knew or believed?

19 A. I can't remember, but I think, given that I was in situ
20 at the prisoner of war camp at the time that this
21 evolved -- I don't recall having any discussions with
22 J2X personally myself at that time, so I'm assuming that
23 would be something that I believed.

24 Q. Thank you.

25 "The [Red Cross] representative at Um Qasr raised

1 this as being a problem in that bagging of prisoners was
2 not humane treatment. Their view was supported by
3 [Colonel Mercer] ..."

4 A. Yes.

5 Q. "... although NCC legal branch (and other [Red Cross]
6 representatives) took the true view that while it would
7 not be available to 'condition' prisoners of war prior
8 to interview, if in the absence of proper holding
9 facilities it was necessary for security and personal
10 protection (whether of PWs or guards), then as a
11 short-term expedient it would be permitted so that the
12 processing of PWs of interest to the J2 community [the
13 intelligence community] could continue."

14 Now, part of that is underlined and therefore may
15 have been track-changed in part, but as I understand it
16 that does and did represent your view.

17 A. I think that's a fair summary, yes.

18 Q. Thank you. Then if we go down below the lines that are
19 drawn, under the text:

20 "An alternative was suggested, namely the use of
21 blacked-out sunglasses in order not to restrict the
22 senses of the prisoner any more than was strictly
23 necessary."

24 Again, I think you told us about that.

25 "Direction from GOC however was that no form of

1 blindfolding was justified and it stopped immediately."

2 When I asked you a little earlier what your
3 understanding was as to the order that came down from
4 General Brims -- do you remember I was asking you
5 whether you understood it to be an order relating to
6 hooding or deprivation of sight? But here you are using
7 the term "blindfolding".

8 "... no form of blindfolding was justified and it
9 stopped immediately."

10 A. Yes.

11 Q. Was that your understanding of the order from
12 General Brims, not that it was to prevent hooding, but
13 that no form of blindfolding could now be used?

14 A. Certainly that's what I have written here. That would
15 have been written in May 2003 and therefore I would
16 concede probably represents a more accurate recollection
17 than my memory here seven years on.

18 Q. You were writing this four or five weeks after the order
19 must have been given by General Brims, weren't you?

20 A. That would have been so, yes.

21 Q. Of course you may have been wrong even then in
22 suggesting it was blindfolding and not hooding.

23 A. I may well have been, yes.

24 Q. I suppose that would be another reason, would it, why we
25 perhaps would have been better served by some written

1 order?

2 A. Indeed. Clarity, yes.

3 Q. Does it follow that after that order was issued, you
4 never saw any prisoners with hoods or indeed blindfolds
5 of any kind?

6 A. Certainly I can't recall seeing any prisoners after that
7 order had been issued.

8 Q. Then you go on to say this:

9 "If the [Red Cross] view is to be accepted that
10 blindfolding is not acceptable per se, then a revision
11 of UK policy and JSP 383 is required ..."

12 We can take it from that, can we, that in May 2003
13 there certainly was an extant version of JSP 383 --

14 A. There was.

15 Q. -- which you had seen?

16 A. Yes.

17 Q. You go on to say this:

18 "The main issue to come out of this incident is that
19 there was a lack of guidance as to what was acceptable
20 in terms of UK interrogation and international law under
21 GC III. This is something that may need to be
22 addressed."

23 A. Yes.

24 Q. It also follows, does it, that by 7 May anyway there had
25 still been no guidance forthcoming?

1 A. It certainly does follow, yes.

2 Q. So that main issue, as you describe it at the foot of
3 that page, was never resolved, at least not in your time
4 in Iraq?

5 A. Not in my time, no.

6 Q. Can we go on then, please, to the last page of the
7 document, MOD052199. Under the heading "Conclusion" --
8 and I appreciate all of this may either be underlined
9 because it was as a conclusion or it may be in track
10 changes, I know not. Perhaps it's the fourth item down
11 the list, "Development of JWP 1-10 and other doctrine".
12 Was that a conclusion that you were coming to that, that
13 something needed to be done in that area?

