

1 Wednesday, 24 February 2010

2 (10.00 am)

3 THE CHAIRMAN: Good morning, ladies and gentlemen.

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

5 Richard Englefield, please?

6 THE CHAIRMAN: Yes. Would you be kind enough to stand up,

7 Mr Englefield?

8 A. Yes, Sir.

9 RICHARD JOHN ENGLEFIELD (sworn)

10 THE CHAIRMAN: Thank you. Do sit down. Please, if you

11 could speak into the microphone, then we will all be

12 able to hear you, otherwise it is very difficult to

13 hear.

14 A. Yes, Sir.

15 Questions by MR ELIAS

16 MR ELIAS: Please give the Inquiry your full name.

17 A. Richard John Englefield.

18 Q. Are you still in the army?

19 A. I am, yes.

20 Q. With what rank?

21 A. Lieutenant colonel.

22 Q. Colonel Englefield, could I ask you, please, to look at

23 a folder which should be to your right and find there

24 a copy of your statement to this Inquiry. If you go to

25 the last page of it at our BMI04458, do you find your

1 signature above the date of 14 September of last year?

2 A. Yes.

3 Q. When you signed that statement on that day, were you
4 attesting to the Inquiry that the contents of the
5 statement were true to the best of your knowledge and
6 belief?

7 A. Yes, I was.

8 Q. If you would like to put the statement aside, please.
9 We have read it and I don't propose to take you to every
10 part of the evidence covered in that statement or indeed
11 in relation to statements that you made earlier. We may
12 look at statements that you made earlier to the RMP and
13 the SIB and also at your court martial evidence.

14 May I ask you this about those accounts? Were they
15 also full, truthful and accurate accounts to the best of
16 your knowledge and belief then?

17 A. Yes, they were.

18 Q. May I just deal very briefly with your army history?
19 You joined the army as a cadet in 1988?

20 A. Correct, sir, yes.

21 Q. I don't want your date of birth, but how old would you
22 have been then?

23 A. 21, I think.

24 Q. You have subsequently served, amongst other places and
25 apart from the UK, in Germany, in Northern Ireland, in

1 Kosovo. Is that right?

2 A. That's correct, yes.

3 Q. Between August 2001 and August 2003, did you work for

4 the defence intelligence staff --

5 A. I did, yes.

6 Q. -- part of the Ministry of Defence, and in that capacity

7 were you deployed on Op Telic 1?

8 A. Yes, I was, sir, yes.

9 Q. Were you deployed on Op Telic 1 to Iraq between

10 19 February 2003, returning to the UK some time in late

11 May of 2003, according to your statement?

12 A. Yes, that's correct, sir.

13 Q. Thank you.

14 So that was your role in Op Telic 1, but you were

15 also to play a role in Op Telic 2 --

16 A. Yes, sir.

17 Q. -- because I think from 19 August -- again I go to your

18 statement -- of 2003, did you take up the role of

19 officer commanding A Company of 1 QLR?

20 A. I did, sir, yes.

21 Q. And you remained in Iraq in that position until return

22 to the UK initially, anyway, on 5 November of 2003?

23 A. Yes, that's correct.

24 Q. Now, Colonel, I want to ask you just a little about your

25 understanding, from training or indeed other sources of

1 certain aspects this Inquiry is concerned, of the
2 position prior to deployment to Iraq for the first time
3 in 2003, therefore.

4 What was your understanding at that time in relation
5 to whether prisoners could be hooded or otherwise?

6 A. My understanding at that time was that prisoners may be
7 hooded for the purposes of protecting security,
8 ie depriving them of sight of sensitive areas or areas
9 of security interest.

10 Q. So putting it in shorthand, hooded for security reasons?

11 A. Correct, yes.

12 Q. Where did that understanding come from? Specific
13 training or teaching or somewhere else?

14 A. From a general background over many years, and it was
15 something I had got in my mind at the end of my
16 pre-deployment training for Op Telic 1.

17 Q. Was there anything specifically said about the use of
18 hoods for this purpose in your pre-deployment training
19 for Op Telic 1?

20 A. I don't recall being specifically told that you may
21 hood, but I was not specifically told that I may not
22 hood, and during my OPTAG training prior to Op Telic 1,
23 when we were briefed on handling prisoners, there was
24 a sandbag present during the lecture, but I do not
25 recall it being used.

1 Q. Had you, in fact, in the course of any training prior to
2 Op Telic 1 -- going back over the whole of your career,
3 if you like -- taken part in exercises where sandbags
4 were used?

5 A. Yes.

6 Q. What was the nature of those exercises?

7 A. I don't recall the specific instances, but I do recall
8 a specific instance, for example, where I was playing
9 the role of a prisoner and was hooded.

10 Q. With a sandbag?

11 A. With a sandbag, yes.

12 Q. Did you have any understanding or instruction as to, for
13 example, how long it would be appropriate to hood
14 a prisoner for security reasons?

15 A. No specific instruction, no, but as a commander one
16 would have to make the judgment based on the
17 circumstances of that particular situation.

18 Q. But do I understand your evidence correctly and your
19 statement correctly that the circumstances would be
20 dictated by the security and need and not by the
21 prisoner's condition?

22 A. Correct.

23 Q. Cuffing, the use of plasticuffs, did you receive any
24 training in relation to that prior to deployment on
25 Op Telic 1?

1 A. I have not received any particular training in how to
2 apply them. Over a period of time I knew that we were
3 using them and I first encountered them back in Northern
4 Ireland. I don't recall specifically being briefed on
5 them, but I recall forming the opinion, by the time
6 I arrived in Iraq, that plasticuffs were the normal and
7 accepted method of restraining someone's wrists.

8 Q. I don't want you to guess about this -- if you don't
9 know, please say so -- but do you recall whether there
10 was any specific instruction or training to cuff to the
11 front of the body or behind the body?

12 A. I don't recall specifically being briefed to do one or
13 the other. And again, my opinion that I formed would be
14 that you would cuff one way or the other depending on
15 the circumstances on the ground at the point of arrest.

16 Q. What would determine whether you cuffed -- let's take it
17 cuffing behind, for example. What circumstances might
18 dictate that --

19 A. If you were trying to arrest someone and they were
20 non-compliant and putting up a struggle, then you may
21 well cuff them to the rear. You may -- if they were --
22 if you were asking them to accompany you, for example,
23 then it is more likely they would offer their wrists to
24 their front.

25 Q. Still dealing with your understanding of the position

1 from training and so on pre Op Telic 1, stress
2 positions -- what do you understand by the term "stress
3 position"?

4 A. It's a position that one adopts that places stress and
5 fatigue on various parts of your body. A classic stress
6 position referred to is with your back to a wall, your
7 knees bent at right angles and your arms out in front of
8 you.

9 Q. In what has sometimes been described to this Inquiry as
10 the "ski position"?

11 A. So I believe. I don't know it as that -- only from its
12 description to this Inquiry.

13 Q. I understand. But there may be other stress positions?

14 A. Yes, if you are placed on your tiptoes against a wall
15 and you are touching the wall purely with the end of
16 your fingertips, again that would cause stress in your
17 limbs.

18 Q. What was your understanding as to whether stress
19 positions could appropriately and properly be used?

20 A. My understanding at the time was that stress positions
21 would be acceptable if you were using them to control
22 a number of prisoners in order to gain control of a
23 situation -- for example at the point of arrest -- but
24 that using them over an extended period of time would
25 cause pain and therefore would not be allowed.

1 Q. Where did that understanding come from?

2 A. I don't recall any specific instruction to that end.

3 However, that is the opinion I formed on the basis of

4 a variety of briefings and based on the law of armed

5 conflict training we had been given to treat prisoners

6 humanely.

7 Q. When, as you did a moment ago, you refer to "over an

8 extended period of time", how long did you understand it

9 might be appropriate to enforce stress positions for?

10 A. I didn't have a defined period in my mind. Again it

11 would depend on the context of the situation, if you are

12 trying to gain control of a situation. It would also

13 depend on the person you are placing in a stress

14 positions. There is a difference between a well-built

15 athletic 18-year-old and an overweight 55-year-old.

16 Q. So did you consider that, for example, a hooded prisoner

17 might appropriately be put in stress positions for

18 a period of time, if the security --

19 A. If it was required to control the situation at that

20 point, at that time, yes, I did believe that was

21 possible.

22 Q. So that was your understanding before deployment on

23 Op Telic 1.

24 A. That's correct, sir, yes.

25 Q. You have referred to LOAC --

1 A. Yes.

2 Q. -- training which you received on an annual basis,
3 I think we have been told. Would that right?

4 A. Yes, pretty much, yes.

5 Q. Did that reinforce in you, as apparently it did in many
6 soldiers, the need to treat prisoners humanely?

7 A. It did. That was the central tenet of that training,
8 sir, yes.

9 Q. If that were the central tenet of that training, did you
10 consider at any stage whether hooding -- whether
11 accompanied by the use of stress positions or not -- was
12 humane?

13 A. I did consider that it was humane if controlled and not
14 taken to an extreme, for example over a period of time,
15 but for a short period of time that it was required,
16 I did consider it humane, yes.

17 Q. By a "short period of time", you would have in mind
18 what?

19 A. Again a period that wouldn't be defined prior to the
20 event. It would depend on the situation that you found
21 on the ground at the point when you chose to either hood
22 or use a stress position.

23 Q. So it might be, in those circumstances, for quite
24 a prolonged period of time?

25 A. You would try not to make it for a prolonged period of

1 time because clearly, if you are putting them in
2 a stress position, the longer you put them in it, the
3 more pain it is going to cause.

4 Q. If the security situation required it, it may be that it
5 would be an hour or two hours or more?

6 A. I would suggest it would be an extreme security
7 situation to warrant putting someone either in a hood or
8 in a stress position for an hour or two.

9 Q. In any training that you had, Colonel, prior to
10 deployment on Op Telic 1 -- whether pre-deployment
11 training for that operation or indeed earlier -- was it
12 ever indicated to you that hoods or stress positions
13 were banned, could not be used?

14 A. No.

15 Q. You have heard now, have you, at the time of this
16 Inquiry, about the ruling that Prime Minister Heath gave
17 in a statement to the House of Commons in 1972?

18 A. I have heard that now, sir, yes.

19 Q. Were you aware of what the Prime Minister had said prior
20 to your deployment to Iraq in 2003?

21 A. No, I was not, no.

22 Q. So that was never brought to your attention?

23 A. No, sir.

24 Q. And the intention of the Prime Minister that those
25 techniques -- hooding, use of stress positions, whether

1 through the statement or otherwise -- the intention was
2 never brought to your attention either; is that what you
3 are saying?

4 A. That's correct, sir, yes.

5 Q. What of what might be called "other conditioning
6 techniques", deprivation of sleep, use of white noise
7 and so on? Did you receive any training as to these?

8 A. I have never received training that use of sleep
9 deprivation or white noise was particularly, as you
10 refer to it, a conditioning technique. I don't recall
11 specifically being told that those two techniques could
12 not be used, but at the time it would have occurred to
13 me that they were not particularly humane ways to treat
14 a prisoner and certainly not the way I would want to be
15 treated as a prisoner.

16 Q. It needn't be turned up, but you indicate in your
17 statement to this Inquiry that those techniques -- and
18 I think including stress positions -- if they were
19 covered, would have been covered in relation to conduct
20 after capture training.

21 A. That's correct. We would have been briefed on the
22 treatment that we may receive if we were to be taken
23 prisoner.

24 Q. Was that training that you received prior to Op Telic 1
25 as part of the pre-deployment training for that or was

1 that earlier?

2 A. I had received conduct after capture training prior to
3 deploying to Kosovo. I don't recall it prior to
4 deploying to Bosnia, but I definitely received it prior
5 to deployment on Op Telic 1.

6 Q. That conduct after capture training would have gone
7 into, would it, issues such as sleep deprivation, white
8 noise?

9 A. It would have covered various techniques that people
10 could use on you if you were a prisoner, yes.

11 Q. As well as hooding and stress positions?

12 A. Yes, I believe it covered that.

13 Q. Again, if you don't remember, please say so, but
14 whenever you received that training, was it made clear
15 to you that although this is what might happen to you,
16 these were not techniques that could be used on
17 prisoners that you might take?

18 A. No, it was not made clear, no.

19 Q. Were you left in any doubt in your own mind anyway --
20 even if it wasn't made clear -- as to whether these
21 techniques were or were not permissible against enemy
22 soldiers who might be taken prisoner?

23 A. As I say, when I deployed on Op Telic 1, my opinion was,
24 at the end of both training in how to deal with
25 prisoners and training as to what may happen if I was

1 a prisoner, that hooding would be acceptable for
2 security purposes, that stress positions over a short
3 period of time would be acceptable for controlling the
4 situation, but my own opinion was, as I have said, that
5 things like white noise and sleep deprivation were not
6 particularly humane treatment and therefore would not be
7 the way that I would have chosen to deal with prisoners.

8 Q. Just lastly on the training aspect, then: stress
9 positions used to control prisoners, you say. In what
10 circumstances should the Inquiry understand that stress
11 positions might be used?

12 A. If you are at a situation on the ground and you are
13 detaining a number of people, it takes time to process
14 them. You may wish to put them in a position separate
15 from each other, whereby it would be difficult for them
16 to do anything. They couldn't lunge at you, they would
17 find it difficult to run away and you would dominate the
18 situation to then process the prisoners, be that
19 plasticuff them or take them back or do whatever you
20 were required to do to process your detainees.

21 Q. How would putting them in stress positions assist that
22 process? I understand hooding, I understand
23 plasticuffing. How would stress positions assist that
24 process?

25 A. If a prisoner is in a stress position, he is going to

1 find it very difficult, for example, to launch an attack
2 on you.

3 Q. What sort of stress position are you imagining when you
4 say that?

5 A. It could be either the one that you described as the
6 "ski position"; it could be facing them to a wall on
7 their tiptoes and their fingertips.

8 Q. How would the ski position prevent or deter an attack by
9 a prisoner?

10 A. It's not easy to rise yourself from the ski position and
11 launch an attack.

12 Q. Were you envisaging the use of stress positions in
13 particular at the point of capture or elsewhere?

14 A. At the point of capture.

15 Q. Could there ever be justification for the use of stress
16 positions once a prisoner had been brought to the
17 detention centre?

18 A. I would not envisage such a situation on the basis that
19 at that point the prisoner was under control.

20 Q. I'm sorry, did you say "If a prisoner were under
21 control"?

22 A. I said I would not envisage the requirement to use
23 a stress position on the basis that, if he was at a TDF,
24 he would be under control. You would have taken him
25 there, one presumes you would have plasticuffed him, if

1 it was required. He may be hooded for security purposes
2 at that point.

3 Q. So you can't envisage circumstances where stress
4 positions would be used within the detention centre, can
5 you?

6 A. Not really, no.

7 Q. And "not really" means?

8 A. I'm just trying to think. If there was a situation
9 where a number of prisoners reacted and tried to escape,
10 for example, and you were therefore controlling the
11 situation again, as you had done in a similar vein at
12 the point of capture, but I would suggest that is
13 extremely unlikely.

14 Q. I just want to ask you a little, please, then, about
15 Op Telic 1. I don't want to go into your role as I
16 don't think it matters to this Inquiry, if I may put it
17 that way, but just your experience in relation to the
18 matters that we have been talking of hitherto.

19 Were you in Op Telic 1 in Basra or elsewhere?

20 A. Elsewhere for the most part.

21 Q. Did you see, in Op Telic 1, prisoners taken?

22 A. Yes, I did, sir, yes.

23 Q. Was this in both the war-fighting phase and in what we
24 have been calling the peace-keeping phase?

25 A. The distinction between the two in the areas that

1 I operated in during Telic 1 was not particularly clear,
2 but if one considers the war-fighting phase prior to
3 effectively the regular military forces surrendering and
4 the peace-keeping after that, then I saw prisoners in
5 both phases, yes, sir.

6 Q. Lest it matters, was there any distinction in the way
7 that prisoners that you saw were handled in the
8 war-fighting or peace-keeping phases of Op Telic 1?

9 A. No, sir.

10 Q. Did you see prisoners hooded?

11 A. Yes, sir.

12 Q. Was that an SOP on detention of prisoners then?

13 A. I believed it was an SOP that you could hood and,
14 therefore, when I saw prisoners at the point of capture
15 who were hooded, it did not strike me as strange or
16 wrong, sir.

17 Q. Were they hooded with sandbags?

18 A. I believe that some prisoners I saw at Talil Air Base
19 were hooded with a sandbag, but I only saw them
20 fleetingly from a distance. On another occasion I saw
21 a prisoner hooded with what I believe was not a sandbag.
22 It looked more like a thin piece of cloth, an item of
23 clothing, for example.

24 Q. I should have asked you this: were the prisoners that
25 you saw hooded at this time, in Op Telic 1, prisoners of

1 the American forces?

2 A. Yes, they were.

3 Q. Did you see stress positions utilised in Op Telic 1?

4 A. Not that I recall, sir, no.

5 Q. Did you see cuffing on prisoners --

6 A. Yes, sir.

7 Q. -- in Op Telic 1? Was that again a standard practice?

8 A. Yes, sir, it was.

9 Q. Don't guess, please, but were prisoners cuffed in front,

10 behind, or would it vary?

11 A. I believe that on the two specific instances that

12 I recall in detail, I formed the impression that some of

13 the prisoners were cuffed to the rear. I wouldn't have

14 been able to see from my vantage point then whether they

15 were cuffed to the front.

16 Q. I am trying to take this shortly and, as I say, not go

17 into unnecessary detail in Op Telic 1, but what you saw

18 in Op Telic 1 of the handling of prisoners was entirely,

19 was it, what the American forces were doing?

20 A. That's correct. I saw no British prisoners during

21 Telic 1.

22 Q. Did you understand in that phase, Op Telic 1, that the

23 American approach in any way differed from that which

24 you understood the British approach to be in the

25 handling of prisoners?

1 A. I didn't think that they operated by any different rules
2 than we did.

3 Q. Were you told anything in Op Telic 1 about the use of
4 what is sometimes called the "shock of capture"?

5 A. Yes, I was, yes.

6 Q. Again was it an American officer who spoke to you about
7 that?

8 A. It was an American warrant officer, yes.

9 Q. What did he tell you about their use of the shock of
10 capture?

11 A. Maintaining the shock of capture prior to tactical
12 questioning, involving the use of constantly moving
13 prisoners around, shouting -- he also mentioned hooding,
14 but purely in the sense of they would be hooded to
15 protect security.

16 Q. Were you told what the purpose of all this was?

17 A. I don't recall the warrant officer specifically saying
18 what the purpose was, but I formed the opinion that it
19 was for unsettling the mind of the detainee prior to
20 tactical questioning so that they couldn't form any bond
21 or any coherent answers at that point prior to being
22 questioned.

23 Q. The moving of prisoners around, did you understand that
24 that might involve what might be described as "forced
25 exercises"?

1 A. No, I did not, no.

2 Q. What did you understand from that?

3 A. It's simply changing their environment, moving them
4 around. It was -- it is distinctly different from the
5 phrase "enforced exercising", which would imply physical
6 exercise for no particular reason.

7 Q. Being, as it were, forcefully, forcibly, run around part
8 of a camp, for example?

9 A. Yes, I understand that to be covered by enforced
10 exercising, yes.

11 Q. That was not your understanding of what was meant by
12 "moving them around"?

13 A. No, certainly not.

14 Q. You say in your statement that to try to keep prisoners
15 unsettled was the objective --

16 A. Yes.

17 Q. -- as you were told it by the warrant officer.

18 A. I don't recall the specific words, but that is the
19 opinion I formed as a result of what he had said.

20 Q. Did anything in that approach of the Americans conflict,
21 as you believed it, with any British practice?

22 A. Nothing that the warrant officer told me then -- no --
23 led me to believe it conflicted with what we would do.

24 Q. So the British approach, if I can put it that way, to
25 the use of the shock of capture, as you understood it,

1 would be the same --

2 A. Yes.

3 Q. -- and would be permissible?

4 A. Yes.

5 Q. So from what you were told in any conversations you may

6 have had and what you saw of the American practice,

7 there wasn't, as it were, was there, any possibility

8 that you were contaminated by the Americans to do

9 things, if you like, which British forces would not do?

10 A. Nothing in that discussion with the warrant officer or

11 understanding of their official procedures would have

12 contaminated me. No, I was quite clear as to, in my

13 mind, what I thought we were and were not allowed to do.

14 I have witnessed other violence by Americans, but it did

15 not, in my mind, contaminate me into the extent that

16 I might think that was acceptable.

17 Q. I move on then, please, to Op Telic 2. Just to remind

18 ourselves, you took over as the OC of A Company on

19 19 August.

20 A. I arrived in theatre on 19 August. I would have had

21 a four- or five-day handover period.

22 Q. From Major Davis?

23 A. From Major Davis, yes.

24 Q. I want to ask you, please, about certain aspects of

25 Op Telic 2 and your role as OC A Company thereafter.

1 Prisoner-handling: you had responsibility, as you
2 say in your statement to this Inquiry, for prisoners or
3 detainees when they were at Camp Stephen, where
4 A company was based.

5 A. Yes. I was the company commander of the company that
6 occupied that base, so, yes, I would.

7 Q. I want to come back to that and to Camp Stephen, if
8 I may, but can I begin by asking you about the TDF at
9 BG Main, which is, as I think you say and many other
10 witnesses have told the Inquiry, where most detainees
11 would be taken, albeit they might be brought back to
12 your base first, but generally speaking they would be
13 taken to the TDF in BG Main.

14 A. That's correct, sir, yes.

15 Q. I want to ask you, please, about your understanding at
16 the time -- that's to say when you took over as OC -- of
17 the responsibility, the chain of command, if you like,
18 for those prisoners and for the TDF. Who ran the TDF,
19 as you understood it?

20 A. At the time, my understanding was in common with our
21 normal doctrine, that the regimental sergeant major
22 would be in charge of prisoners and would discharge that
23 responsibility through his provost staff -- provost
24 sergeant, the provost corporal.

25 Q. That, you tell the Inquiry, was your understanding

1 through until after the death of Baha Mousa?

2 A. That's correct, yes.

3 Q. It follows, therefore, does it, that from 19 August on,
4 no one had told you any differently?

5 A. I don't recall being told any differently. I don't
6 recall being told that the RSM's role had changed and
7 that the BGIRO was now responsible for things.

8 Q. So your understanding was that it was the RSM, and down
9 from him ...? Provost sergeant?

10 A. Provost sergeant, provost corporal and other provost
11 staff.

12 Q. Did you yourself visit the TDF from time to time?

13 A. No, I did not.

14 Q. I think you did make a visit to the TDF, didn't you --

15 A. No.

16 Q. -- in relation to the Operation Salerno detainees?

17 A. No, I did not make a visit to the TDF. Later on, when
18 the detainees were in the TDF and they were being
19 guarded and some of my soldiers were detached from me to
20 assist in that guarding, I visited those soldiers, but
21 I did not visit the TDF; that is to say I did not enter
22 the TDF.

23 Q. I follow. I will come back to that in a little while if
24 I may.

25 So the chain of command was as you have indicated to

1 us. Can I deal, please, with this aspect of matters?
2 You have just referred, for example, to some of your
3 soldiers taking guard duty. The Inquiry has heard that
4 where a multiple made arrests, then frequently that
5 multiple may be called upon to be the guard at the TDF.
6 You were aware of that, obviously.

7 A. Yes.

8 Q. If a multiple were required to guard prisoners at the
9 TDF, did the multiple commander retain responsibility
10 for his multiple in that task?

11 A. Yes, he would. It would be normal for the battlegroup
12 headquarters to order the company to detach a multiple
13 from the company to go and work for battlegroup
14 headquarters -- what I, at the time, understood to be
15 the RSM. That multiple commander would go down, would
16 take his troops down there and he would be responsible
17 for those troops, that is correct.

18 THE CHAIRMAN: You said "responsible for those troops".
19 What about those inside the TDF?

20 A. You are referring to the detainees, sir?

21 THE CHAIRMAN: Yes.

22 A. I would suggest he is not responsible for those
23 detainees. My understanding was that that
24 responsibility still rested with the RSM and the provost
25 staff.

1 THE CHAIRMAN: Thank you.

2 MR ELIAS: If his responsibility -- if I can just focus on
3 this for a moment -- for his own multiple remains, as
4 I think you say in previous accounts that you have
5 given, he may, as it were, fall under the commands from
6 the RSM -- you are nodding.

7 A. Yes.

8 Q. -- or indeed the provost sergeant?

9 A. That's correct. He would receive detailed instructions
10 from them.

11 Q. But he, you have said in the past -- is this correct --
12 and I can take you to aspects of your evidence, for
13 example, from the court martial -- he would retain
14 responsibility for his multiple nonetheless?

15 A. Yes, he would.

16 Q. And in exercising that responsibility, what would you
17 expect the multiple commander to do?

18 A. I would have expected him to have arrived at the
19 location, sought out the person in charge, the RSM or,
20 in his absence, the provost sergeant, provost corporal,
21 confirmed the nature of the task, duration of the task,
22 confirmed that he understood what was required and
23 confirmed that his soldiers understood what was
24 required, either by relaying the orders from the provost
25 staff to the soldiers himself or by overseeing the

1 orders from the provost staff directly to the soldiers.
2 He would then have monitored the soldiers as they were
3 doing the task, make sure the rota was running
4 correctly, that they were being looked after and that
5 they were conducting their task correctly.

6 Q. So briefing them adequately, having found out what was
7 required?

8 A. Yes.

9 Q. Monitoring them throughout the period of the guard duty
10 or duties?

11 A. Yes.

12 Q. That would inevitably mean, would it, visiting
13 physically, finding out what was going on?

14 A. One would envisage that to check everything was going
15 okay, he would visit and check the soldiers were happy
16 with what they were doing and that the people they were
17 working for, ie the provost staff, were happy with what
18 the soldiers were doing.

19 Q. I think it has been put to this Inquiry, quite a long
20 time ago now in evidence, that one would expect
21 a multiple commander to know where his men were and what
22 they were doing. Is that fair?

23 A. Yes, although in guarding a TDF it may only require
24 three or four soldiers at any one time and, therefore,
25 may not have required the multiple commander's presence

1 100 per cent of the time. So he may well -- as
2 I believe he did -- attend to other duties in that
3 location, Battlegroup Main, or indeed he may well have
4 come back to Camp Stephen to receive further orders from
5 me for future operations.

6 Q. He would not have to be, as it were, sitting on their
7 coat-tails all the time --

8 A. Correct, sir, he would not.

9 Q. -- but he would have to know what they were doing.

10 A. No.

11 Q. You say in paragraph 104 of your statement to this
12 Inquiry at BMI04420:

13 "At some point in the month after Baha Mousa died
14 I was informed by Company Sergeant Major Tomkinson that
15 in fact the BGIRO had overall responsibility for
16 ensuring proper treatment of prisoners ..."

17 A. That's correct, sir, yes.

18 Q. Is that correct?

19 A. Sorry, sir, I don't understand the question. Is it
20 correct that I believe the sergeant major told me that?

21 Q. Yes.

22 A. That is correct. I believe the sergeant major did tell
23 me that, yes, sir.

24 Q. I will be corrected if I am wrong, but Mr Tomkinson has
25 told the Inquiry that the RSM retained control.

1 A. No, sir. I believe that at some point Sergeant Major
2 Tompkinson told me that the BGIRO had overall
3 responsibility.

4 Q. You see, if we look at MOD004203 -- this is a passage of
5 your interview under caution that you were giving in
6 March 2005. There is quite a long answer at the top of
7 the page:

8 "... I take responsibility for the troops on the
9 ground ..."

10 In the second line of that answer, do you see?

11 A. I see.

12 Q. A little lower down:

13 "... they're then taken to Battlegroup Main and
14 handed over effectively into the custody of the
15 regimental sergeant major and his provost staff, which
16 ever one of them, individuals is there to take custody
17 of them and the way I see it is they have custody of
18 those prisoners ..."

19 A. Yes.

20 Q. You were still saying in 2005, in that answer -- and we
21 can go on towards the foot of the page where you
22 reiterate it, you see, when you are asked the question:

23 "... the battlegroup internment officer then, as far
24 as you're concerned, was the man who was in the control
25 of the situation."

1 You said:

2 "No the, no I, explaining that, but in my opinion
3 the routine custody is the matter of the regimental
4 sergeant major and the provost staff ie reception,
5 documentation, placing in custody, maintaining the
6 custody ie guarding is the matter for the regimental
7 sergeant major and their provost staff ..."

8 A. I don't recall the details of the statement. I can only
9 assume that I was speaking of what I believed at the
10 time, ie at the time of Baha Mousa.

11 Q. I will be corrected again if I am wrong, but I don't
12 think you refer to any conversation with the company
13 sergeant major.

14 A. I don't believe I refer to it in that statement, having
15 re-read that statement in the recent past.

16 Q. No.

17 A. I am, however, clear in my own mind that, at some point
18 shortly after Baha Mousa's death, I did have that
19 conversation with my company sergeant major.

20 Q. It may arise in other areas of evidence that we will
21 look at in due course, Colonel, but let me put this
22 proposition to you now: was there, after the death of
23 Baha Mousa, any what I might call "concerted attempt" to
24 switch the blame from the RSM and, therefore, through
25 him, to the commanding officer, on to the BGIRO,

1 Major Peebles?

2 A. I don't recall any concerted attempt, as you say. My
3 impression is that immediately following the death, that
4 responsibility lay with the provost staff, which was
5 clearly headed up by Corporal Payne on the day, and the
6 BGIRO. And that is -- I don't recall this particular,
7 as you say, concerted attempt to divert the attention
8 that way. I believe it was that way from the start.

9 Q. Although you didn't know about it?

10 A. No, I believed at the time that the RSM was responsible.

11 Q. Can we move on then, please, to Op Telic 2 and the use
12 of hooding in your time as OC of A Company? You saw
13 prisoners hooded, did you?

14 A. Yes, I did.

15 Q. Both at Camp Stephen and at BG Main?

16 A. I don't particularly recall seeing prisoners hooded at
17 BG Main. I do recall seeing prisoners hooded at
18 Camp Stephen.

19 Q. Did you also, from time to time, see prisoners hooded at
20 the point of capture?

21 A. I believe I did, though I can't recall the specific
22 instances.

23 Q. Was it, in practice, an SOP to hood prisoners at the
24 point of capture?

25 A. It would -- it was an SOP that you could hood prisoners

1 at the point of capture.

2 Q. Was, therefore, that the norm?

3 A. I do not know if it was the norm, sir, to be quite
4 honest. I just know that if you thought the situation
5 warranted it for security, then you would be allowed to
6 hood them; for example, if you were going to bring them
7 back in the back of a Saxon vehicle which -- you would
8 therefore hood them to deprive them of sight of the
9 radio systems, for example.

10 Q. So, what, they would be routinely hooded if they were
11 taken into to a Saxon vehicle, would they?

12 A. I would expect them to be hooded if they were in a Saxon
13 vehicle and they were considered that much of a threat.

14 Q. Hooded at Camp Stephen -- I will come back to that, if
15 I may, in just a little more detail in a minute or two.
16 You don't recall seeing prisoners hooded at BG Main?

17 A. I don't recall specific instances, no, sir.

18 Q. Was it your understanding that prisoners were kept
19 hooded until they were taken to BG Main whether they
20 were brought to Camp Stephen first or no?

21 A. Sorry, can you repeat that again, please?

22 Q. Yes. Was it your understanding that prisoners were, if
23 hooded at the point of arrest, kept hooded until they
24 were delivered to BG Main whether or not, for example,
25 there was a stop-off at Camp Stephen first?

1 A. It was my understanding that they would be kept hooded
2 as long as the security situation warranted it.

3 Q. In practice, did that mean until they were delivered to
4 the TDF in BG Main normally?

5 A. If they were going direct from the point of capture,
6 I would suspect that it did. If they stopped off
7 somewhere en route, for whatever reason, then there may
8 not be the necessity to keep them hooded.

9 Q. You had seen hooding before?

10 A. Yes, sir.

11 Q. You took no exception to what you saw in Op Telic 2?

12 A. No, sir.

13 Q. Did you ever question it?

14 A. I had a casual conversation with Major Royce very early
15 on after I had arrived. He was the then BGIRO. It was
16 more in relation to what state the prisoners would be in
17 when they were delivered to the TDF, did they require to
18 be -- were they supposed to be hooded, and I don't
19 recall the exact words, but I came away with the
20 impression that he would expect them normally to be
21 hooded because of the vicinity of the TDF to the rest of
22 battlegroup headquarters.

23 Q. Did Major Royce say anything else about hooding in this
24 casual conversation?

25 A. Not that I recall specifically.

1 Q. At paragraph 96 of your statement to this Inquiry --
2 BMI04418, please -- you say:
3 "I had asked Major Royce how prisoners were to be
4 handled and whether hooding was required."
5 Did you inquire of him of that?
6 A. Yes, that's what I have just said, sir.
7 Q. Why did you make that inquiry of Major Royce if in fact
8 you had seen it and believed it to be effectively an
9 SOP?
10 A. It was just part of a casual conversation, sir. I don't
11 recall any specific impetus to make me ask the question.
12 Q. Forgive me if I am wrong about this, but let me ask you
13 why it is, if you can help us: I don't think you have
14 given an account of any conversation with Major Royce in
15 any account that you have given prior to this one.
16 A. I have never -- I don't recall ever being particularly
17 asked the question before --
18 Q. I follow.
19 A. -- and the way that the evidence for this Inquiry was
20 put together is entirely different to the way we were
21 questioned for the court martial. So, for example, when
22 I first sat down with the Treasury Solicitors, it was
23 more a telling a whole story, going through everything
24 you can remember and taking time to think of all sorts
25 of things --

1 Q. I follow.

2 A. -- rather than responding to questions.

3 Q. The paragraph goes on:

4 "I cannot remember what prompted me to ask this

5 other than that we were having a general conversation

6 about prisoners."

7 Then this:

8 "He told me that he had questioned the brigade HQ

9 about whether hooding was allowed and had been told that

10 it was permitted."

11 Did he tell you that?

12 A. I can't recall it today, sir, but when I put this

13 statement together, clearly that's what I thought, yes,

14 sir.

15 Q. Three or four months ago you were making the statement.

16 You remembered it then, did you?

17 A. I did, sir, yes.

18 Q. But you don't now?

19 A. I don't recall that specific comment when I am recalling

20 that situation now, sir.

21 Q. It would perhaps have been quite a significant matter,

22 wouldn't it, if he was telling you that he questioned

23 hooding with brigade?

24 A. Not particularly, sir, no. He would have questioned and

25 discussed lots of SOPs with brigade.

1 Q. But from your perspective, hooding was, as it were,
2 cleared to be used, wasn't it?

3 A. Yes, sir.

4 Q. And that should have been his, shouldn't it, from his
5 training too?

6 A. Yes, sir.

7 Q. So when he said that he had questioned the matter with
8 brigade about whether hooding was permitted, did you ask
9 him why he had done that when everybody knew it was?

10 A. I don't recall asking him why, sir, no.

11 Q. You go on in the statement to say:

12 "I understood from this that it was a legitimate,
13 but not mandatory practice."

14 A. Yes, sir.

15 Q. So that we are clear about it, that was simply
16 confirming what I think you have told us you already
17 knew.

18 A. That's correct, sir, yes.

19 Q. Did Major Royce, as he then was, tell you why hooding
20 was being used?

21 A. I don't recall specifically discussing why it was used.
22 I certainly have the opinion in my mind that we
23 discussed it in relation to the location of the TDF to
24 Battlegroup Main, but nothing more specific than that,
25 sir.

1 Q. Stress positions or conditioning: when you were
2 OC A Company, were stress positions used to your
3 knowledge?

4 A. I did not see stress positions being used, no, sir.

5 Q. But you knew they were being used, did you?

6 A. No, I did not know they were being used, however, as
7 I said, I was of the opinion at that time that they
8 would be allowed to be used, for example, at the point
9 of capture for controlling a prisoner. But I was not
10 aware particularly that they were being used.

11 Q. When you were in Iraq on Op Telic 2, as company
12 commander, was there any discussion about the use of
13 stress positions?

14 A. Not that I'm aware of prior to the death of Baha Mousa.

15 Q. Was something said after the death of Baha Mousa?

16 A. I don't recall specifics, but I certainly recall forming
17 the impression that people were saying you could not use
18 stress positions.

19 Q. That was being said after the death, you say?

20 A. I believe so, yes. I can't recall a specific
21 conversation where that was the topic, but certainly
22 I began to form -- I think I began to form that opinion
23 then.

24 Q. You say in paragraph 119 of your statement to this
25 Inquiry -- BMI04423, please -- you put it this way:

1 "... I did receive oral guidance on the use of
2 conditioning techniques prior to Baha Mousa's death."

3 Just pausing there, please, why did you need to
4 receive guidance prior to Baha Mousa's death on the use
5 of conditioning techniques?

6 A. I don't remember the specific conversation, but I do
7 remember again, as part of, I believe, my handover at
8 some point early in my tour, being told about
9 conditioning.

10 Q. If you were told about it early in your tour, did you
11 question it?

12 A. Not that I recall, sir, no.

13 Q. Wasn't it your duty so to do?

14 A. I don't understand, sir, no.

15 Q. Well, conditioning techniques were not -- apart from the
16 very limited way in which you have described at the
17 point of capture -- on the menu, were they, to be used?