14 A. I can't remember whether I decided to write a conclusion
15 in capitals, but that would certainly be against my
16 usual style. So my assumption would be that this text
17 had been added in by whoever had completed the rest of
18 the track changes.

19 Q. So it probably isn't yours?

20 A. It probably isn't mine. But certainly, in the previous
21 comment, I had flagged the issue of effectively a need
22 to revise or look at current doctrine, so I think it's a
23 fair comment.

24 Q. If we can just go to your second statement to this
25 Inquiry at BMI07215, paragraphs 24 and 25 in particular,

1 perhaps you are encapsulating what is said in that
2 report that we have just looked at.

3 At paragraph 24:

4 "Given that during my deployment there had been
5 a difference of opinion as to the legality of
6 blindfolding with hoods ... I considered that my
7 conclusion, namely that there was a lack of guidance,
8 was a reasonable one to draw."

9 You expand upon that in this way:

10 "In particular, the direction from the GOC as
11 I understood it to have been, namely that no form of
12 blindfolding at all was to be used, seemed to be more
13 cautious than the advice expressed in JSP 383."

14 That's the advice that we looked at in the 2004
15 edition, isn't it --

16 A. Yes.

17 Q. -- which would seem to permit hooding under those
18 justifiable security situations?

19 A. That was my take on it, yes.

20 Q. Yes. That's what you are referring to.

21 At paragraph 28, you answer the question posed by
22 the Rule 9 Request. By the time your report was drafted
23 the issue of blindfolding and hooding had been addressed
24 on the ground by virtue of the GOC's direction and there
25 was no longer any immediate urgency, but it had not been

1 addressed by any directive coming from, if you like, on
2 high.

3 A. That is correct.

4 Do you still consider, Mr Christie, that the use of
5 sandbags for hooding in certain circumstances may be
6 humane or has your view changed on that?

7 A. No, I think it still could be in certain circumstances.

8 MR ELIAS: Yes, thank you.

9 THE CHAIRMAN: Now, there will be one or two questions from
10 other counsel, I suspect.

11 Yes, Mr Singh?

12 Questions by MR SINGH

13 MR SINGH: Sir, thank you. Mr Christie, I would like to ask
14 you first about training. You have referred to your
15 receiving training on the law of armed conflict --

16 A. Yes.

17 Q. -- in particular, I think you said, the University of
18 Nottingham and also at the Institute of Humanitarian Law
19 in San Remo.

20 A. That's correct.

21 Q. From that training, are you aware -- or were you aware
22 when you were in Iraq -- that the law of armed conflict
23 includes the law of occupation?

24 A. I was certainly aware that the law of occupation was
25 relevant because we'd done some work on that within

1 division before deployment.

2 Q. Does it follow from that, therefore, that you were aware
3 that the law of occupation covers the treatment of
4 civilian detainees and not only prisoners of war?

5 A. Absolutely. Essentially GC IV covers the civilians
6 where GC III covers the prisoners of war, so it's a very
7 loose summary.

8 Q. The Institute of Humanitarian Law, despite its name, as
9 I understand it, does teach some human rights law as
10 well; is that right?

11 A. It's now eight years ago since I was there. I don't
12 think it was strictly humanitarian law in itself, if
13 that assists, but I cannot recall exactly what was
14 taught.

15 Q. That's really what I wanted to ask you about. From your
16 training, were you aware of the distinction between
17 international humanitarian law on the one hand and human
18 rights law on the other?

19 A. I was aware of the broad distinction.

20 Q. Yes. Thank you.

21 Had you, before or while you were in Iraq, come
22 across a judgment of the European Court of Human Rights
23 in that case called Ireland v UK?

24 A. These are the issue of the five techniques being --

25 Q. Yes.

1 A. -- banned. I can't say for definite whether that had
2 been mentioned during any part of my training. The only
3 part of the training that it may have been mentioned
4 would have been in the very initial training at Upavon,
5 which was the headquarters for DOALS -- the Directorate
6 of Army Legal Services. I know we had a small component
7 on Northern Ireland, but that was more generic. I would
8 be guessing if I said it was definitely there or not.

9 Q. From your reference to Northern Ireland in answering my
10 question, does that reference come from a view of that
11 case being concerned only with Northern Ireland?

12 A. No. It's -- I think that's just the only element of the
13 training where I thought that it may have been
14 discussed, if at all.

15 Q. I see.

16 Can I ask on a different topic now, please, if you
17 would go to your first Inquiry statement at BMI04847?
18 It is paragraph 22.

19 A. Yes.

20 Q. You refer there to the fact that you have not come
21 across the use of this technique in the last sentence.

22 A. Yes.

23 Q. By the phrase "this technique", are you there referring
24 back to the earlier part of your paragraph where you are
25 referring to stress positions?

1 A. Yes.

2 Q. You then continue that last sentence of the same
3 paragraph by saying:
4 "... use of this technique by UK forces or anyone
5 save for the single incident described at paragraph 78
6 below."
7 A. Yes.

8 Q. Now, if we go to paragraph 78 of your statement at
9 BMI04862, that at least --
10 A. Yes.

11 Q. -- to my reading seems to be about seeing an incident of
12 hooding.
13 A. Absolutely. I think there has been an error on the
14 reference.
15 Q. I see.
16 A. I think that the reference should have read
17 paragraph 77, which is the blacked-out paragraph above
18 it.
19 Q. Well, we won't go into that.
20 At paragraph 82 of your witness statement -- if we
21 can go on a few more pages, please -- you are now
22 dealing with hooding, as you can see, and in the second
23 sentence, third line, you say "My own view was ..." and
24 then, if I may say so, you say very much what you have
25 told the Inquiry this afternoon, that in certain limited

1 circumstances it might be lawful. Is that a fair
2 summary?

3 A. That's a fair summary, yes.

4 Q. I just want to understand on what you based that fair
5 summary. Is that on consideration of the Geneva
6 Conventions alone?

7 A. It was the Geneva Conventions, the doctrines I had
8 available to me, which was limited by my own
9 circumstances. That included JSP 383 of course. And
10 obviously -- the circumstances that existed at the time
11 were obviously informed by the factual circumstances.

12 Q. Thank you. Just to be clear then, in terms of legal
13 principle, what you had in mind in saying that -- would
14 this be right -- was legal principles to be derived from
15 the Geneva Conventions --

16 A. Yes.

17 Q. I accept what you said about the factual circumstances
18 and policy doctrine and so on, but so far as legal
19 doctrine is concerned, you were not taking into account,
20 were you, human rights law?

21 A. As far as I can recall, the Geneva Conventions was the
22 source of my argument, as it were, on that point.

23 Q. That's very helpful. So just finally to be clear about
24 this topic, not, for example, the United Nations
25 Convention Against Torture?

1 A. I don't believe so.

2 Q. Not, I take it therefore, the International Covenant on
3 Civil and Political Rights?

4 A. Again, I don't believe so.

5 Q. And I think it is obvious from what you have been
6 saying, not the European Convention on Human Rights?

7 A. Certainly not that I can recall. I recall that there
8 was some discussion about that, but not that I related
9 to this type of incident.

10 Q. Indeed.

11 In answer to some questions from Mr Elias when he
12 was asking you about the end of paragraph 82 -- we don't
13 need to go back to it -- you said to him, I think, that
14 there was a lack of clarity about the UK's position on
15 the legality of hooding --

16 A. Yes.

17 Q. -- and that you flagged that up at the end of your tour.
18 When you said that, were you there referring to the
19 report that we have seen dated 7 May?

20 A. That's correct, yes.

21 Q. I thought so. Can we look at that report again for
22 a moment, please? If we can go to MOD052186. That's
23 the first page. Then, a couple of pages further on at
24 MOD052188, can we perhaps just enlarge the top half,
25 please? Thank you.