18 A. You are losing me, sir. I believed that conditioning,
19 as in maintaining the shock of capture, unsettling of
20 the mind, moving people around, was acceptable, was part
21 of what we were allowed to do, and therefore, when
22 I received the same sort of guidance, I would not have
23 questioned it, no.

24 Q. So, what, moving prisoners around were conditioning
25 techniques, were they, as you understood them?

1 A. Yes, sir.

2 Q. So if we look at what you said in paragraphs 119 and
3 120:

4 "... I did receive oral guidance on the use of
5 conditioning techniques prior to Baha Mousa's death.
6 This was provided during conversations with other staff
7 not long after I arrived in Iraq in August 2003 ...",
8 although you can't say when.

9 Which other staff did you have conversations with
10 about conditioning techniques?

11 A. Are you referring to early August, sir?

12 Q. I am referring to what you say in this paragraph.

13 A. I don't recall the specific staff that I discussed it
14 with.

15 Q. Not at all?

16 A. No. I mean, I can -- I can make an assumption as to who
17 they were, but I don't recall the specific
18 conversations.

19 Q. Who would you have expected to have spoken with about
20 conditioning techniques?

21 A. I expect that I would have spoken with my company
22 sergeant major. I expect that it may have been a topic
23 of conversation were I speaking to someone from the
24 intelligence cell or perhaps the BGIRO or perhaps the
25 provost staff, but I don't recall particularly speaking

1 to those people. I don't recall specific instances, if
2 you like.

3 Q. As you believed it, the man who would or ought to have
4 known what was going on was the RSM?

5 A. Yes.

6 Q. Do you ever recall speaking to him about what in fact
7 was taking place with prisoners?

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

9 Q. So when you refer in that paragraph, as you do, to
10 conditioning techniques, what techniques did you have in
11 mind?

12 A. Movement -- moving the prisoners around, unsettling the
13 mind, shouting.

14 Q. Shouting at the prisoners, moving them around. Anything
15 else?

16 A. No, sir.

17 Q. You go on in paragraph 120 to say this:

18 "I remember on one occasion Company Sergeant Major
19 Tomkinson explained to me that it was important to
20 maintain the shock of capture between the point of
21 arrest and transfer to BG Main for tactical
22 questioning."

23 A. Yes.

24 Q. Did he tell you that?

25 A. I believe he did, sir, yes.

1 Q. "He did not explain what this meant ..."

2 Did you ask him?

3 A. I don't recall the specifics of the conversation and

4 I don't recall specifically asking him to explain in

5 detail what he meant. I believe I came away

6 understanding what he meant on the basis of what I would

7 have understood about shock of capture.

8 Q. Forgive me, Colonel, you were the OC A Company.

9 A. I was.

10 Q. Your company sergeant major was talking to you about

11 shock of capture, conditioning techniques, in relation

12 to prisoners. Surely if he said something that you

13 didn't understand, you would have asked him what

14 actually goes on.

15 A. I did understand what -- or I thought I understood what

16 he meant --

17 Q. I follow.

18 A. -- and therefore, because what he was saying accorded

19 with my understanding of what was allowed at the time,

20 I saw no reason to question him or get him to explain in

21 any further detail.

22 Q. So you didn't question him and you didn't question the

23 practice?

24 A. That's correct, sir, I did not.

25 Q. What you understood is now set out, is it, in

1 paragraph 120?

2 "... we should ensure prisoners were unsettled and
3 could not communicate a strategy for defence. I do not
4 recall discussing how this was to be achieved with [the]
5 Company Sergeant Major ... but I assume that it would
6 have been done by separating the prisoners and
7 constantly moving them around."

8 A. Yes, sir.

9 Q. Over the page at paragraph 121, you were asked to
10 clarify the answers -- forgive me, those paragraphs
11 a little further. You say:

12 "... prisoners were to be unsettled and whether
13 hooding played any part in this."

14 You were asked to clarify that.

15 "... I drew an inference that prisoners should be
16 kept unsettled from Tomkinson's reference to the
17 importance of maintaining shock of capture. He did not
18 actually say that prisoners should be kept unsettled and
19 more specifically, he did not mention hooding as a means
20 of doing so. I do recall noting that hooding prisoners
21 to deprive them of sight of sensitive areas or for other
22 tactical reasons would have the effect of unsettling
23 them anyway. However, this was my own view and not
24 something mentioned by any of the chain of command,
25 including CSM Tomkinson. Apart from the separation of

1 prisoners, moving them around, and the possible
2 incidental impact of hooding for security reasons, I was
3 not aware of any other ways in which the prisoners might
4 be kept unsettled."

5 So the Inquiry should understand, Colonel, should
6 it, that relatively early on in your post now as company
7 commander, you knew -- what you suggest in paragraph 119
8 of your statement to this Inquiry -- that conditioning
9 techniques, in the way that you there define them, were
10 being used on prisoners for the purposes of tactical
11 questioning?

12 A. Yes, that's correct.

13 Q. When these issues were raised with you and discussed, as
14 you outline in the statement to this Inquiry, did you
15 ask any questions such as, "Well, for how long does this
16 conditioning process go on"?

17 A. No, I did not. I was not a tactical questioner and it
18 did not occur to me to go into that detail of it, sir,
19 no.

20 Q. Did it occur to you from the training rooted in you in
21 LOAC training and its humane treatment that perhaps you
22 needed to know about how long these conditioning
23 processes might be employed in relation to any
24 particular prisoner?

25 A. No. It did not occur to me to delve into that, sir.

1 I would have assumed that it was being done correctly
2 and within the rules.

3 Q. And what were the rules?

4 A. That prisoners must be treated humanely.

5 Q. What were the rules about how long conditioning could be
6 employed for?

7 A. I don't know those rules, sir. I'm not a tactical
8 questioner.

9 Q. Do you think now, Colonel, looking back on it, that it
10 was your duty to find out what was happening -- since
11 these matters were raised with you, to find out in more
12 detail what was happening?

13 A. I don't think the matters were raised to me in
14 a discussion of some concern that would therefore have
15 warranted me to delve deeper. The matters were raised
16 as a matter of routine conversation, not indicating an
17 area of concern. Had there been -- as there was no area
18 of concern, no, I did not consider that I should have
19 looked into it. Had I been aware of an area of concern
20 or something going wrong, then, yes, as any individual
21 or, more importantly, as an officer, then I would have
22 looked into it.

23 Q. It is right, isn't it, Colonel, that whatever we call
24 it, those conditioning techniques employed up until the
25 time of tactical questioning you understood were

1 intended as a means to break the prisoner?

2 A. I would choose the phrase "unsettle the mind". I am
3 aware I have used the phrase "break" before in one of my
4 statements.

5 Q. Let's have a look at that, shall we, at MOD007072?
6 Perhaps we should go to MOD007071 first, just to get the
7 date. It is the statement that you made on 15 March
8 2006 to the RMP, all right. If you go over the page to
9 the second page, please, and halfway down the page, the
10 paragraph beginning "I would say that ..."

11 This is in a different context, which perhaps we
12 will look at just a little later, that hooding was
13 stopped, was banned, wasn't it, post the death of
14 Baha Mousa?

15 A. It was banned, yes.

16 Q. It is in that context you are referring to this, but
17 perhaps it doesn't matter.

18 "I would say that the only real concern I and others
19 had was that by changing the guidance, there was an
20 implication that things had been incorrect prior to
21 this."

22 A. That's correct, yes.

23 Q. That is saying "You may no longer hood" was implying
24 that it might have been wrong to hood before. That's
25 what you were saying there.

1 A. Yes.

2 Q. "By this I mean the use of hoods. I can state that we
3 found this a concern because the use of hoods had been
4 the accepted means of breaking detainees and had been
5 what we had been briefed and trained on pre-deployment."
6 What does "breaking detainees" mean?

7 A. I don't know, sir. I don't recall details of making the
8 statement. I know it's a summary. That's not to say
9 I don't -- I didn't say that word. I can only know
10 that -- I knew the purpose of hooding was for security
11 and it would be: you were not to hood to break, to harm,
12 a detainee.

13 Q. Forgive me, Colonel. You signed this statement.

14 A. I have, indeed, sir, yes.

15 Q. It has a caution at the beginning of it saying that the
16 contents are true to the best of your knowledge and
17 belief --

18 A. Yes, sir.

19 Q. -- and you know you will be prosecuted if you have
20 stated anything false. You have signed that.

21 A. Yes, sir.

22 Q. You no doubt realised it was a serious matter.

23 A. Yes, sir.

24 Q. I am asking you now, on behalf of the Inquiry, please,
25 if you will help us as to what you meant putting your

1 signature to the term "hoods had been the accepted means
2 of breaking detainees". What does it mean?

3 A. I don't know what I meant when I signed that statement
4 and, reading it, I can only assume I did not read it as
5 fully as I should, and at no point did I have the
6 opinion or the thought that using hoods to break
7 detainees, ie cause them harm, was accepted or allowed.

8 THE CHAIRMAN: Major, can I just ask you, "breaking" the
9 detainees, reading it as it stands, doesn't it mean
10 breaking their will?

11 A. Reading the sentence as pure English, Sir, it does, yes.

12 THE CHAIRMAN: It does. Breaking their will and causing
13 them to say something that they otherwise would not?

14 A. You could draw that inference, Sir, yes.

15 MR ELIAS: You say "You could draw that inference", Colonel,
16 but that's what you meant, wasn't it? However one puts
17 it, making them more malleable, more likely to say that
18 which otherwise they wouldn't volunteer, isn't that what
19 you meant?

20 A. That's what the sentence meant, sir.

21 Q. Well, isn't that what you meant?

22 A. No, because at the time I was not of the opinion that we
23 would use hoods -- I was not of the opinion that we
24 would use hoods to cause harm. We used hoods for
25 security. I was clearly of the opinion that hooding

1 someone would unsettle them. It may be a bad use of the
2 word "break", if indeed, as the chairman has said, that
3 "break" implies -- I forget your phrase, sir, but --
4 THE CHAIRMAN: Breaking the will.
5 A. -- breaking the will or the mind, yes.
6 MR ELIAS: You have already told the Inquiry, not a few
7 minutes ago, that you understood, you say from Company
8 Sergeant Major Tompkinson, that the use of these
9 conditioning processes was for the purpose of the
10 lead-up to tactical questioning.
11 A. That's correct, sir, yes.
12 Q. By that, do we understand that you mean -- and I don't
13 mean this in any physical sense -- the softening-up
14 process so that they may be more malleable, as I put it,
15 more disposed to volunteer information, as the chairman
16 has put it?
17 A. More disposed to volunteer information, sir, yes.
18 Q. Were you aware of any prohibition on the use of force or
19 inducement of prisoners to answer questions?
20 A. I'm aware that prisoners must be treated humanely, that
21 you can't use force upon them.
22 Q. Did you regard hooding, with whatever associated
23 conditioning techniques of the kind that you have
24 described -- did you regard that process as being
25 humane?

1 A. I regarded hooding as being humane provided it was
2 a requirement due to the security, ie the reason you
3 were hooding them was correct, and that you did not
4 prolong the hooding unnecessarily. But, yes, if it is
5 done correctly, I considered it humane.

6 Q. If the hooding were in fact to remain in place until
7 TQ'ing, which, as I understand it from your evidence,
8 was your understanding from Major Royce and from your
9 own belief, that could involve a detainee remaining in
10 a hood for several hours, couldn't it?

11 A. If it was to be -- if he was to be hooded entirely for
12 the whole period from point of capture to tactical
13 questioning, it could involve a long period, but I would
14 have hoped that at the point where hooding was no longer
15 required -- for example, from the point of capture, they
16 are face down on a Bedford truck, there is no reason for
17 them to be hooded at that point; or if they are sat
18 somewhere in a location where what they see has no
19 security risk or implications, at that point they would
20 not need to be hooded. So there would not necessarily
21 be a need to have them hooded for the whole period of
22 time between one and the other.

23 Q. Can we come now to Camp Stephen, please, and your direct
24 responsibility, if you like --

25 A. Yes, sir.

1 Q. -- and detainees there. You saw detainees there hooded?

2 A. Yes, I did, sir, yes.

3 Q. Brought back from operations?

4 A. Yes, sir.

5 Q. You saw detainees there in stress positions?

6 A. No, sir.

7 Q. Were detainees questioned at Camp Stephen?

8 A. Detainees may have been asked brief questions to

9 ascertain whether they were the right person, whether

10 they were the kind of person that we needed to then

11 onward move to the TDF or whether we were going to give

12 them to the Iraqi police.

13 Q. Were they questioned at Camp Stephen to obtain

14 intelligence information?

15 A. In the manner in which I described, you would describe

16 that information potentially as "intelligence".

17 Q. So the answer is "yes"?

18 A. Yes. If you are asking someone confirmation of who he

19 is or it is the initial questioning as to what he was

20 doing and for the reason you arrested him, you may

21 consider that intelligence, yes.

22 Q. Who would ask questions at Camp Stephen?

23 A. It would vary. It would depend on who had brought the

24 prisoners in, who was in Camp Stephen at the time. It

25 may be me, it may be my company sergeant major, it may

1 have been my company intelligence or company crime
2 officer.

3 Q. So you might question detainees?

4 A. I might, sir, yes.

5 Q. The Inquiry has heard evidence of prisoners being
6 brought to what I might call a veranda-type area.

7 A. Yes, sir.

8 Q. And in that same area questioning took place sometimes?

9 A. Yes, sir.

10 Q. Were detainees in that area, before questioning, made to
11 kneel down?

12 A. I don't recall specific instances, but I do believe that
13 it would be normal or common sense to have them kneel
14 down there.

15 Q. You don't have a picture of ever seeing them kneeling,
16 do you?

17 A. I do not have a picture of particularly seeing them, no,
18 sir.

19 Q. Was the SOP that prisoners brought into Camp Stephen
20 prior to questioning there would kneel on the ground
21 with their hands, fingers interlaced, on top of their
22 heads?

23 A. I don't recall that there was a specific SOP for how you
24 would place prisoners. It would depend on what threat
25 you thought the prisoner posed.

1 Q. Did that happen from time to time, prisoners with hands
2 on heads, kneeling down?

3 A. I have seen it, not particularly in Camp Stephen, and
4 clearly I have seen photographs since. However, if
5 somebody brought a prisoner into Camp Stephen and
6 considered that they may be a threat, then them kneeling
7 with their hands on their heads, fingers interlaced,
8 would seem a routine thing to do, yes.

9 Q. Did you regard the kneeling and hands-on-heads position
10 that detainees were kept in prior to questioning as
11 being in any sense a stress position?

12 A. It would depend on where they were located, the
13 environment and how long they were there, sir.

14 Q. Were they sometimes located kneeling on rough ground?

15 A. Not that I'm aware of from seeing it myself. I have
16 clearly read the evidence from one or two people.

17 Q. Coming back to my question, please, did you ever see, at
18 Camp Stephen, detainees kneeling in the manner that we
19 have been describing in stress positions?

20 A. No, sir.

21 Q. Would you agree, Colonel, that the margin, if you like,
22 between placing a detainee in a comfortable kneeling
23 position and in what might be called a stress position
24 kneeling position may be a very fine one?

25 A. I would indeed agree. It is a very fine one depending

1 on the circumstances, sir, yes.

2 Q. Did you issue any guidance to A Company as to what was
3 and was not acceptable in this area?

4 A. I don't recall issuing specific guidance as to how
5 a person should be knelt or positioned. I do recall
6 giving general guidance on treating detainees properly,
7 with respect.

8 Q. But soldiers would not, at least from you, have received
9 any instruction on what, for example, might be a stress
10 position as opposed to some more comfortable position?

11 A. No, I don't recall defining the difference between
12 a stress position and not a stress position, sir, no.

13 Q. At paragraph 125 of your statement to this Inquiry --
14 may we look at it please -- you say this:

15 "Although Major Royce told me hooding was permitted
16 ... I did not consider it necessary to give any orders
17 in this regard as I understood from my conversation with
18 Major Royce that hooding was merely a possibility, as
19 opposed to being mandatory in every case. I was content
20 to leave it to the discretion of my troops as to when
21 hoods were to be applied."

22 A. Yes, sir.

23 Q. And the same applied, did it, to the use of stress
24 positions? You left it to the discretion of the troops?

25 A. On the basis that at that time I believed the use of

1 stress positions was allowed, for example, at the point
2 of capture, as I said, I did not give any particular
3 detailed guidance, as I have just said, on what was and
4 wasn't a stress position and I would have therefore left
5 it indeed to the commanders on the ground at the --
6 whatever situation was going on to make that
7 distinction, yes.

8 Q. Do you think, even looking back now, that in relation to
9 hooding and the use of stress positions, that clearer
10 more particular guidance would have been desirable?

11 A. Clearer guidance would indeed have been good. However,
12 to give guidance that applied to every single situation
13 that we were likely to encounter on the ground just was
14 not possible. One has to place a certain amount of
15 trust in your commanders on the ground to interpret the
16 situation and act accordingly within the rules.

17 Q. Of course, but guidance such as "If a detainee has to be
18 hooded, it should not be for more than 30 minutes" for
19 example?

20 A. I don't think you can specify a time. You can specify
21 correctly that it should be for the shortest possible
22 time because it is only for security.

23 Q. If we move on then, please, to Operation Salerno. You
24 played a part as officer commanding A Company in
25 Operation Salerno.

1 A. I did, sir, yes.

2 Q. I just want to touch on certain aspects of that, please.

3 Did you give a briefing or briefings in respect of that

4 operation?

5 A. Yes, I did.

6 Q. Was there anything in the briefing that you gave --

7 because, as I think you say, if I may take this shortly,

8 in your statement, you were aware that prisoners may be

9 taken in that operation.

10 A. Correct, sir, yes, I was aware.

11 Q. Did you give any briefing in relation to how prisoners

12 should be handled or treated?

13 A. No specific briefing. The orders covered the fact that

14 we would deal with detainees according to our standard

15 operating procedures. It is in the orders that it was

16 a -- regarded as a soft knock operation --

17 Q. Yes.

18 A. -- and therefore that implies that, you know, we were

19 not going in hard. We are not expecting to have to meet

20 difficult prisoners.

21 Q. You went to the hotel?

22 A. I did, sir, yes.

23 Q. I just want to ask you a little about that, but can you

24 help the Inquiry about this: officers of your rank or

25 more senior, do you recall seeing any inside the hotel

1 itself at any stage?

2 A. Yes. That day I had the brigade commander's tactical
3 team with me, including the brigade commander.

4 Q. Was he in the hotel?

5 A. I don't specifically recall seeing him in the hotel.
6 I know he went up to the roof and clearly I'm aware of
7 that now from further statements, but I can't
8 specifically recall seeing the brigade commander in the
9 hotel.