1 Now, it may be, Mr Christie, that you can't help me
2 on this because the passage I am going to ask you to
3 look at with me is underlined, so that may be one of the
4 track-changed parts, but help me if you can.

5 In about line 5, after some redactions, you see
6 there's a sentence which begins:

7 "The key assumption made by legal advisers at PWHO
8 and NCHQ ..."

9 Pausing there for a moment, I think we all know what
10 "PWHO" is. You have told us about that. "NCHQ", is
11 that the same as "NCC".

12 A. Yes, it's the National Contingent Headquarters.

13 Q. Thank you. Then these words up here in brackets -- and
14 tell me if you are not able to help us with this because
15 if it's not your text, that's fair enough. But it says
16 in the text that the European Convention on Human Rights
17 should not apply during phase 3 operations. Then
18 there's another blacked-out passage:

19 "... for the resolution of the single outstanding
20 issue referred to governments for resolution (transfer
21 of jurisdiction for the trial of PWs who had committed
22 offences which might attract the death penalty)."

23 I think you refer to that issue and Mr Elias and
24 I don't need to trouble you with that for the moment.
25 So it's not the particular issue about the death penalty

1 or transfer of jurisdiction or anything of that sort.
2 It is just the reference first of all to "phase 3
3 operations". Are you able to help us with what that
4 means?

5 A. I am afraid I am not, no.

6 Q. That is fair enough. Is this your text, this reference
7 to the ECHR?

8 A. No, that would have been added in, I assume, on the
9 basis that it's a tracked change and I can't recall from
10 my own mind anything that could assist in terms of an
11 assumption or whether an assumption was taken of that
12 nature.

13 Q. That really answers the question I was going to ask you,
14 whether you know anything about the so-called key
15 assumption made by legal advisers at PWHO and NCHQ. You
16 are saying you can't help us with that?

17 A. I am afraid I can't remember that.

18 Q. That's very fair. Thank you. Sir, those are my
19 questions.

20 THE CHAIRMAN: Ms Dobbin?

21 Questions by MS DOBBIN

22 MS DOBBIN: Outwith the initial training that you may have
23 given to the personnel at the JFIT, you didn't have any
24 other sort of formalised or professional role as regards
25 JFIT, did you?

1 A. No. They had their own separate command structure.
2 I didn't have any role with them.

3 Q. As regards your discussion with other people about
4 possible justification for hooding, you mentioned that
5 you would have discussed that with S040. Was there any
6 particular reason why you would have discussed that with
7 him?

8 A. He was the person who would represent JFIT at the
9 O Groups. So where issues came up that needed to be
10 briefed he'd have actively -- S009 or back to division,
11 he would be the person who would be part of that forum.
12 So if there was any crossover between mine and his role
13 or my role and JFIT, he would be the person that I would
14 primarily speak to.

15 Q. Is it right, then, that you sought him out, as it were,
16 in order to ask about this issue?

17 A. I don't know. I can't remember now whether I sought him
18 out or whether the issue was raised within one of those
19 group meetings where we were both present and therefore
20 it got discussed there. Certainly, I suppose, either
21 could have been possible and I am afraid I just can't
22 remember which way round it would have happened.

23 MS DOBBIN: Thank you. That's all, Sir.

24 THE CHAIRMAN: Thank you. Ms Edington?

25 Questions by MS EDINGTON

1 MS EDINGTON: Thank you, Sir. Mr Christie, you said to
2 Mr Elias that the best recollection was that you
3 produced the draft report on PW handling, which Mr Singh
4 and Mr Elias have both taken you to, for Colonel Mercer
5 because he was the person that you reported to; is that
6 right?

7 A. Yes, that's right.

8 Q. Colonel Mercer does not remember seeing that document,
9 so could it be that you actually sent that document to
10 someone else other than him?

11 A. My own recollection is very sketchy as to the production
12 of that document and where it went afterwards. I can't
13 think of anybody else who I would have sent it to, but,
14 equally, I don't have any strong memories of what
15 I actually did with it.

16 Q. You reported quite a lot to the NCC, to Commander Brown.
17 Obviously a Miss Quick at PJHQ felt that you were the PW
18 lead in the division. Were you aware of that?

19 A. Certainly I had a lot of dealings with Commander Brown,
20 a lot of it before the actual invasion because they were
21 dealing with more sort of wide-ranging issues, but
22 ongoing -- I think ongoing discussions would be fair to
23 say.

24 Q. And some of those ongoing discussions actually didn't
25 include Colonel Mercer, did they? They were direct

1 between you and Commander Brown and others, not
2 including Colonel Mercer?

3 A. Certainly I would have conversations with
4 Commander Brown. I recall going across to the NCC on
5 a couple of occasions without Colonel Mercer. I think
6 I would always have kept Colonel Mercer in the loop as
7 to what developments were occurring in terms of what
8 I was briefing Commander Brown.

9 Q. But perhaps not the exact detail?

10 A. Certainly it would have been a summary, I would imagine.

11 Q. So could it be that that document that you did prepare
12 for 7 May actually went direct to NCC rather than to
13 1 Div?

14 A. As I say, I can't say where it did go, although I do
15 know that it was recovered from my P file at 1 Div. So
16 it came back, as it were, once it came into the
17 Inquiry's scope from 1 Div, rather than anywhere else.

18 Q. With the track changes?

19 A. I believe so -- well, yes, indeed.

20 Q. You say that you were content with blindfolding for
21 security purposes, but, in fact, the only prisoners
22 being blindfolded or hooded initially were those in the
23 JFIT, weren't they?

24 A. That's right, yes.

25 Q. If your security was the only reason for blindfolding,

1 why were prisoners in the PWHO not being hooded or
2 blindfolded?

3 A. The prisoners in the JFIT were all, by definition, the
4 high value prisoners rather than run-of-the-mill
5 prisoners or indeed civilians, as they may have been.
6 The issue, therefore, was that they were -- the high
7 value prisoners were seen as more of a security threat
8 than other prisoners in the general compounds.

9 Q. And JSP 383, you said you took a copy into theatre with
10 you.

11 A. Yes.

12 Q. Colonel Mercer explained to the chairman yesterday that
13 he felt that JSP 383 was, until 2004, a document in
14 progress. Would you agree with that definition of it?

15 A. My recollection is -- I had taken it in as a relevant
16 document. We only had limited amount of kit that we
17 could take in and certainly the luxury of books was not
18 available to us. My recollection of actually reviewing
19 it and seeing that relevant passage was such that
20 I thought it was a relevant document and stated UK
21 policy as it was then in force.

22 Q. So may it be the case that you actually looked at
23 JSP 383 after the hooding raised "its ugly head" as
24 an issue?

25 A. Well, certainly I did on the basis that the first time

1 I was aware that hooding was going to be an issue was
2 when I saw it myself because it hadn't been raised or
3 briefed as going to be an issue in advance of the
4 invasion.

5 So it was at that point that I then looked and
6 examined the text that I had, including 383, to see if
7 there was any relevant information within those texts.
8 So it would probably be that period, late March,
9 whenever I saw that, when the whole issue was coming to
10 light, that I first looked at 383 in that context.

11 MS EDINGTON: Thank you.

12 THE CHAIRMAN: Thank you. Mr Garnham?

13 Questions by MR GARNHAM

14 MR GARNHAM: Thank you, Sir.

15 In late March/early April 2003, what was the
16 temperature like in Iraq?

17 A. It certainly wasn't massively warm. I know that there
18 was a lot of concern that we had to -- we had to get
19 adequate bedding and blankets and provision for the
20 prisoners before we deployed because the nights were
21 exceptionally cold. It certainly got warmer during
22 April, but at that time --

23 Q. Blankets were still being needed at night, were they?

24 A. Absolutely, yes.

25 Q. Do you have any recollection of daytime temperatures?

1 A. It is difficult to say, but I don't recall it -- I only
2 recall end of April/middle of April, when we actually
3 got air-conditioning, that temperatures got very
4 oppressive. I am loath to put a figure on it because
5 I am very poor at estimating that.