10 Q. That's rather what I'm asking you. Who else of your
11 rank or above was in the hotel that you remember, if
12 anyone?

13 A. I don't recall anybody senior to me being in the hotel.
14 I'm aware that the brigade commander accompanied me, as
15 I have just said, but I don't recall seeing him, neither
16 do I recall seeing, for example, the commanding officer
17 in the hotel.

18 Q. When you went into the hotel, you saw detainees lying on
19 the floor?

20 A. Yes, sir.

21 Q. About how many, do you remember?

22 A. I believe it's somewhere between six and nine, sir.

23 Q. And in what position on the floor?

24 A. Prone, face down, sir.

25 Q. Cuffed at that stage?

1 A. I believe that I thought some of them were cuffed to the
2 rear.

3 THE CHAIRMAN: But either cuffed to the front or the rear?
4 All cuffed either to the front or --

5 A. No, I believe some of them, sir, were cuffed and
6 I believe they were cuffed to the rear. I would not
7 have been able to see if they were cuffed to the front.

8 THE CHAIRMAN: No, probably not.

9 MR ELIAS: Lieutenant Rodgers of your company was there?
10 A. Yes, sir.

11 Q. Was he -- can I use the expression -- marshalling the
12 operation when you arrived?

13 A. He was, yes. He was the lead multiple for that hotel.

14 Q. Did you see any incidents between prisoners -- detainees
15 as they were to become -- and soldiers?

16 A. Yes, I did, sir.

17 Q. You tell us in your statement to this Inquiry of an
18 incident involving Lance Corporal Redfearn.

19 A. Yes, sir.

20 Q. How clear in your recollection is that incident?
21 A. I'm clear that -- it's clear in my mind what happened
22 and what I recollect of it, sir.

23 Q. Tell us what happened, so far as -- forgive me using the
24 surname -- Redfearn is concerned.

25 A. I believe he was standing a short distance away from

1 where -- the edge of where the detainees were laid and
2 I believe a detainee rose and lunged at
3 Corporal Redfearn and he then struck the detainee. I am
4 not clear with what, but something, and the detainee
5 then went back to the ground. I believe he then raised
6 whatever he had used again and the detainee stayed down,
7 ie the deterrent was there.

8 Q. Could we have a look, please, at LCY000042, the bottom
9 left-hand photograph, please on that page. I think you
10 would have seen this before; is that right?

11 A. I have, sir, yes.

12 Q. It is part of an Anzio Company magazine.

13 A. This photograph is taken from a battalion magazine, but
14 from the Anzio page, yes.

15 Q. I'm not really concerned about the photograph or who the
16 individuals are. "Say hello to my little friend" -- the
17 staff or baton or whatever one calls it in the hand of
18 the soldiers, was that what Lance Corporal Redfearn had?

19 A. I don't know, sir. He may well have had one. I would
20 have expected him to carry one, but I do not know
21 whether he was carrying it or whether it was that or,
22 for example, his rifle that he used to strike the
23 detainee.

24 Q. You have a clear recollection, do you, of that incident?

25 A. I believe so, sir, yes.

1 Q. You say, if we can go to it please at paragraph 175 of
2 your statement to this Inquiry -- BMI04435 -- having in
3 the previous paragraph spoken of the lunge -- you say in
4 paragraph 175:

5 " ... Redfearn struck the man on his leg with
6 something and the man fell to his knees."

7 So it was a blow, as it were, hard enough to fell
8 the man in that sense, was it?

9 A. I believe so, sir, yes.

10 Q. "The man then tried to get up again but Corporal
11 Redfearn raised whatever he had used to hit him as
12 a threat and instead the man went back down to the
13 floor. I cannot remember what ... Redfearn used to
14 strike the man but I think it may have been the end of
15 his weapon or a wooden stick -- it was certainly
16 something long and blunt. In terms of the degree of
17 force used I did not think it was a very hard blow.
18 I felt that he had complied with the rules on the
19 minimum use of force."

20 A. Yes, sir.

21 Q. You go on then to refer to another incident:

22 "A few seconds later a different man tried to get
23 up."

24 You describe him. In paragraph 177:

25 "Another soldier, I cannot recall who, placed a foot

1 in the small of his back to push him back down to the
2 ground."

3 You saw that too, did you?

4 A. Yes, I did, sir.

5 Q. Did that appear to you to be appropriate as well?

6 A. Yes, sir.

7 Q. You go on to say:

8 "... it was ... light. I felt it was proportionate
9 and was the minimum force required."

10 In paragraph 179 you go on to say:

11 "One detainee on the floor had a minor facial injury
12 (... a cut to his lip or nose). This was not one of the
13 men that I had already seen being pushed to the floor."

14 So not the man that Redfearn had dealt with and not
15 the man who had been pushed to the floor with a foot?

16 A. Correct, sir, yes.

17 Q. You were told about that man, when you asked
18 a soldier -- according to paragraph 179 -- that he had
19 been injured while being put down to the floor.

20 A. That's correct, sir, yes.

21 Q. And you accepted that explanation?

22 A. Yes, I did, sir, yes.

23 Q. You go on in your statement -- I am not going to take
24 you to the detail of it -- to refer to an incident
25 where, when being taken to the truck to be bussed away

1 from the hotel, one of the detainees knocked his knee
2 while stepping on the platform to get up.

3 A. That's correct, sir, yes.

4 Q. When you made a statement to the RMP -- can we go,
5 please, to MOD000250 -- on 20 October 2003 -- do you see
6 the date there below the caution which you have signed?

7 A. I see the date, yes, sir.

8 Q. If we go over the page, please, to MOD000251, towards
9 the foot of the page, the big paragraph. Thank you very
10 much. You are referring to the search concluded, you
11 returned to the hotel and so on. Can I take you down,
12 please, to three lines from the bottom of that
13 paragraph:

14 "With their arms plasticuffed the males were aided
15 into the rear of the Bedford 4 ton vehicle, when I saw
16 only one slip slightly knocking his knee but not so as
17 to cause any notable injury, the knock being only
18 slight."

19 Then this:

20 "None of the males showed signs of visible injuries
21 or ailments."

22 A. Yes, sir.

23 Q. Having given the account of the one who slipped getting
24 into the wagon, did it not occur to you that perhaps the
25 attempted assault on Redfearn and his reaction to it,

1 the foot on the body of another and the bleeding nose or
2 lip of another were matters that ought to be referred to
3 in this statement?

4 A. No, sir. The first two incidents I was not asked about
5 and we were -- they were asking specific questions, and
6 I would have thought, had I remembered it at the time,
7 I would have made note that somebody did have a mark to
8 his face because in the last sentence here I have said
9 "none of the males showed visible signs of injuries",
10 but later I remembered that I had seen one with a small
11 facial cut. I clearly didn't remember it at that time.

12 Q. Forgive me, this was five weeks after the events that
13 you were describing.

14 A. It is indeed, sir, yes.

15 Q. Why did you say "none showed signs of visible injuries"
16 if that was not, in fact, the case?

17 A. Because at that time I clearly did not remember the chap
18 with the small injury to his face.

19 THE CHAIRMAN: Any time you find a convenient moment?

20 MR ELIAS: That would be, Sir.

21 THE CHAIRMAN: Now?

22 MR ELIAS: Thank you.

23 THE CHAIRMAN: Colonel, we have a break at this time in the
24 morning of ten minutes. Please don't talk to anybody
25 about your evidence during the course of the break and

1 if you would be ready, please, to start again in exactly
2 ten minutes' time. Thank you.

3 (11.26 am)

4 (A short break)

5 (11.36 am)

6 THE CHAIRMAN: Colonel, you are still under oath. I am sure
7 you appreciate that.

8 A. Yes, Sir.

9 MR ELIAS: Colonel, we still at the hotel, if I may just ask
10 you a few more details about that. The Inquiry has
11 heard some evidence of detainees being taken to a toilet
12 area and water splashed over them. Were you present
13 when any of that happened?

14 A. No, I was not, sir.

15 Q. Were you aware of it happening?

16 A. No, I was not aware of it and neither any soldier nor
17 any detainee raised it to me at the time, sir.

18 Q. When the time came for the detainees to be removed from
19 the hotel, you made a communication, didn't you? We
20 find it -- if I could take it shortly without
21 necessarily going to the log, but we can do so if
22 necessary -- at paragraph 193 of your statement, please,
23 at BMI04439:

24 "... battlegroup net radio log entry ... to remove
25 another party ..."

1 Do you see it?

2 "... do we do it normally or gently ..."

3 This was a request from you, was it?

4 A. No, it was not, sir. What happened was I made
5 a decision not to hood the prisoners when we were
6 removing them. I tried to communicate that fact to
7 battlegroup headquarters. I could not get through.
8 I relayed the message through my company headquarters
9 and somehow my company headquarters took what I had
10 given them as a decision and sent it to battlegroup
11 headquarters as a request. And the company ops
12 officer's log and the battlegroup ops officer's logs
13 show one type of phrase, if you like, one wording of
14 that request, and the phrase "normally or gently"
15 appears in the signal operator's log.

16 Q. You say at paragraph 194, if we can go on to that
17 please:

18 "I had been in radio contact via the battlegroup and
19 company nets with Captain Ainley of A Company 2IC
20 throughout the morning. I think that this particular
21 entry in the radio log records an inquiry that was made
22 on my behalf to establish the position with regard to
23 hooding."

24 Is that true?

25 A. Yes, I think that's what -- he interpreted me telling

1 him I had made a decision incorrectly and then asked
2 permission of battlegroup headquarters or asked for
3 guidance from battlegroup headquarters, but that was not
4 what I had asked him to do.

5 Q. Well, the request was made. What is meant, as you
6 understand it, by the term "either removing them
7 normally or removing them gently"?

8 A. It is not terminology that I used, therefore I can only
9 assume what it means.

10 Q. What does it mean, as you assume?

11 A. "Normally" would refer to using our normal SOPs, which
12 may or may not include hooding. I can only assume that
13 "gently" means not hooding in relation to this. I would
14 be -- it would be speculating if I was to try to
15 understand what the radio operator meant by that term.

16 Q. Of course, if the request really was, "Shall we hood
17 them or not?", no doubt that is what could have been
18 said.

19 A. I would have to refer to the log of the company ops
20 officer and the battlegroup ops officer for what they
21 said because both those logs accord with each other,
22 whereas the signal radio operator's log is the only one
23 that uses this particular phrase.

24 Q. Forgive me, if the request was "Shall we hood or not?",
25 that could have been said in those terms?

1 A. Yes, it could, yes. I cannot remember what was said on
2 those nets from reading the logs, but it is in the logs.

3 Q. It was not that "normally" implied some rougher handling
4 than might be anticipated here at the hotel with a crowd
5 outside?

6 A. No, I don't see that "normally" implies a rougher
7 handling at all, sir.

8 Q. I move on. Was there any connection, as you understood
9 it, at any stage between these detainees arrested from
10 the hotel and those suspected of having committed the
11 murder of Captain Dai Jones or the RMP policemen who had
12 been killed in August?

13 A. No, the operation was directed to the hotel on
14 intelligence about foreign fighters. We had a list of
15 potential bravos. But the detainees were detained
16 purely on the basis of the weapons and other items found
17 at the hotel.

18 Q. That we understand. Did you ever learn, Colonel, or
19 hear rumour of the suggestion that they were in some way
20 connected to either of the previous murders?

21 A. I believe I heard something of that nature some time
22 later, ie after the death of Baha Mousa.

23 Q. I think in one of the accounts that you have given in
24 the past, you suggest that you may have gone back to
25 Camp Stephen before going on to BG Main from the hotel.

1 Do you recall that?

2 A. I don't specifically recall saying that, sir, but it may
3 be in one of my statements, yes.

4 Q. Do you recall now what you did do from the hotel?

5 A. No, I do not, sir, no.

6 Q. You might have gone to Camp Stephen?

7 A. I may have gone there. I may have gone to another task,
8 sir. I do not specifically recall.

9 Q. Do you recall that day ever seeing any of the detainees
10 who had been arrested at the hotel at Camp Stephen?

11 A. No, I did not see any of them at Camp Stephen, sir.

12 Q. It seems from the evidence that the Inquiry has heard
13 that three detainees were taken there, two of them then
14 detained there for what might be thought of as
15 a comparatively long time, several hours.

16 A. From looking at the evidence, so I believe, sir, yes.

17 Q. You were not aware of that, were you?

18 A. I was not aware of that, no.

19 Q. You were not aware of any detainees being questioned at
20 Camp Stephen that day --

21 A. No, I was not.

22 Q. -- or of any of them being put into the kneeling
23 position that we were describing before the break?

24 A. At that time, no, sir. Only from what I have read in
25 the evidence now.

1 Q. If detainees were taken to Camp Stephen, not merely
2 these, was that something about which you would expect
3 to know?

4 A. It would depend on the circumstances, sir. If they were
5 taken there and I was in camp at the time, then I would
6 normally be expected to be made aware of it. If I was
7 out on the ground and they were taken there for
8 a serious matter or something, then I would expect to
9 know about it. If, following, for example, Mr Crosbie's
10 view of events, he merely stopped there to try to
11 establish communications with me, then I might not be
12 made aware specifically that he had taken the detainees
13 there en route to somewhere else.

14 Q. Did you ever learn, either during the period of
15 detention or indeed after, prior to what you may have
16 read in connection with this Inquiry, that detainees
17 were held at Camp Stephen for a period of time?

18 A. I am -- I believe I was asked a question about it at
19 some point by the RMP. They were discussing that some
20 detainees may have gone back to Camp Stephen and
21 I believe, at the time, I said to the RMP that I didn't
22 think that was the case. It's only in reviewing the
23 evidence, prior to coming here today, of this Inquiry
24 that it is clear that two or three detainees did go back
25 to Camp Stephen, but I was not aware of it, sir, no.

1 Q. At BG Main that Sunday evening there would have been,
2 would there, an O Group?
3 A. There would, sir, yes.
4 Q. With the CO?
5 A. Yes.
6 Q. You attended it?
7 A. Yes, sir.
8 Q. Just before moving on that Sunday, while we are dealing
9 with O Groups meetings, were matters of
10 prisoner-handling or treatment dealt with at any
11 O Group meeting that you can recall attending?
12 A. They were not dealt with at any O Group meeting that
13 I attended prior to the death of Baha Mousa.
14 Q. All right. So on this Sunday you attended that meeting.
15 Did you go to the vicinity of the TDF where the
16 detainees were being held that Sunday night?
17 A. I recall I went to the O Group and I went back to
18 Battlegroup Main later that night. I do not
19 specifically recall much about the O Group visit, though
20 I recall speaking to soldiers on the second visit, and
21 the reason it had come to my mind is that it was dark
22 when I was speaking to soldiers.
23 Q. So now we are later in the evening of the Sunday?
24 A. I believe so, sir, yes. I would have parked my vehicles
25 in the vicinity of battlegroup headquarters and

1 therefore reasonably close to the TDF and I would have
2 expected, if I had discussed or chatted to some of my
3 soldiers, that they would be reasonably close to both
4 those locations.

5 Q. You say in your statement to this Inquiry that perhaps
6 you parked 20 or 30 metres away from the TDF.

7 A. I believe so, sir, yes.

8 Q. And you would have gone over to the TDF, although you
9 say you haven't been in it --

10 A. I'm not sure where it was exactly I spoke to the
11 soldiers, but I certainly did not go into the TDF, no,
12 sir.

13 Q. You spoke to Lieutenant Rodgers?

14 A. I believe so, sir, yes.

15 Q. MOD004196 please. This is part of your interview under
16 caution on 15 March 2005 and the bottom long-ish answer.

17 A. Yes.

18 Q. You said in the previous answer:

19 "In general if I have a portion of my company
20 detached I will visit them ..."

21 A. Yes, sir.

22 Q. "Are you being looked after lads capacity, if I could
23 and depending on what operations I have in the distance,
24 et cetera, et cetera, as a result I would be invariably,
25 invariably question them on the task they were doing,

1 were they happy enough with it and that conversation
2 would usually be with the multiple commander. In this
3 particular instance I did speak to Mr Rodgers,
4 I certainly recall speaking to him as I said in the
5 night time visit because what we'd normally do is
6 whoever escorts them there they'd tend to be relieved
7 during that guard duty whilst they were guarding the
8 prisoners, sort of get rest and changed ...", and so on.

9 So you didn't have any doubt then that you would
10 have spoken to with Lieutenant Rodgers?

11 A. No, that's correct, sir. When I made that statement
12 I didn't have any doubt. As you will be aware, during
13 the court martial, it is clear that my visit to the
14 O Group on the 14th, my subsequent visit on the
15 evening -- sorry, the night of the 14th and my visits on
16 the 15th, both to the O Group and what I believed again
17 was later that evening, were somewhat confused and
18 I struggle now to separate those sort of four visits out
19 particularly.

20 Q. From your recollection, have I understood it correctly,
21 you do indicate that you made two visits to the TDF --
22 the vicinity of -- without going inside?

23 A. So I believe, sir, yes.

24 Q. One you think was late on the Sunday evening and the
25 next was on the Monday evening.

1 A. In addition to the two visits I would have made for the
2 O Groups as well, sir, yes.

3 Q. Dealing with the Sunday evening visit, the Inquiry has
4 now heard a lot of evidence, including evidence of
5 soldiers who admit serious assault on the detainees in
6 the TDF throughout, in part anyway, the Sunday evening.

7 A. Yes, sir.

8 Q. You say in your statement to this Inquiry that you think
9 you were stood outside the detention facility that
10 Sunday night for 15 to 20 minutes. Is that right?

11 A. So I believe, sir, yes.

12 Q. Paragraph 211. It needn't be put up. You spoke to
13 Mr Rodgers. Do you recall speaking to any other
14 soldiers?

15 A. I believe that at some point over the -- those various
16 visits, I spoke to a couple of the soldiers, yes.

17 Q. Sticking particularly with the Sunday, if we may, you
18 indicated you could recall speaking to Mr Rodgers. Do
19 you remember speaking to anyone else that Sunday
20 evening?

21 A. I can't place whether it was the Sunday or the Monday
22 when I spoke to a couple of soldiers, sir.

23 Q. All right. Were you given any indication that anything
24 was untoward, awry, wrong, that Sunday evening?

25 A. No, sir.

1 Q. You didn't go into the TDF?

2 A. That's correct, sir.

3 Q. Why not?

4 A. It was not my place to do so. The prisoners were not
5 Anzio Company prisoners at that point. I did not have
6 a responsibility for the TDF or for what goes on in
7 there.

8 Q. But they were being guarded by Anzio soldiers.

9 A. The TDF was being guarded by Anzio soldiers, yes.

10 Q. Nonetheless you didn't go in?

11 A. I didn't go in, no. The soldiers were detached from my
12 company to work for battlegroup headquarters, the
13 provost staff.