6 Q. Can I too ask you some questions about the report on PW
7 handling? I wonder if we could have it on the screen.
8 It may well be that you simply cannot answer this and,
9 if that's the case, please say so. But the tracked
10 changes -- have you had a chance to read through the
11 whole of this document?

12 A. I have, thank you.

13 Q. The tracked changes adopt certain forms of language and
14 style. Are they suggestive to you of any particular
15 author?

16 A. I honestly can't say.

17 Q. Thank you. Can I ask you, please, to go to
18 paragraph 19 -- although I think there's more than one
19 paragraph 19. It's about four pages from the end of the
20 document, please. Thank you very much.

21 Do you see the paragraph 1 there?

22 A. I do.

23 Q. That appears to be the original draft form and so
24 presumably from you.

25 A. Indeed.

1 Q. The:

2 "The ICRC maintained a presence at the PWHO from
3 about the second [2] week -- the time at which it was
4 deemed safe for them to enter Iraq. They attended with
5 a large contingent of personnel and inspected all
6 aspects of the camp commenting as follows."

7 When you wrote that, were you referring to their
8 maintaining a presence at Um Qasr, at the camp itself?

9 A. Yes.

10 Q. And when you say "they maintained a presence", what does
11 that mean, exactly?

12 A. My recollection is they came with quite a large
13 contingent of personnel, quite a number of the white
14 vehicles and they stayed there for a considerable period
15 of time.

16 Q. Do you mean hours, days, weeks or what?

17 A. Days, certainly. Perhaps longer than that. I know
18 that -- just trying to put timings on it is very
19 difficult, but I know they came early -- as early as
20 they could do, second week. They were still there when
21 the camp had been handed over to the Americans because
22 I recall a meeting that I had with them -- I won't go
23 into any details -- just in terms of that particular
24 time. So I think between those two periods they were
25 certainly there, as far as I can recall, on a regular,

1 if not constant, basis.

2 Q. Thank you. Finally this: what were your personal
3 relations like with Colonel Mercer?

4 A. I got on with Colonel Mercer very well. He was quite
5 a demanding boss to work for in some ways. He is a very
6 dogmatic character and we obviously had our
7 disagreements, one of which was over the views on
8 hooding. But on a personal level I respected him and
9 got on with him very well.

10 Q. Is it right that he recommended you for an award at the
11 end of the tour?

12 A. I understand, yes, that he wrote me up a citation for an
13 award.

14 MR GARNHAM: Thank you very much.

15 MR ELIAS: Sir, I have no questions. Thank you.

16 Questions by THE CHAIRMAN

17 THE CHAIRMAN: Just two matters I want to ask you about,
18 please. You need not look at it, but at the end of your
19 second statement at paragraph 28, you said:

20 "I am also asked whether anything was done about the
21 lack of guidance."

22 The dispute between you and Colonel Mercer on this
23 issue of whether hooding could be legitimate was, as we
24 have heard or at least I have heard, quite an important
25 issue, wasn't it?

1 A. I think it was, given that it affected how operations
2 would be conducted by UK forces.

3 THE CHAIRMAN: And you too. And did you know that
4 Major Frend took a similar view to you?

5 A. I recall, I think, that he was of a similar view, as
6 were some of the other lawyers at the NCC.

7 THE CHAIRMAN: As I understand it, it was staffed. Is that
8 a term for being handed up the chain of command --

9 A. Basically up the chain of command, Sir, yes.

10 THE CHAIRMAN: -- to get a final result or some sort of
11 clarity, is that right?

12 A. Yes.

13 THE CHAIRMAN: But before anything like that happened or you
14 got any clarity, the GOC made his order.

15 A. That's right.

16 THE CHAIRMAN: Do you think that that had any effect on
17 those who might otherwise have had to resolve this?

18 A. I think it could well have done because there was no
19 longer an urgent issue on the ground.

20 THE CHAIRMAN: No.

21 A. There was a clear direction from the GOC as to what was
22 going to happen and therefore any issue of getting an
23 urgent proclamation as to what was right or what was
24 wrong had diminished and quite logically there was a lot
25 going on at that time.