14 Q. And in the 15 minutes or so that you were outside, you
15 didn't hear any sounds that caused you any concern,
16 groaning or moaning or --

17 A. No, I did not.

18 Q. -- assaults or anything of that kind?

19 A. No, I did not.

20 Q. Do you recall whether any of the provost staff were
21 there at that time?

22 A. I don't recall seeing any of the provost staff, sir, no.

23 Q. But certainly Mr Rodgers, at that visit, did not
24 indicate to you, in the 15 minutes that you were there,
25 that anything untoward had happened?

1 A. That's correct, he did not.

2 Q. Did you hear any rumour or story that night, back at
3 Camp Stephen perhaps, that these detainees had been
4 assaulted by A Company soldiers?

5 A. No, sir.

6 Q. Did you ever hear such rumours?

7 A. In -- prior to the death or after the death --

8 Q. At any stage.

9 A. Clearly after the death there were rumours that the
10 soldiers who were assisting the provost staff in
11 guarding the prisoners were involved in their death --
12 the death of Baha Mousa and the injuries to the other
13 prisoners, yes.

14 Q. So this was something that emerged, you say, after the
15 death.

16 A. Yes, sir.

17 Q. What, in the days or weeks?

18 A. I could not be specific, sir, to be quite honest.

19 Q. Going back then to the 15th, on the Monday, you made
20 another visit to the vicinity of the TDF.

21 A. Yes, on the Monday I would have attended the O Group and
22 I also believe I went sometime later in the evening as
23 well. Again I have an impression of being there in
24 darkness hours.

25 Q. Do you recall which soldier or soldiers you saw, if any,

1 then?

2 A. I believe at some point during either the Sunday or the
3 Monday -- and I cannot be specific which -- that I spoke
4 to Crowcroft. I believe I spoke to a couple of
5 soldiers. I am struggling to remember their names.

6 Q. On that Monday visit, whoever you may have spoken to,
7 were you given any indication that anything was wrong?

8 A. No, sir.

9 Q. On either occasion -- the Inquiry has been told there
10 were no doors on the TDF -- did you get a glance inside
11 to see the condition, position, of any of the detainees?

12 A. Not that I recall, sir, no.

13 Q. If, in fact, by the Monday evening -- I don't think
14 there's now much doubt about it -- some, at least, of
15 the detainees had been already severely beaten, you
16 simply were not aware of that on your Monday evening
17 visit, were you?

18 A. I was not aware of that, sir.

19 Q. If it be the case -- I put an "if" there. It is for the
20 chairman, of course, to decide -- if it be the case that
21 A Company soldiers had been involved in the assault of
22 detainees whilst they were either guarding or simply
23 because they attended to assault, who should have known
24 about it?

25 A. The provost staff who were intimately involved in the

1 supervision of the prisoners; the team commander of the
2 small group of soldiers intimately involved in
3 guarding --

4 Q. The multiple commander you mean?

5 A. No, I mean the team commander. The multiple was
6 composed of three teams of four people --

7 Q. I follow.

8 A. -- and on the basis that the guarding task does not
9 require all twelve people in a multiple at any one time
10 and therefore requires perhaps three or four, one would
11 have expected the team commander to be there for
12 a greater majority of the time than perhaps you would
13 have expected the multiple commander to be there.

14 Q. The team commander, obviously, would need to know what
15 was going on inside the TDF --

16 A. Yes, sir.

17 Q. -- and what his men were doing.

18 A. Yes, sir.

19 Q. And on his visits, the multiple commander, the same.

20 A. I would expect that, yes.

21 Q. As you have expressed your understanding, you would also
22 have expected the provost staff -- certainly the
23 sergeant and the RSM -- to be aware of what was going on
24 there?

25 A. Yes. At the time it was my understanding that the

1 provost staff were responsible for the detainees and,
2 therefore, my understanding at the time was that that,
3 going up the chain of command, fell to the regimental
4 sergeant major.

5 Q. Let me move on, please, to the death of Baha Mousa.
6 When did you learn about that?

7 A. I believe it was late on the Monday night. I have
8 clearly since seen the radio logs.

9 Q. So within an hour or thereabouts of it happening?

10 A. I believe so, yes, sir.

11 Q. Were you shocked?

12 A. Yes, sir.

13 Q. You yourself had visited not long before?

14 A. Yes, sir.

15 Q. You had spoken to A Company soldiers and had gathered
16 that everything was fine?

17 A. Yes, sir. I believe I was there earlier during darkness
18 hours on that night, sir.

19 Q. Yes. So what did you do when you discovered the death?

20 A. I believe I went to battlegroup headquarters, but
21 I cannot recall specifically the incident.

22 Q. What steps, if any, did you then take, given your
23 knowledge that A company soldiers had been involved in
24 the guarding?

25 A. As I say, I don't remember the specific incident.

1 I believe that I went to Battlegroup Main. I believe
2 I was then told again that Baha Mousa had died or that
3 a detainee had died -- sorry -- I don't believe the name
4 was specified at that point. I have a recollection that
5 there was a lot of activity regarding the TDF and the
6 other detainees. I remember the ops officer busying
7 around. I have a recollection of somebody explaining to
8 me that the medics and the doctor were involved.
9 I believe I spoke to Mr Rodgers, but I don't recollect
10 it in detail, sir.

11 Q. Forgive me, my question to you was what steps you took
12 in any direction, having learnt of the death.

13 A. I believe -- and I can't recall the specific
14 conversation, and it may have been that night or shortly
15 afterwards, the following day -- that I spoke to
16 Mr Rodgers and I basically reminded him that there would
17 be, you know, a full investigation.

18 Q. So what was the purpose of speaking to Mr Rodgers?

19 A. I can't recall the specific conversation. I can only
20 assume that I would have (a) checked that he was okay --
21 you know, he may well have been in shock. I would have
22 reminded him that there was going to be an
23 investigation. I can only assume, on the basis that my
24 understanding of such events is that when there is an
25 investigation people like myself should not get involved

1 in the investigation, we should not be questioning
2 soldiers in detail and that I would have reminded him of
3 that.

4 Q. If he needed reminding?

5 A. I would probably have reminded him anyway, whether
6 I thought he needed it or not.

7 Q. I understand. And the purpose of soldiers not
8 discussing the matter themselves was what?

9 A. I didn't say discussing it themselves. What I meant was
10 people like Craig Rodgers -- Mr Rodgers -- or myself
11 should not get involved in the detailed questioning of
12 soldiers because that could influence the investigation
13 or interfere with the investigation.

14 Q. Because, putting it simply, witnesses talking to each
15 other before their accounts had been taken might
16 contaminate each other; is that fair?

17 A. No, sir, no, I am not referring to that. I am not
18 referring to telling soldiers not to speak to each
19 other. I am referring to -- it would be wrong of me to
20 question a soldier in detail because he does not have
21 suitable representation at that point. I am interfering
22 with the RMP process. So at the point where, for
23 example, I speak to a soldier and it becomes clear that
24 there is something that he needs to say for the
25 investigation, I have to pull away at that point and

1 give it over to the RMP.

2 Q. That did not actually preclude you, did it, as company
3 commander, from trying to find out what had happened?

4 A. In general, sir, no, it did not.

5 Q. So did you try to find out what happened?

6 A. I don't recall a specific conversation. I do recall
7 wanting to know what had gone on and being told that
8 a detainee had died, there had been a struggle, he had
9 banged his head, and, as I recall at the moment,
10 I didn't get much more information than that.

11 Q. Was that an account that you got from a number of
12 soldiers?

13 A. I don't specifically recall, sir.

14 Q. Can we have a look, please, at MOD000252? This is your
15 statement five weeks after the event, the last full
16 paragraph:

17 "In a separate brief, in an effort to identify what
18 had occurred, I spoke with Lieutenant Rodgers and the
19 brick commanders who I believe were Redfearn, Cooper,
20 Graham and another, possibly Reader, of my unit.
21 Collectively they informed me that the prisoner had
22 broken free previously and shoulder charged someone or
23 rugby tackled them, when he returned to custody it was
24 noted he was not breathing and the doctor/medics were
25 called to assist. Following this however, the male had

1 died."

2 That's the account you gave five weeks or so
3 afterwards from those individuals; is that right?

4 A. I would assume, that being five weeks afterwards,
5 I would be better placed to remember the names of the
6 individuals, sir, yes.

7 Q. At paragraph 220 to this Inquiry, BMI04446, you say
8 this:

9 "I also spoke to Private Crowcroft either on the
10 same day as the visit to BG Main where I found out about
11 the death, or a day or so later ..."

12 Why did you speak to Crowcroft?

13 A. I believe it's because he was one of the soldiers
14 involved in guarding the prisoners, sir.

15 Q. We have heard from him that he was involved in the very
16 beginning of the guard duty. Why, in particular, did
17 you speak to Crowcroft?

18 A. I don't recall in particular why I spoke to him, sir.

19 Q. If we read on, do we learn something about it?

20 "I said something along the lines that at this point
21 there was no point worrying and that he should be open
22 and honest."

23 Why were you telling Crowcroft that?

24 A. It would have been the same comment I would have made to
25 any soldier, sir.

1 Q. "I told him that he would get all the support he needed.
2 I explained that there would be an investigation and
3 that it may well be an uncomfortable process because the
4 RMP always examine things in a lot of detail. By
5 'uncomfortable', I was referring to the fact that
6 sometimes soldiers do not understand the relevance of
7 the questions and that it can sometimes feel to them as
8 if they are being asked the same questions over and
9 over again. I did not explain my meaning to
10 Private Crowcroft at the time."

11 You have singled out Crowcroft in this statement,
12 haven't you, as someone you spoke to?

13 A. Mainly because I remember speaking to him. I don't
14 recall why I spoke to him, whether it was at my
15 instigation or his, but his name clearly sticks in my
16 mind over the period because he was the -- one of the
17 soldiers that was court-martialled.

18 Q. It may be suggested that you would have spoken to him
19 because, either through bragging or rumour or story, you
20 had come to learn that he had been involved in whatever
21 had happened to these detainees on the Sunday night.

22 A. I don't believe that's why I spoke to him, sir, no.

23 Q. You go on in paragraph 223 -- can we go down to that,
24 please -- having said that Crowcroft was calm and matter
25 of fact when you spoke with him:

1 "I also spoke to some other soldiers from
2 Lieutenant Rodgers' multiple for the same reason.
3 I cannot recall any further specific conversations but
4 overall I would say that most of the soldiers in that
5 multiple did not seem worried at first."
6 A. Yes, sir.
7 Q. Did that position change?
8 A. Soldiers became anxious as the RMP investigation started
9 and progressed.
10 Q. You say in paragraph 226:
11 "I asked Lieutenant Rodgers speak to the multiple
12 and encourage them to cooperate with the RMP."
13 A. Yes, sir.
14 Q. Was there in fact, Colonel, a reluctance to cooperate at
15 some stage?
16 A. I wouldn't use the word "reluctance".
17 Q. What word would you use?
18 A. I would say the soldiers were worried about what they
19 should say, about dealing with the RMP. Soldiers do not
20 inherently like the RMP and soldiers often worry, if
21 they say anything, that they will land themselves in
22 trouble.
23 Q. You say at 227:
24 "Lt Rodgers did as I asked and although it had no
25 effect at first eventually a few more soldiers wanted to

1 speak to the RMP."

2 One of those coming forward, you think, was

3 Private Aspinall.

4 A. I believe so, sir, yes.

5 Q. "Private Cooper also came forward as a result ...", of

6 what was said.

7 Did you encourage soldiers -- your soldiers, that is

8 to say -- to speak with Lieutenant Rodgers?

9 A. Yes, I did.

10 Q. One of the matters that you will no doubt be aware of

11 that has already been put in this Inquiry is the

12 suggestion that the Rodgers multiple were, at least

13 initially, unfairly and improperly seeking to blame

14 Corporal Payne for what had happened. You are probably

15 aware of that suggestion.

16 A. I'm aware of that suggestion, sir, yes.

17 Q. It may be said, Colonel, that your directing soldiers,

18 as it were, to liaise with Mr Rodgers before dealing

19 with the RMP was a part of that project to ensure that

20 the stories were put together.

21 A. That is not correct, sir.

22 Q. Were you ever aware of any suggestion that, to save

23 A Company or the Rodgers multiple, if I may call it

24 that, Payne should be blamed?

25 A. No, sir. I'm aware of a discussion or an incident -- an

1 exchange of words between Mr Rodgers and the then
2 WO2 Leigh, but not of a particular plan, if you like, to
3 blame Corporal Payne.

4 Q. When you were in Basra, did any of your A Company
5 soldiers admit to you that they had been involved in any
6 assault in relation to those detainees?

7 A. No, sir.

8 Q. We turn, Colonel, just to a few last disparate points.
9 You were aware of the change following Baha Mousa's
10 death of the non-employment of hoods, the ban put on
11 hoods?

12 A. Yes, sir.

13 Q. We have seen that part of the statement where you say
14 questions were raised --

15 A. Yes, sir.

16 Q. -- reflecting on previous conduct.

17 Did you take the same view as you express in the
18 statement -- the passage of which we looked at -- that
19 is to say that this was a bit of an unfair reflection on
20 what had gone before?

21 A. At the time, sir, yes. I thought that at the first
22 O Group, where we were told no longer to use hoods, it
23 did imply that we had been using them incorrectly. We
24 also --

25 Q. Sorry, forgive me.

1 A. We also raised the issue that if we weren't to use
2 hoods, what were we to do vis-a-vis security. And
3 I think -- the next night I think it was or very shortly
4 afterwards we were briefed on the use of blacked-out
5 goggles.

6 Q. Were you aware, during your time with A Company, that
7 soldiers treated detainees from time to time with what
8 I might call casual violence, slaps or kicks?

9 A. No, I was not, sir, no.

10 Q. You were aware of one incident because you refer to it,
11 don't you, in your statement to this Inquiry at
12 paragraph 139?

13 A. I do, sir, yes.

14 Q. Could we just have that on the screen, please? I don't
15 want to make a meal of this at all. A soldier trying to
16 kick a prisoner?

17 A. Yes, sir.

18 Q. The prisoner sitting on the ground doing nothing?

19 A. Yes, sir.

20 Q. You say you took the prisoner aside and warned him of
21 the risk of such action, but you didn't take any further
22 action.

23 A. I took the soldier aside and briefed him, yes. I did
24 not take any further formal disciplinary action, sir,
25 that's correct.

1 Q. It may be said that it speaks volumes for the culture of
2 A Company that in your presence -- the officer
3 commanding -- you say you were about 10 to 13 metres
4 away -- a soldier should have dared to kick a detainee
5 doing nothing, sitting on the ground.

6 A. That is presuming that he knew I was there. I don't
7 think he knew I was there. He did it out of frustration
8 because he was trying to get the detainee to move,
9 having already told the detainee to sit there for the
10 interpreter. I did not think that it was an attempt to
11 beat the prisoner, but it does not -- it doesn't matter,
12 it's still wrong, and I briefed him to that effect and
13 made sure that I was happy he understood that he was not
14 to do that in the future.

15 Q. Did you not think that kicking a detainee on the ground
16 or trying to demanded some formal disciplinary action?

17 A. No, sir, at that point I did not.

18 Q. Would that incident ever have been conveyed to the CO?

19 A. No, sir, that would not.

20 Q. In the same context -- can I take this quite shortly --
21 you are aware of what the Inquiry is calling the
22 "MacKenzie diary", are you?

23 A. I'm aware of the MacKenzie diary, yes.

24 Q. Can I take you, please, just to one passage, at
25 MOD015617, 11 September, and to the right-hand column,

1 please:

2 "Caught three Ali Babas -- beat fuck out of them in
3 the back of a Saxon. One had a punctured lung and
4 broken ribs and fingers. One had a dislocated shoulder
5 and broken fingers."

6 If such things were going on, were you ever aware of
7 them?

8 A. I was not aware of any incident of that nature, sir, no.

9 Q. You were never aware of any incident where detainees
10 were ill-treated, were you?

11 A. Not in that manner. I'm aware of an incident where
12 Major Peebles brought it to my attention that a detainee
13 had an injury on arrival at Battlegroup Main.

14 Q. A bloody nose, wasn't it?

15 A. A bloody nose, yes, sir.

16 Q. What steps did you take in relation to that detainee, if
17 any?

18 A. I don't recall specifically, but I recall that at some
19 point after him making me aware of it, that I was
20 satisfied that the injury had occurred as a result of
21 trying to arrest the man and bring him back and that any
22 unlawful violence or force had not been used.

23 Q. On the same point, but a different incident, would you
24 look, please, at MOD022655? An alleged assault and
25 a report of 4 July 2005. If we can highlight just

1 paragraph 1, please:

2 "It will be recalled... that in April 2004
3 an investigation was initiated following allegations by
4 Mr ... Hamid and his brother ... then both interned at
5 ... Shaibah that during August 2003, together with
6 several other Iraqi males, they were arrested by UK
7 coalition forces and conveyed to the Palace, Basra.
8 Here Mr ... Hamid alleges that whilst held in the room
9 of a building in the complex, a soldier repeatedly
10 assaulted him by striking his head against a wall. The
11 brothers state they were all then conveyed to a second
12 location ... where they were beaten by soldiers who
13 struck them about the head and body with a baseball bat,
14 causing them to suffer bruising to those areas."

15 If we go to paragraph 2 and just the first sentence,
16 please:

17 "Inquiries by SIB ... established the Hamids were
18 detained during Operation Valiant, mounted by 1 QLR,
19 with members of A Company ... being responsible for the
20 arrests. The servicemen involved were each interviewed
21 after caution, and readily admitted conveying those
22 arrested to the C Company ... location ... Thereafter,
23 they denied having any responsibility for or involvement
24 with guarding the detainees ..."

25 I don't want to go into any detail of the incident,

1 but simply to ask you -- because you didn't arrive, as
2 you told us, until 19 August -- was that an incident, do
3 you remember, which occurred on your watch?

4 A. I don't -- I wasn't aware of the incident and I had not
5 heard of it at all until the run-up to this Inquiry.
6 But I was presented with that document you just showed
7 me there and the ICRC list of incidents --

8 Q. Colonel I think it will suffice if you have no
9 recollection of it --

10 A. No, and I was never briefed that there had been an
11 investigation, no.

12 Q. Thank you. Can we have a look just at two or three
13 photographs please? At MOD049413, the faces have been
14 redacted from this photograph, but you no doubt know
15 where it was taken?

16 A. It looks like the edge of the veranda.

17 Q. The area where detainees would be detained and
18 questioning took place?

19 A. Yes, it looks like the edge of the veranda at
20 Camp Stephen, sir.

21 Q. Would you describe this as a trophy photograph?

22 A. Yes, sir.

23 Q. Did you know trophy photographs of the kind were being
24 taken?

25 A. No, sir.

1 Q. Would you have approved of it?

2 A. No, sir.

3 Q. The man in the white, sitting in the foreground, would
4 you describe him as being in a stress position?

5 A. Sorry, sir, it is very difficult to see the photograph.
6 Assuming he is a fit male, then he looks to be in
7 a relatively comfortable position. However, keeping his
8 hands on his head for an extended period of time would
9 cause him fatigue and pain.

10 Q. Thank you. MOD049415, please. Would you have approved
11 of the taking of a photograph of that kind?

12 A. No, sir -- sorry, unless it was for evidence of somebody
13 struggling or whatever. But that does not look like it
14 is likely in this particular case.

15 Q. Well, not in the case of somebody else who appears to be
16 trying to take a photograph of the same individual.

17 A. Exactly. The camera in the photograph indicates that
18 it's not an attempt to take a photograph of someone
19 struggling.

20 Q. The photograph at MOD049409, please, another trophy
21 photograph?

22 A. It could be viewed as a trophy photograph, sir. It
23 could also be argued that it was a photograph to show
24 that the soldiers were taking someone back to a location
25 in that manner, to show they were doing it correctly.

1 Q. Thank you. Take that down, please.

2 Finally then, Colonel, if, as the Inquiry has heard,
3 there was, in the TDF, when A Company soldiers were
4 forming the guard, something of the order of 36 hours
5 where detainees were being routinely beaten and kept in
6 stress positions and hooded, was that something that you
7 ought to have come to know about?

8 A. Only if someone had told me about it. It would not have
9 been part of my duties to have gone into the TDF or to
10 have checked in detail as to what those soldiers were
11 doing as they were detached from my company and under
12 the orders of somebody else. Had I been made aware of
13 something going wrong, then clearly I would have been
14 expected to look into it.

15 Q. Knowing what you do know now, not only about those
16 detainees, but perhaps what you may have read, for
17 example -- and some of it is corroborated, it would
18 seem, in the diaries of MacKenzie and other evidence --
19 do you agree that it appears that you perhaps did not
20 exercise the supervision or oversight of your soldiers
21 that you ought to have done?

22 A. I don't think it shows that, sir, no. I cannot be at
23 every single location on the shoulder of every single
24 soldier every single moment whilst they are under my
25 command. I believe I took all reasonable steps to make

1 example when we are briefed about using threats of harm
2 or threats against, for example, the prisoners' family,
3 that sort of mental pressure, if you like, in that that
4 would be unacceptable.

5 Q. Was it ever drawn to your attention that it was
6 prohibited that detainees ought not to be exposed to
7 unpleasant or disadvantageous treatment?

8 A. Not -- I was not familiar with that phrase until last
9 night, actually, when someone showed me an extract from
10 the conventions.

11 Q. I want to ask you about Operation Telic 1 and maintain
12 the same approach as Mr Elias about asking you not to go
13 into the detail.

14 You were asked about the US approach to prisoner
15 handling and your reply was "I didn't think that they
16 operated by any different rules than we did". The
17 question is: did you regard the Americans as applying
18 the same rules, but in a different way or by different
19 standards?

20 A. No. I believe the American rules were the same as ours.
21 I believe that they applied them pretty much the same
22 way, and you will be aware of it from other statements
23 I have made and I think I said it earlier today, that
24 I was also aware that Americans broke their own rules at
25 times in using violence, but that did not, to use

1 a previous phrase, contaminate me.

2 Q. No.

3 A. Quite the reverse. I didn't think violence worked.

4 Q. I understand that. Just looking at how that, then, was
5 taken by you into Operation Telic 2. First of all,
6 before you saw the Americans doing it, had you ever been
7 trained about shock of capture or anything to do with
8 unsettling or shouting at detainees?

9 A. I can't recall specific training in it. However, I have
10 experienced it both in my time as role-playing as
11 a prisoner, in seeing it happening on a variety of
12 exercises -- I am afraid I can't recall specific
13 instances -- and certainly the phrase "shock of capture"
14 had been part of my understanding for quite some time.

15 Q. Did you discuss with the members of your company the
16 experience that you had had working with the Americans?

17 A. Yes, I did. In casual conversations they would ask me
18 what I had been doing previously. As a result of those
19 conversations and general conversations with my
20 predominantly multiple commanders, I would have
21 explained that I didn't think violence worked as
22 a method of coercion.

23 Q. Yes.

24 A. I can't recall the specifics of it, but --

25 Q. Don't worry about the specifics. But following on from

1 that, did you also discuss the shock of capture
2 techniques that you had observed?

3 A. I don't recall specifically doing it, but I am of the
4 overall opinion that I would have covered that sort of
5 thing. But I do not recall it specifically.

6 Q. Did you discuss it with Major Royce?

7 A. I believe the only thing I discussed with Major Royce
8 was hooding. I don't specifically recall discussing the
9 details of conditioning techniques.

10 Q. I want to develop upon questions you have already been
11 asked by Mr Elias and the chairman about the use of the
12 phrase "breaking them".

13 THE CHAIRMAN: Mr Friedman, is that really necessary? He
14 has been asked by both of us.

15 MR FRIEDMAN: Well, I will take it as shortly as possible.

16 THE CHAIRMAN: If at all.

17 MR FRIEDMAN: Well, you were asked about this in the court
18 martial, weren't you?

19 A. I believe so. My recollection of it is relatively
20 vague.

21 Q. Just in terms of testing your question about whether
22 this is a misunderstanding by the people who took the
23 statement originally, you had the opportunity to be
24 asked questions about it over a period of questions in
25 the court martial. You never said anything wrong

1 about it there and you accepted that this included
2 disorientating them, didn't you?

3 A. I am aware that if you hood someone, it has that effect,
4 yes.

5 Q. I will continue.

6 Just on the question of hooding being, as it were,
7 an operational choice for a commander rather than an
8 order that it always had to be complied with, why is it
9 that you had to communicate one way or another with the
10 battlegroup that you were not going to hood during
11 Operation Salerno?

12 A. I did not have to communicate. I chose to communicate
13 that decision.

14 Q. Why was it necessary in your mind to choose to do that?

15 A. I chose to do it because of a number of reasons.
16 I still had in my mind the conversation I had had with
17 Major Royce and also because I was aware that, however
18 I removed the prisoners, that there was a likelihood of
19 the press, who were outside, seeing it, so I was just
20 confirming my decision.

21 Q. I want to turn then to Operation Salerno, please, and
22 first ask you about the descriptions of use of force
23 that you have given in your Inquiry statement that you
24 regarded as justified. I want you to please go to your
25 RMP interview in March 2005. It's at page MOD004178.

1 This, in effect, moving on from the statement we saw
2 before, is another opportunity that you are given to
3 explain what you saw in the hotel. It's the penultimate
4 entry for you, perhaps the third entry up:

5 "I didn't observe the physical definition of every
6 single detainee, ie you know ...

7 "Mr X, come here, I'm cuffing you and putting you on
8 the floor, eh, the final two that they decided were part
9 of the hotel staff or connected with them I did observe
10 those two being detained I believe by Corporal Redfearn
11 and the other soldier's name I forget ..."

12 You go on to say:

13 "And they carried the correct procedures, the
14 detainees were stood up, they were asked do to place
15 their hands, I'm pretty certain it was behind, behind
16 their back the photograph will show it ...

17 "For plastic cuffing, some of them were released
18 from plastic cuffs for quite some considerable time ...

19 "And at some point, not long before they were moved
20 two of the detainees asked for water ...

21 "Were given water ..."

22 You say:

23 "That's as much as I can recall about this."

24 So, second opportunity, in an interview, several
25 questions, but no mention of quite a detailed

1 description of what went on during the arrests that you
2 saw.

3 A. Yes.

4 Q. Why is that?

5 A. I can only assume that at that point I did not
6 particularly remember those two incidents. I do not
7 know when during the interview this passage is, but
8 I recall that an interview under caution is quite
9 a tiring event. The not mentioning them is not
10 a deliberate attempt to hide the event or to not mention
11 it or to whatever, and, as I said, the process is they
12 were asking questions and me answering them.

13 The process of collation of evidence for this
14 Inquiry is a very different process. The way the
15 statements came out was drawing out and taking me
16 through what happened at the time and had a better
17 effect of improving my memory, allowing me to remember
18 things in better detail.

19 Q. All right. I want to move on to the theft, then, and
20 try to deal with it as quickly as I can. You are aware
21 that this Inquiry has heard evidence of two things to
22 summarise: one, Private Fearon has admitted the theft,
23 albeit he has given a reason for it, and, two, acting
24 company sergeant major at the time, Mr Hollender, gave
25 him a punishment of 250 sandbags.

1 A. Yes.

2 Q. You know those two points. When did you come to note
3 those two points?

4 A. I believe it was in the process of looking at the
5 evidence for this Inquiry because my recollection of
6 events was slightly different.

7 Q. Yes.

8 A. My recollection was that Fearon had told me he was not
9 stealing it, merely moving it, and I -- my recollection
10 is I saw the incident as an act of stupidity -- albeit
11 dishonest stupidity --

12 Q. If I can interrupt, the chairman has your detailed
13 account about how you saw it. I am really interested in
14 how the facts were kept from you, and, in fact, the two
15 facts, one that Fearon had admitted it to Mr Hollender
16 on the day and, two, either on the day or near enough,
17 Mr Hollender had given him a punishment of 250 sandbags.
18 I want to know --

19 A. It's not that the facts were kept from me. It's that my
20 recollection of that event is not as clear as others'
21 recollection of that event on the basis that, for
22 example, the event is clearly more central to
23 Private Fearon than it was to me at that point.

24 Q. You have also accepted that the event was pretty central
25 to Colonel Mendonca, so much so that he came to tear

1 a strip off your company and other companies. Now, did
2 that happen, first of all?

3 A. Yes, he did. He did address the companies, yes.

4 Q. Therefore, are you simply saying that it was an honest
5 mistake on behalf of Colonel Mousa, as you said in your
6 interview, but it is an honest mistake on your own part
7 that you forgot these two facts, the admission and the
8 punishment?

9 A. Yes.

10 Q. All right. A suspect was lost from Operation Salerno --

11 THE CHAIRMAN: Now, your time is getting very close.

12 MR FRIEDMAN: Understood.

13 A suspect was lost from Operation Salerno.

14 A. Yes.

15 Q. We know from the logs that the detainees, once arrested,
16 were kept in the hotel for two hours. Were they kept
17 there to try to question them to find out where that
18 suspect was?

19 A. I don't recall them particularly being questioned.
20 However, I do recall being asked if somebody could take
21 one of the detainees to an address that that detainee
22 had indicated was the address of the missing suspect.

23 Q. Yes.

24 A. So at some point either a question was asked or that
25 detainee volunteered that information.

1 Q. And we know from the logs that that project of going to
2 that other address leads to two new people being taken
3 to Camp Stephen lines.

4 A. I believe so now, sir, yes.

5 Q. I just want to understand that because it is something
6 of an aside in your Inquiry statement. These were
7 people being held as suspected insurgents. If someone
8 was going to go to an address where an escapee was
9 suspected to be, given all the guns and weapons that you
10 found, that would have been a reasonably significant
11 decision, however ad hoc it would be?

12 A. You use the term "insurgents". We -- the intelligence
13 behind the raid was that the hotel was being used for
14 foreign fighters. These people were not arrested
15 because they were foreign fighters but for illegal
16 possession of weapons, therefore it does not follow that
17 we considered them necessarily insurgents in the foreign
18 fighter sense. They may well just have been holding an
19 illegal number of weapons.

20 Q. So you didn't consider it potentially a dangerous
21 operation to go to the home of a suspect, not knowing
22 anything about where that home was, and just relying on
23 a person that you have arrested telling you where it
24 was?

25 A. All operations are dangerous --

1 Q. Yes.

2 A. -- and I would have relied on the experience of the team
3 going to conduct that operation to make the assessment
4 as they approached that operation.

5 Q. I just want to then briefly deal with the period at
6 BG Main and the times you say you went.

7 THE CHAIRMAN: Your last topic, Mr Friedman.

8 MR FRIEDMAN: It is my last topic. I am going to think for
9 a moment.

10 THE CHAIRMAN: Sensible. You can be rest assured he has
11 been very carefully examined --

12 MR FRIEDMAN: Yes, I can do.

13 I would like to put this to you though: it's not the
14 position that, having been questioned under caution by
15 the RMP, potentially with an allegation of neglect of
16 duty hanging over you, that you have tied yourself into
17 a story about going to see your soldiers outside that
18 TDF, you say twice, because you are well aware of the
19 evidence about what was in fact going on? Have you tied
20 yourself into that story to cover yourself?

21 A. Certainly not to cover myself. I have given the
22 story -- if you want to use that word -- or an account
23 that I attended Battlegroup Main for both the O Groups
24 on the Sunday and Monday and it's my belief that
25 I attended on each of those nights at some point during

1 the darkness hours.

2 Q. Yes.

3 A. I am afraid my recollection as to the distinction
4 between each of the four visits and who I spoke to where
5 and when during those four visits is slightly vague,
6 I am afraid.

7 Q. This is the last question which is: you gave evidence
8 about the fact that you would not necessarily require
9 your multiple commander or perhaps his 2IC to be there
10 100 per cent of time and that you were aware that both
11 of them had left, I think, or at least you are aware
12 that the multiple commander --

13 A. I didn't speak about the multiple 2IC. I spoke about
14 the multiple commander and said that he would not be
15 there 100 per cent of the time.

16 Q. Do you think that at least the multiple commander or the
17 2IC should have been at the base in a position to do
18 periodic review 100 per cent of the time?

19 A. I would expect either the multiple commander or one of
20 his team commanders --

21 Q. Yes.

22 A. -- to be there. If you want to call that team
23 commander, being the only one there, his 2IC, then, yes.

24 Q. Does the expectation recalibrate when you find out, as
25 we now know, that hooding was being used in the TDF with

1 the stress positions?

2 A. I am afraid I don't understand that question.

3 Q. I'm sorry --

4 THE CHAIRMAN: I think I do, and I think it is more of
5 a comment than a question of something that I shall
6 plainly have to consider.

7 MR FRIEDMAN: Sir.

8 THE CHAIRMAN: That being your last topic, which has added
9 another one into it, Mr Friedman.

10 Mr Evans?

11 Questions by MR EVANS

12 MR EVANS: Colonel, I first of all want to ask you about
13 your discussion with Major Royce --

14 A. Yes.

15 Q. -- in respect of hooding. You told us in evidence that
16 this conversation took place shortly after you arrived
17 in Iraq.

18 A. Yes.

19 Q. Can we take it that that was then about the end of
20 August or early September that this conversation took
21 place?

22 A. No. It would have been very early after I arrived in
23 Iraq, purely on the basis, if I remember correctly, that
24 Major Royce did not remain in Iraq for long after
25 I arrived because he handed over to Major Peebles.

1 Q. So within a week of your arrival, perhaps? Would that
2 be fair?

3 A. It would be fair, but I wouldn't be able to be specific.

4 Q. All right. You told us as well in evidence that there
5 had been no discussion about stress positions at all
6 before the death of Baha Mousa.

7 A. At O Groups, yes.

8 Q. Can we take it that at this discussion there were no
9 discussions about stress positions either, but only
10 hooding was discussed?

11 A. I don't recall discussing stress positions with
12 Major Royce.

13 Q. No. Turning to the role of the RSM if I may, was the
14 situation this: that though initially you believed that
15 the RSM fulfilled his traditional role of being at the
16 top of the pyramid as far as prisoner-handling was
17 concerned, you later learned that that was not in fact
18 the position throughout the tour in Iraq?

19 A. That's correct. At some point later I learned that it
20 was the BGIRO who was responsible for the prisoners,
21 detainees. I believed that I learned that from Company
22 Sergeant Major Tomkinson.

23 Q. Is it possible that you might have learned it from
24 somebody else, such as the CO or the BGIRO himself?

25 A. It is possible, yes.

1 Q. Turning to the conversation that you say you had with
2 Mr Tomkinson about conditioning, if I may. You were
3 asked, "Who would you have expected to talk to about
4 conditioning?", and your response was, "Well, I would
5 have expected to talk to the RSM or the BGIRO".

6 A. I believe -- I knew I had spoken to a number of
7 different staff and I was asked the question of who
8 would I expect to have spoken to because I can't recall
9 specifically who I spoke to, so yes.

10 Q. I see. My question really is this: you do not actually
11 remember that the discussion was with Mr Tomkinson; it
12 might well have been with other members of staff?

13 A. Correct, but I do believe -- I do recall a conversation
14 with Sergeant Major Tompkinson, but not particularly at
15 that point about conditioning in the manner you are
16 asking.

17 Q. So it's possible that that conversation to which you
18 refer might have taken place with someone else, such as
19 the BGIRO?

20 A. The conversation about ...?

21 Q. About conditioning.

22 A. No, I'm pretty sure that the conditioning discussion or
23 conversation was with Sergeant Major Tompkinson. The
24 general conversation earlier on, I can't remember who
25 I spoke with.

1 Q. The reason I put it to you is that Colour Sergeant
2 Tomkinson does not remember the conversation, so that's
3 why I ask you whether it's possible that he is correct
4 and it might have taken place with someone else.

5 A. He may be correct. I can only say what I honestly
6 believe I recollect.

7 Q. Very well. I will move on.

8 You told us in your witness statement of
9 a conversation you had later with Colour
10 Sergeant Tomkinson -- this is after the death of
11 Baha Mousa -- about stress positions and whether you
12 could use them or not.

13 A. Yes.

14 Q. At paragraph 240 of your witness statement, if we could
15 just have it on the screen, you say this:

16 "Although I do not recall discussing my
17 understanding in respect of stress positions at the
18 O Group, I did discuss it with CSM Tomkinson sometime
19 afterwards. Again, I am not sure exactly when.
20 CSM Tomkinson's understanding of what was allowed
21 regarding stress positions was the same as mine but we
22 both felt that given Baha Mousa's death and the ongoing
23 investigation, you would have to have a very good reason
24 for doing so otherwise you would face criticism."

25 You said that your training on the Geneva Convention

1 led you to believe that stress positions were
2 unacceptable as they place undue stress upon a prisoner.
3 Is that right?

4 A. Unacceptable if my -- at that time my belief was that
5 they were unacceptable if they were used for a long
6 period of time, as we have already discussed many times
7 over.

8 Q. Sorry to interrupt. Did you finish?

9 May I just go up to paragraph 239? Your
10 understanding of stress positions, you tell us there,
11 was that they were permitted for short periods, ie a few
12 minutes at the most, as a way of controlling large
13 numbers of prisoners.

14 "I do not remember discussing my understanding at
15 the O Group where this was mentioned, nor do I recall
16 exactly why I formed this opinion."