1 THE CHAIRMAN: Yes. Perhaps it might also be thought that
2 it was rather a hot potato, which might provide
3 a difficulty to answer to everybody's satisfaction.
4 A. I think the debate that it generated probably means
5 that's a fair comment, sir, yes.
6 THE CHAIRMAN: Yes.
7 Now one other matter I want to ask you about. Your
8 view was plainly that hooding could in certain
9 circumstances be legitimate.
10 A. Yes.
11 THE CHAIRMAN: Do you remember, when you were debating these
12 matters, whether anybody suggested to you that one of
13 the problems might be with hooding that there were so
14 many or a number of variables about as to whether or not
15 the circumstances would make it legitimate or not that
16 it would be rather difficult to supervise and to
17 control?
18 A. I can see that being the case, but I can't remember --
19 THE CHAIRMAN: Do you remember people making that point?
20 A. No, I can't remember that, Sir.
21 THE CHAIRMAN: All right. Thank you.
22 Well, that's all the questions that you are to be
23 asked by the Inquiry. Thank you very much for coming
24 along. I am very grateful to you for your evidence.
25 You are now free to go. Of course if you want to come

1 back to the Inquiry at any stage, you are very welcome
2 as a visitor, but thank you very much for your evidence
3 today.

4 A. Thank you.

5 THE CHAIRMAN: Yes. I don't think we have any more
6 business.

7 MR ELIAS: Sir, that concludes the business for today.

8 Discussion re Thursday's proceedings

9 MR ELIAS: May I say a word, with your permission, about
10 tomorrow?

11 THE CHAIRMAN: Yes.

12 MR ELIAS: Sir we have two witnesses, Messrs Cowling and
13 Ayling to be called in that order. They are witnesses
14 who may take the morning, but on the other hand they may
15 be completed by about noon. Therefore the remaining
16 business I think will have to fall in line, as it were,
17 either from about noon or a little later, but not before
18 noon, I would suggest.

19 THE CHAIRMAN: Yes, I am anxious not to lose any time.

20 I don't quite know how long this is going to take, but
21 I cannot sit on Friday.

22 MR ELIAS: No.

23 Sir, you are then, as you know, timetabled, as it
24 were, to hearing submissions relating to the Attorney
25 General's advice and skeletons which have been lodged in

1 that regard.

2 So what is proposed there if you agree -- and
3 I understand, having spoken to each and all parties
4 agree -- is that we should proceed in this way: Counsel
5 to the Inquiry through me will, as it were, set the
6 scene initially, that the Ministry of Defence will then
7 lead off in making submissions to you through
8 Mr Hollender because, in a sense, they are proposing
9 that LPP applies, it will then be Mr Singh, who will
10 respond first of all, Mr Garnham to follow and
11 Ms Edington after that.

12 It is understood on all sides that the Ministry of
13 Defence will then have, as it were, a chance to round up
14 in answer before, if we wish to, we might say something
15 at the very end. That is the proposed way of dealing
16 with matters which, as I say, people are happy to adopt.

17 THE CHAIRMAN: Fine. I can say at this stage that by then
18 I will have read -- I have actually read the skeleton
19 arguments. I am not so word perfect on the authorities,
20 but I shall have read a number of those by tomorrow.

21 I don't want to cut anybody short in their submissions,
22 because it is too important and not that easy, but
23 I want to be assisted and I know I will be assisted, but
24 equally time is finite.

25 MR ELIAS: Thank you, Sir.

1 THE CHAIRMAN: I am sure we can work those two adequately to
2 put them together.

3 All right. Thank you very much. 10 o'clock
4 tomorrow.

5 (3.37 pm)

6 (The Inquiry adjourned until 10.00 am, Thursday,
7 18 March 2010)

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