17 So did it come to this, that your understanding from
18 that discussion was that stress positions were
19 permitted, but for short periods?

20 A. Yes.

21 Q. That that should be a few minutes at the most for
22 control purposes?

23 A. I have used the phrase "a few minutes", but as I have
24 already said in this Inquiry, it would depend on the
25 context, the person and the situation.

1 Q. And that the concern was that to make a prisoner hold
2 a stress position for a long period would be equivalent
3 to physical violence, as you put it?

4 A. Yes, it would, yes.

5 Q. All right. Do you agree that it's necessary sometimes
6 to place prisoners in positions of control in order to
7 control them and reduce the risk of escape and/or
8 violence?

9 A. Yes, I do.

10 Q. Is your position this, that any position, even a control
11 position, might become a stress position if a prisoner
12 is held in it for too long a time? Is that your belief?

13 A. Depending on the prisoner, yes, it could. If you make
14 an elderly gentleman stand for a long period of time
15 when he is ill, it becomes a stress position.

16 MR EVANS: Thank you very much. Thank you, Sir.

17 THE CHAIRMAN: Ms Edington?

18 Questions by MS EDINGTON

19 MS EDINGTON: Colonel Englefield, I wonder if I might take
20 you back to Chilwell to your OPTAG training, please.
21 You said to Mr Elias that your understanding of the use
22 of hoods being permissible came from a sandbag and
23 a discussion, but not actually being told that the
24 sandbag could be used; is that right?

25 A. Not correct, no. My understanding of use of hooding

1 being permissible developed over a long period of time,
2 but I referred specifically to being briefed at OPTAG
3 and I don't recall it specifically being said we could
4 or could not hood prisoners, but I do recall, I believe,
5 a hood being present -- or sandbag, sorry -- being
6 present at that training.

7 Q. But you had never used hoods on any previous operational
8 tours, had you?

9 A. I had not had an occasion to use a hood in Kosovo or
10 Bosnia and most certainly not in Northern Ireland, no.

11 Q. And you had not used them in Northern Ireland. You, of
12 course, deployed into the American area of operations.
13 Again, please no details. Were you aware at some stage
14 that 1st Division banned the use of hoods for units
15 under their command?

16 A. No, I was not. We didn't fall under their command, less
17 for administrative support through the Joint NBC
18 Regiment.

19 Q. Were you aware, when you went back to your unit in the
20 UK, of the difference of opinion on the use of hoods
21 that had gone on in theatre for Op Telic 1?

22 A. Sorry, when you say I went back to my unit in the UK,
23 when I went back to the defence intelligence staff?

24 Q. Yes.

25 A. No, I was not, no.

1 MS EDINGTON: Thank you.

2 THE CHAIRMAN: Thank you. Mr Summers?

3 Questions by MR SUMMERS

4 MR SUMMERS: Colonel, three short matters. Do we agree that
5 you did not receive, when you were at the hotel on
6 Operation Salerno, an order from the CO that the
7 detainees should be removed from the hotel forcefully as
8 some sort of display to people outside?

9 A. I most certainly did not receive any order of that kind.

10 Q. Are you aware that that is something that
11 Lieutenant Rodgers says he got from you?

12 A. I am aware of that, yes.

13 Q. And he is wrong about that?

14 A. Yes, sir, he is.

15 Q. In fact I think you dealt with, in your interview with
16 the SIB, that the only person you spoke to higher up the
17 chain of command on anything to do with that, that day,
18 was the 2IC, and that was communicating to him your
19 decision that you weren't going to use hoods.

20 A. It was. I was struggling to get communications over the
21 radio nets. I had asked the decision to be relayed by
22 my company net, but by pure chance -- and I forget the
23 reason why -- we were speaking on a mobile phone and
24 I communicated that decision to Major Suss-Francksen by
25 mobile phone.

1 Q. Second matter, the address by Colonel Mendonca to the
2 company about the theft, described earlier as "tearing
3 a strip off the company". Can you recall how long that
4 address was perhaps?
5 A. How long he was speak for?
6 Q. Yes.
7 A. I don't recall. I don't recall it being a particularly
8 long brief, but I don't recall in detail, sir, no.
9 Q. I imagine the Colonel got pretty much straight to the
10 point and made his views plain.
11 A. Yes.
12 Q. I think you agreed at the court martial that that
13 address took place on the afternoon of
14 Operation Salerno.
15 A. It may well have done. I may have remembered it better
16 then. I do not recall when it was now, I am afraid.
17 Q. Lastly, the third matter, Colonel Mendonca as CO. Do
18 you agree with these propositions -- perhaps you could
19 indicate -- that it was your view, you considered, that
20 he had a firm grip on discipline within the battlegroup?
21 A. I did consider that, yes.
22 Q. That the message in relation to the proper treatment of
23 detainees was made clear by the CO?
24 A. Yes.
25 Q. And that, in relation to your access to him as an OC, it

1 Q. So it was your purpose. Can I just turn to what you
2 could actually give evidence of? You were at the hotel,
3 but not for the entirety of the duration of the raid and
4 search, were you?

5 A. No, I was not there for the entire raid, no.

6 Q. So you were not in a position to say what Private Lee
7 did or didn't do when you weren't there?

8 A. No, but I didn't believe he was there, except when he
9 brought out the sandwiches.

10 Q. You say that Private Lee didn't have a role in the
11 handling of detainees. You can't say that he was not in
12 a position to witness such handling, can you?

13 A. No, I cannot.

14 Q. Back at the TDF, I think you made two short visits on
15 the Sunday night and the Monday night, 15 or 20 minutes
16 on the first occasion; yes?

17 A. In addition to being there each evening for the O Group
18 as well.

19 Q. Yes, but actually witnessing what was going on at the
20 TDF?

21 A. I did not witness what was going on at the TDF. I was
22 in the vicinity of the TDF because that's where I would
23 have parked my vehicles and therefore was speaking to
24 soldiers in that area.

25 Q. You were not there on the Saturday morning when the

1 detainees arrived at the TDF?

2 A. Sunday morning.

3 Q. Sorry, Sunday morning, my mistake.

4 A. No, I was not there when the detainees arrived at the
5 TDF.

6 Q. So you are not in a position to say whether he,
7 Private Lee, was there or not and witnessed what went
8 on?

9 A. I would not witness whether he was there. I did not
10 believe that he was part of the multiple tasked to be
11 there.

12 Q. No, but if there is a body of evidence suggesting that
13 he was there, independent from him --

14 A. Yes.

15 Q. -- other than him --

16 THE CHAIRMAN: That is a matter for me to decide after that.
17 You have made the point.

18 MR BEER: You say that you had a conversation with
19 Captain Sweeney about this, about Lee's evidence in your
20 statement. You can't remember the precise context --

21 A. I can't remember the precise conversation, but ...

22 Q. You discussed Lee and his claims?

23 A. I recall the conversation. I can't recall the specifics
24 of it.

25 Q. At this time, was Captain Sweeney the then adjutant?

1 A. I believe he was at that point, yes.

2 Q. Does it follow that this would have been back in Cyprus?

3 A. Yes.

4 Q. Can we look on the screen, please, at MOD022528? Can we
5 highlight the fourth paragraph on the right-hand side,
6 please. Just to put this in context for you, this is
7 part of some medical notes in relation to Private Lee,
8 taken by a nurse, a Corporal Mitchell. In the fourth
9 paragraph there, do you see it says:

10 "With Lee's written consent I [that is the corporal]
11 have today contacted the adjutant of 1 QLR."

12 It would have been Captain Sweeney by that time.

13 "The adjutant acknowledged Private Lee's right to
14 make a statement against the alleged offence, however
15 investigations appear to suggest that Private Lee's
16 evidence is flawed as Private Lee was not in the
17 vicinity of the alleged offences when they occurred."

18 Were you responsible for telling Captain Sweeney
19 that?

20 A. I believe -- and I can't recall the details -- that in
21 some conversation with Captain Sweeney he asked me
22 whether I thought Private Lee was at the hotel and
23 involved in the arrests or at the TDF and involved in
24 the guarding.

25 THE CHAIRMAN: So the answer to the question is "yes"?

1 A. I believe I gave that impression to Captain Sweeney,
2 yes.

3 MR BEER: Were you in a position to say that Private Lee was
4 not in the vicinity of the offences --

5 THE CHAIRMAN: There again that is a matter for comment.

6 MR BEER: Sir, I have made the point. Thank you, Sir.

7 THE CHAIRMAN: Thank you. Mr Dingemans?

8 Questions by MR DINGEMANS

9 MR DINGEMANS: Did the CO have a set time for his O Groups?

10 A. Yes, he did. I can't remember if it was 16.00 or 17.00,
11 but it was a set time.

12 Q. 16.00 or 17.00 hours. Did you have an O Group yourself
13 each evening?

14 A. Most evenings, yes.

15 Q. Did you have a set time for your O Groups?

16 A. Generally we would try to do them about 18.00 or
17 19.00 hours. It depended how long the battlegroup
18 O Group went on.

19 MR DINGEMANS: Thank you very much.

20 Further questions by MR ELIAS

21 MR ELIAS: You said in answer to Mr Summers that the
22 commanding officer made clear the message "proper
23 treatment for detainees". In what way?

24 A. He made it very clear that we should respect the local
25 population, that the hearts and minds was an important

1 part of the battle, that we should follow -- he was
2 clear -- all rules should be followed --

3 Q. Forgive me. We understand the message, but in what way
4 did he promulgate it?

5 A. By -- he would have -- at O Groups he would make it
6 clear that people should follow the rules, his comments
7 to people, his conversations with people on the ground,
8 and when he found out that something wasn't being done
9 correctly, his actions in dealing with that, be that
10 correcting it or, indeed, at the other extreme, taking
11 it for formal disciplinary action.

12 Q. I asked the question specifically, Colonel, because
13 I understood you to have said a little earlier on that
14 you had no recollection at any O Group of
15 prisoner-handling having been referred to.

16 A. No, I said that prisoner-handling in detail, ie how we
17 should do it, was not referred to -- or that's what
18 I meant, sorry.

19 Q. Let me move on, then, just to the other point. In
20 answer to Ms Edington, you were asked questions about
21 OPTAG training and what you may or may not have learnt
22 there. I wonder if your answer that you gave conflicts
23 with what you said at the court martial. May we have
24 a look, please, at your court martial transcript,
25 Day 53, page 40, beginning at line 10. Can I just read

1 through a passage:

2 "Answer: I was briefed on my Op Tag package prior
3 to TELIC 1 that hooding was acceptable.

4 "Question: Who was on that briefing with you? Was
5 it officers or was it privates upwards?

6 "Answer: On my package it would have been privates
7 upwards.

8 "Question: When would that have taken place?

9 "Answer: I did my Op Tag package in January 2003.

10 "Question: Right. Where did the briefing take
11 place? When in what --

12 "Answer: At the mobilisation centre at Chillwell.

13 "Question: Who trained you?

14 "Answer: I do not recall the name of the person who
15 trained us. It was the training team that ran
16 Chillwell.

17 "Question: And the Op Tag package and the ITDs that
18 you referred to -- the predeployment training -- are you
19 suggesting that that training session at Chillwell was
20 part of that set of training?

21 "Answer: Sorry?

22 "Question: Sorry, it was a terribly confused
23 question.

24 "You have referred to this training or briefing that
25 you had at Chillwell?

1 "Answer: Yes.

2 "Question: In which you were briefed about amongst
3 other things the use of hoods to break detainees?

4 "Answer: Correct.

5 "Question: The question I was asking is: was that
6 part of the Op Tag training?

7 "Answer: It was part of the Op Tag training that
8 I received, yes. We were briefed on detainee and
9 prisoner of war handling."

10 So you seem to have been suggesting there, at the
11 court martial, not only that you were briefed at
12 Chilwell that hooding was acceptable, but that you also
13 appeared to understand what was meant by the use of
14 hoods to break detainees. Was that the message you got
15 from Chilwell?

16 A. Clearly, at that point, at the court martial,
17 I recollected that we were briefed that hooding was
18 correct. I don't now recall that, but I do recall
19 seeing the sandbag there.

20 MR ELIAS: Yes, thank you very much, Sir.

21 A. And I think again it's the phrase "break detainees" --
22 I don't know why I said "correct". Again, I was aware
23 then as I'm aware now, as I was aware at the time of
24 Baha Mousa, that hooding was only to be used for
25 security, but that it had the other effect of

1 disorientating.

2 MR ELIAS: Thank you very much.

3 Questions by THE CHAIRMAN

4 THE CHAIRMAN: Colonel, one or two matters I would like to
5 ask you about.

6 First of all, the commanding officer,
7 Colonel Mendonca. You answered questions about how you
8 found him. Mr Summers asked you. Let me ask you this:
9 did you find him an easy person to get on with?

10 A. An easy person to get on with, yes; a difficult person
11 to work for because he was -- he demands very, very high
12 standards.

13 THE CHAIRMAN: Was he or could he be a slightly forbidding
14 man?

15 A. Yes, he can be slightly forbidding.

16 THE CHAIRMAN: Was he someone whom it was easy to own up to
17 faults to? You follow what I mean?

18 A. I follow what you mean, Sir, yes. I did not worry about
19 owning up to him, but others may have.

20 THE CHAIRMAN: Would it surprise you if others had found it
21 difficult to own up to --

22 A. No, it would not surprise me.

23 THE CHAIRMAN: No. Thank you.

24 May I ask you about Mr Rodgers? How did you find
25 him as a platoon and module commander?

1 A. He was a very, very effective soldier. His soldiers in
2 general liked him. He ran a fairly tight ship in that
3 he got things done relatively efficiently. I would not
4 describe us as friends in a person I would choose to go
5 for a drink with, but I respected his professional
6 ability.

7 THE CHAIRMAN: Now, would you have expected him, over
8 36 hours of his multiple guarding the detainees, to have
9 visited them on a regular basis?

10 A. Yes, I would have expected him to do that.

11 THE CHAIRMAN: About what sort of ratio of time?

12 A. It would be unfair to specify a ratio, sir, because I do
13 not know what other things he was asked to do at the
14 time --

15 THE CHAIRMAN: No, he may have obviously had other things to
16 do.

17 A. -- but I would suggest over 36 hours he will have been
18 there and seen them and finding out what -- was
19 everything going okay at the minimum four or five times.

20 THE CHAIRMAN: All right. When someone goes to look at his
21 people for whom he is responsible as the multiple
22 commander or platoon commander, would you expect him to
23 find out what they are actually doing?

24 A. On the basis that his multiple was detached from the
25 company specifically for this task, guarding, then, yes,

1 I would.

2 THE CHAIRMAN: You would expect him to know exactly --

3 A. Yes.

4 THE CHAIRMAN: Turning to your position, if you go to see
5 your soldiers out doing something detached from your
6 company, would you not similarly expect to make sure you
7 know exactly what they are doing?

8 A. No, sir. I wouldn't go out to visit them specifically
9 to see what they were doing. I visited them because
10 they were at Battlegroup Main, I was passing and I would
11 check on their --

12 THE CHAIRMAN: That is not quite the question I am asking
13 you. I am asking you: generally speaking, would you not
14 expect to make sure you know what your soldiers are
15 doing when you are out visiting them?

16 A. Sorry, Sir, I thought I was answering that. I would not
17 expect that I would visit them and go into great detail
18 about the specifics of the task that they were doing
19 because they are reporting to someone else, not me.

20 THE CHAIRMAN: You saw the question coming, because you went
21 to the TDF on two occasions, at least, and the thing
22 that I was a little surprised about is that you say you
23 didn't actually put your head in and see what was going
24 on.

25 A. That's correct. I didn't, sir. I didn't feel that it

1 was part of my duty or responsibility to go into the
2 TDF. By pure location of where I parked and where
3 I then found my soldiers, with whom I then had
4 a conversation, it did not place me geographically
5 immediately close to the TDF -- ie right next to the
6 open door, open window, for example -- and therefore
7 I didn't find myself in a geographic position to
8 casually pop my head round the door.

9 THE CHAIRMAN: On the second occasion -- that's the Monday
10 night --

11 A. Yes, sir.

12 THE CHAIRMAN: -- you presumably were aware they were
13 guarding the same detainees who they had been guarding
14 on the Sunday night.

15 A. I was aware of that, sir, yes.

16 THE CHAIRMAN: Did that come as a surprise to you?

17 A. Surprise, not particularly. I was not aware of the
18 14-hour rule at that point. It may have been mentioned
19 in the handover, but it had just not stuck in my head.

20 Surprised -- I would have expected to have my
21 multiple returned to me earlier because I wanted to do
22 other things with them, but I did not have sufficient
23 experience at that time, having been in theatre for
24 a short period of time, of how long these things
25 normally take, so I wasn't particularly surprised.

1 THE CHAIRMAN: So you wouldn't have gone in out of pure
2 curiosity to see what they were up to?

3 A. No, sir. Certainly not -- the extended period did not
4 raise any alarm bells, sir.

5 THE CHAIRMAN: All right. Would you have expected or would
6 you be surprised if you had gone in and seen them in
7 stress positions and hooded?

8 A. Appalled, rather than surprised, sir.

9 THE CHAIRMAN: You would have been ...?

10 A. Appalled, not surprised.

11 THE CHAIRMAN: Wouldn't that be one reason, if they had been
12 there for that length of time, for you to go and check
13 on them?

14 A. No, sir, because although they had been there for that
15 period of time, I had no reason to suppose they weren't
16 being treated correctly.

17 THE CHAIRMAN: But as I understand it, you believed that
18 hooding people and putting people in stress positions
19 was something which was permissible to do, provided it
20 didn't go on too long.

21 A. That is correct, but I did not know that in the TDF
22 these prisoners were in stress positions or were being
23 hooded for extended periods of time.

24 THE CHAIRMAN: I follow what you say about that. I just
25 wonder why you didn't go in and check whether they were

1 in stress positions --

2 A. Because one assumes as a matter of course competence,
3 not incompetence, and I had no reason to suspect
4 something was wrong.

5 THE CHAIRMAN: Well, to use a phrase that Mr Friedman was
6 going to put to you when I stopped him, if you
7 recalibrate your knowledge, that is to say you were
8 aware that detainees could be put in stress positions
9 and hooding, does that not mean that with young soldiers
10 somebody at least in control ought to supervise those
11 young soldiers quite closely?

12 A. Yes, it does, sir, and on the ground, at the point of
13 capture, where using those techniques, one would expect
14 the team and multiple commander to supervise it, and
15 when they are in the TDF, the conduct of those soldiers
16 should be supervised by their team commander, their
17 multiple commander -- as that is the unit that's
18 detached to their task -- and those responsible for the
19 prisoners in the TDF, which clearly I thought was the
20 RSM.

21 THE CHAIRMAN: Yes, obviously the provost staff.

22 A. Yes, sir.

23 THE CHAIRMAN: Yes. Very well. Thank you very much. Those
24 are all the questions that the Inquiry has for you. You
25 are now free to go and I am grateful to you for coming

1 to give your evidence to the Inquiry. Thank you.

2 A. Thank you, Sir.

3 THE CHAIRMAN: Shall we say 10 past 2?

4 MR ELIAS: I am grateful, Sir.

5 (1.09 pm)

6 (The short adjournment)

7 (2.10 pm)

8 THE CHAIRMAN: To save us saying at the end, tomorrow we

9 have S009, yes.

10 Yes, Mr Elias.

11 MR ELIAS: Sir, I was going to say that I am grateful for

12 the opportunity to say a word or two about new documents

13 that were delivered to the core participants last year,

14 but I fear it will be rather more than a word or two.

15 THE CHAIRMAN: Yes.

16 MR ELIAS: I expect, sir, that people will either stay or

17 go, but I shall be about an hour and a half or

18 thereabouts, if I may.

19 THE CHAIRMAN: Yes, of course.

20 Remarks re Module 3 further disclosed documents

21 MR ELIAS: Sir, between last July, when I delivered our

22 opening address to the Inquiry, and the end of last

23 year, the Ministry of Defence has provided the Inquiry

24 with a very large quantity of further documents relevant

25 particularly to Module 3. Most of these fall into one

1 of three categories.

2 First, materials provided in response to a detailed
3 disclosure request made by the Inquiry on 29 April of
4 last year, following analysis of the court martial
5 materials.

6 Second, materials found by the MoD which have been
7 held by the Directorate General Legal Services, the
8 DGLS.

9 Thirdly, electronic files on a disc found by
10 Lieutenant Colonel Charles Barnett, a army lawyer, who
11 is one of the Inquiry's witnesses, who provided these
12 materials to the Inquiry via the MoD.

13 I propose to spend a little time introducing the
14 Inquiry to just a selection of the documents provided.
15 This is -- and perhaps I may underline this -- by no
16 means a comprehensive exercise, but rather to draw
17 attention to some of the key documents which it might be
18 helpful to have in mind when we come to hear the
19 evidence of Module 3 witnesses above battlegroup level
20 over the next weeks and months.

21 I propose, Sir, to take you through these key
22 documents in their chronological order so far as we can.
23 In our opening address last July, we divided Module 3
24 into a number of discrete topics, and I am not proposing
25 to use a topic-by-topic approach to take you through the

1 new documents, not least because they are a somewhat
2 electric mix.

3 So I shall not go now to every single relevant
4 document from the newly disclosed materials. The
5 Inquiry team has been sending out Rule 9 statement
6 requests asking witnesses to address the new documents,
7 and the range of documents which witnesses have been
8 asked to address is broader than those that I shall take
9 you to today. So when the Inquiry comes to hear
10 evidence from Module 3 witnesses, you will see further
11 documents above and beyond those to which I am about to
12 refer.

13 May I start with a number of specifically undated
14 documents, the origins and contents of which we shall
15 wish to explore during the coming weeks' evidence. The
16 first is MOD050131, please. It is headed "Prisoner of
17 war handling: instructor's pack". It then goes on to
18 lesson 1, as one can see from the headline.

19 We understand this document to be the course notes
20 used by instructors on military provost staff courses
21 taught at the MCTC. Unfortunately, we have not been
22 told of the dates these materials were produced or used.
23 They may or may have predated Op Telic. They almost
24 certainly, however, post-date 2000, since they refer to
25 JWP 1-10, which was, of course, introduced in 2000. We

1 have asked witnesses from the MPS to attempt to identify
2 the relevant dates.

3 One particular part of this training perhaps merits
4 note. We find it at MOD050135, please. Under the
5 heading of "Treatment" halfway down the page, the
6 following guidance is given:

7 "The use of plasticuffs should be considered only as
8 a last resort for those PQ who are violent or who try to
9 escape. Their widespread use is generally unnecessary,
10 impractical and is considered inhumane. Likewise there
11 is no requirement to sandbag the heads of prisoners.
12 Contrary to popular belief, the harsh treatment of PW is
13 counter productive when it comes to questioning, it
14 potentially strengthens the resolve of the individual
15 who is being mistreated, as well as being illegal."

16 Now I move on, please, to the next document,
17 MOD049917, an RMP document, "Handling and treatment of
18 prisoner of war ... and surrendered enemy personnel".

19 Sir, the origins of this document are not clear. It
20 appears from the title to have been a standard operating
21 procedure, probably drafted by either 4 RMP or 5 RMP,
22 since those are the two RMP battalions who support the
23 army's two logistical brigades, namely 101 and 102. An
24 amended date appears at the bottom of the document and
25 this appears to be 12 June 2000.

1 At paragraph 3.13.002, halfway down the page under
2 the heading "Treatment":

3 "Prisoners of war are to be treated humanely at all
4 times. They are not to be subjected to humiliating
5 treatment nor are they to be subjected to disorientating
6 or conditioning treatment. (No hooding or blindfolding
7 except when being moved through critical areas of
8 friendly concentration, which may provide intelligence
9 to the enemy should the PW escape. Such blindfolding is
10 to be authorised by an officer and a record maintained
11 by the IC escort)."

12 Thus this SOP contained a clear prohibition on
13 disorientating and conditioning treatment, as well as
14 providing limitations on hooding and blindfolding. As,
15 sir, we set out in the main Module 3 opening last year,
16 however, such guidance was not generally replicated in
17 other army guidance and doctrine and we are aware of no
18 reason to consider that this SOP would have been
19 available to infantry officers in a battlegroup on
20 Op Telic 2.

21 The next document is a minute which we find at
22 MOD053714. This minute shows the nature of prisoner
23 handling issues which were occupying PJHQ during the
24 war-planning phase in January 2003. We did, in fact,
25 see them briefly yesterday when Colonel Heron was giving

1 his evidence. I don't propose, Sir, to take you to the
2 minute itself, but they record the consideration which
3 was being given at that time to matters such as the
4 transfer of prisoners to the United States, planning
5 medical provision for prisoners of war and review of
6 individuals' detention. The applicability in Iraq of
7 the ECHR or at least article 5 was also raised.

8 There is no record in the minutes of interrogation
9 techniques being considered at PJHQ at this time. There
10 is nothing in this minute to indicate that either
11 hooding or any of the other five techniques were under
12 consideration by PJHQ at this time. It seems clear that
13 prisoner of war planning at this stage envisaged that
14 the US would be accepting responsibility for running
15 prisoner of war camps and that 1 (UK) Division's role
16 would be in handling the prisoners of war from capture
17 up the prisoner of war chain, rather than in holding
18 prisoners of war.

19 The next document, sir, we find at MOD050773. As we
20 see from the top of the page, this document appears to
21 have been issued by PJHQ in January 2003. It appears to
22 be an overarching instruction on prisoner of war
23 handling from PJHQ to all UK commanders in theatre. It
24 appears to be based largely on JWP 1-10, which is
25 reference A -- as we can see on the screen -- to the

1 document. May I take you to paragraph 5(c) over the
2 page. Paragraph 5(c) states:

3 "All component commanders [that is all UK
4 commanders] will be responsible for the safe delivery of
5 PW to the PW collection point. Reference A [JWP 1-10]
6 details the regulations for the initial handling,
7 interrogation, guarding and escorting of PW and must be
8 strictly adhered to."

9 At paragraph 6, headed "Provost responsibilities",
10 it sets out the role of provost assets. This appears to
11 be a reference to the military provost staff as opposed
12 to unit provost staff. As well as setting out provost
13 responsibility for guarding certain high value
14 prisoners, with which we are not especially concerned in
15 this Inquiry, it states:

16 "Provost assets provide advice to commanders on the
17 handling of PW."

18 Then, Sir, at paragraphs 10 to 11, it sets out
19 instructions for the handling of prisoners at unit or
20 sub-unit level, the substance of which is familiar to us
21 from other guidance and orders. At paragraph 10:

22 "Once a PW has been handed to the unit or sub-unit,
23 the following criteria should be adhered to ..."

24 May I go to (d) please:

25 "Ensure the prisoner of war is kept in safe custody

1 and treated humanely at all times."

2 Then (2) in particular:

3 "Provide food, water and protective clothing."

4 Going on, please, to (f), the provision to carry out
5 tactical questioning, and at (g):

6 "Escort PW to a PW collection point as soon as
7 possible by unit or sub-unit transport and hand over to
8 the PWHO."

9 11:

10 "Do not use force to gain information from a PW.
11 When questioned, a PW is required to give only name,
12 rank, number and date of birth."

13 At annex B it attaches the same prisoner of war
14 handling memoire, which we have seen previously, and
15 which repeats the instructions which I have just read
16 out from paragraphs 10 and 11. I don't think that need
17 be put on the screen.

18 The next document, Sir, we find at MOD050844. We
19 understand this to have been authored by the Joint Force
20 Headquarters, JFHQ, which is the deployable arm of PJHQ,
21 which became the National Contingent Command for
22 Op Telic 1.

23 The document, as we can see from the screen, looking
24 at volume 2, section 2, the subject "Enemy prisoners of
25 war and detention centres", last updated February 2003.

1 There are then the references. The STANAGs are referred
2 to but at E, JWP 1-10, "Enemy prisoners of war", and
3 under the heading "Aim":

4 "To outline a framework and key factors for PW and
5 detention centre planning."

6 Sir, I don't take you to the rest of the text of the
7 document because it is a document which adds little of
8 relevance to guidance and orders that we have already
9 seen. It appends the soldiers' aide-memoire on
10 prisoner-handling, which again we have seen, and it
11 refers to JSP 391 and JWP 1-10, but otherwise is not
12 a document which deals with the physical aspects of
13 prisoner-handling.

14 The next document we find at MOD049310, "Commander
15 joint operations' directive to ComBritFor for HUMINT
16 operations in support of UK forces deployed on
17 Op Telic". You may, Sir, recall that in July 1997 the
18 Ministry of Defence issued an amended policy on
19 interrogation entitled "Policy for interrogation and
20 related activities". It cancelled part 2 of the 1972
21 directives, which had contained detailed guidance on the
22 setting up of a deployed interrogation centre, and it
23 required that procedures used by UK interrogators be
24 governed by a detailed directive incorporating current
25 legal advice and issued on behalf of the joint

1 commander.

2 Our opening in July recorded that no detailed
3 directive on interrogation during Op Telic had been
4 provided to the Inquiry and it was thought possible --
5 and we so said in opening -- that none had been issued.
6 However, after the opening, the Ministry of Defence
7 provided the Inquiry with the directive for HUMINT
8 during Op Telic, which appears to have been the document
9 intended to satisfy the 1997 requirement for a detailed
10 directive.

11 It is the document on the screen. It was apparently
12 written by S051, a commodore who was the assistant chief
13 of staff for intelligence at PJHQ. S051 will be asked
14 to provide a statement to the Inquiry which addresses
15 the directive.

16 May I take you to parts of it? Again, noting under
17 the heading F and the references to JWP 1-10, may I then
18 take you on to paragraph -- forgive me, perhaps I should
19 say this.

20 Surprisingly, perhaps, this document does not refer
21 to the first part -- that is the extant part -- of the
22 1972 directive in which the prohibition on the five
23 techniques is set out. By contrast, part 2 of the 1972
24 directive had referred back to part 1, emphasising the
25 need for compliance with the principles set out in

1 part 1.

2 This document, as we can see under the heading
3 "Scope", says this:

4 "This HUMINT directive gives formal direction to
5 ComBritFor for ... HUMINT operations in support of UK
6 forces deployed on Op Telic. This directive is for
7 planning purposes only. It draws authority from
8 reference A and should be read in conjunction with
9 reference B to F."

10 The aim is set out:

11 "... to define the concept of operations and command
12 and control arrangements for HUMINT operations ...
13 supporting Op Telic."

14 If we go over the page, please, to paragraph 4, and
15 note 4(e), under "Prisoner-handling and tactical
16 questioning". As to guidance on the limits of
17 permissible interrogation techniques, the directive
18 itself says only this, if we go to paragraph 7, please.
19 Under the heading "Legal advice":

20 "HUMINT operations are subject to specific legal
21 advice. The NCC LEGAD will be indoctrinated to HUMINT
22 operations and provide appropriate advice. Any conflict
23 between operational requirements and legal advice is to
24 be highlighted to PJHQ J2X. The following Acts and
25 Conventions are to be adhered to ..."

1 And relevantly to us, perhaps, at (b), the Geneva
2 Convention:

3 "Interrogation, debriefing and PH&TQ
4 [prisoner-handling and tactical questioning] operations
5 are to be conducted in line with the Geneva Convention.
6 Further guidance on the handling of POWs and detainees
7 can be found at annex B ...

8 "J2X is to ensure that the NCC LEGAD approves
9 methods and approaches for interrogation and debriefing
10 operations."

11 Annex B to which that refers is found at MOD049314
12 under the heading "PJHQ guidance on the handling of
13 prisoners of war and detainees", and the references that
14 one can see at A and B.

15 "Applicable law. The treatment of captured
16 personnel held for interrogation will comply with the
17 provisions of the 1949 Geneva Convention relative to the
18 treatment of prisoners of war and the 1997 additional
19 protocol to the Geneva Conventions, and other applicable
20 laws of armed conflict including the 1949 Geneva
21 Convention relative to the protection of civilian
22 persons in time of war. In particular in accordance
23 with article 17 of Geneva Convention III, no physical or
24 mental torture, nor any other form of coercion, may be
25 inflicted on prisoners of war to secure from them

1 information of any kind whatever. Prisoners of war who
2 refuse to answer may not be threatened, insulted, or
3 exposed to unpleasant or disadvantageous treatment of
4 any kind."

5 Sir, this annex does not give any further guidance
6 about the physical handling of those being interrogated.
7 It might also be noteworthy that the focus of the annex
8 is very much on interrogation and not on tactical
9 questioning. Like the main body of the directive, the
10 annex does not refer to part 1 of the 1972 directive or
11 to the ban on the five techniques therein; neither is
12 there any replication of the express requirements which
13 had been set out in part 2 of the 1972 directive for
14 medical examinations for those being interrogated,
15 records of such examinations to be kept and detention
16 records, giving details of rest times and the provision
17 of food and water. It will be for the Inquiry to
18 consider whether these omissions rendered this detailed
19 directive inadequate.

20 I move on, Sir, to consider some ministerial
21 correspondence. On 3 March 2003, the then Secretary of
22 State for Defence, Mr Hoon, wrote to the
23 Foreign Secretary, Mr Straw, seeking approval for the
24 conduct of human intelligence operations in Kuwait in
25 Iraq. We see a copy of that letter at MOD048584.

1 Can I ask then that it be screened, please? It is
2 a letter to the Foreign Secretary from the Minister of
3 Defence:

4 "I am writing to seek your agreement to the conduct
5 of human intelligence operations including ...
6 interrogation, in Kuwait and Iraq from 1 March 2003 for
7 a period up to twelve months in support of UK forces
8 deployed on Operation Telic. These operations fall
9 under category A of the ministerial rules."

10 Can we go over the page, please? Under the heading
11 "Interrogation teams":

12 "Three interrogation teams will conduct debriefing,
13 tactical questioning and interrogation of prisoners of
14 war. Two teams, each [so many] strong will support the
15 army and Royal Marine contingents. A third team of [so
16 many] will operate at the US-led joint interrogation
17 facility, which will focus to particularly high value
18 prisoners of war, such as high ranking military and WMD
19 experts. Interrogation will be carried out by
20 appropriately trained personnel and all prisoner
21 handling will be managed in accordance with the agreed
22 UK-US guidelines and the Geneva Convention."

23 And under the heading "Oversight":

24 "Theatre. An in-theatre management board will be
25 formed to direct and control HUMINT operations, ensuring

1 that they do not conflict with coalition operations ...
2 The board, which will meet at the national component
3 headquarters in Qatar, will include the UK chief of
4 staff/assistant chief of staff operations, MoD's
5 political adviser in Qatar, legal adviser ... and the
6 head of HUMINT planning. The management board will meet
7 at least monthly. It will provide a report to PJHQ and
8 MoD HQ after every meeting and will refer contentious or
9 sensitive issues to the MoD supervisory authority as
10 necessary."

11 Under the heading "MoD":

12 "An MoD supervisory authority will be established to
13 provide high-level oversight and guidance for all op ...
14 HUMINT operations."

15 Down the page, under the heading "Risk" and the
16 paragraph that is now highlighted in green on this copy,
17 please:

18 "During and after hostilities, tactical questioning
19 and interrogation, although accepted elements of
20 warfare, are likely to attract media attention,
21 especially at the US-led joint interrogation facility,
22 following events at Guantanamo Bay. However, UK
23 personnel will operate in accordance with the Geneva
24 Convention, the UN's Universal Declaration on Human
25 Rights and UK armed forces regulations at all times."

1 Sir, that letter was responded to by Mr Straw in
2 a document which, if we can have it on screen, if it is
3 there, please, at MOD048589 -- again, then, I will
4 simply put it on the screen. It is a very poor copy, in
5 any event, and I think I might have had to read it.

6 Mr Straw's response:

7 I agree to the conduct of human intelligence ...
8 operations including ... interrogation, in Kuwait and
9 Iraq from 1 March 2003 for a period ... in support of UK
10 forces deployed on Operation Telic.

11 "I note that an in-theatre management board will be
12 formed to direct and control HUMINT operations, ensuring
13 that they do not conflict with coalition operations ...
14 I am also pleased that you have confirmed that UK
15 personnel will operate in accordance with the Geneva
16 Convention, the UN's Universal Declaration of Human
17 Rights and UK armed forces regulations at all times."

18 It then went on to refer to potential media interest
19 and I don't trouble you with that.

20 Sir, ministerial approval for interrogation in
21 theatre was therefore provided on the footing that such
22 interrogation would be subject to a degree of oversight,
23 that it would be conducted in accordance with the Geneva
24 Conventions, the UN declaration and, of course, army
25 regulations.

1 I move next to a document which is dated, I think,
2 14 March 2003. It is a submission to the Secretary of
3 State on prisoners of war, a submission put up by PJHQ.
4 Can we look, please, at MOD054362? This is a document
5 that was signed by Richard Johnson, Mr Johnson, a civil
6 servant holding the post of deputy head of policy and
7 operations at PJHQ. The submission is perhaps
8 summarised in the first four paragraphs of the document.
9 Can we go down to 1 and 2 on this page, please?

10 "Issue."

11 "1. The role of British forces in handling
12 prisoners of war ...; practical, legal and
13 presentational considerations."

14 Under the heading "Recommendations", paragraph 2:

15 "That Secretary of State notes the arrangements for
16 handling PWs, in particular that:

17 "(a) our planning is designed to ensure we meet our
18 legal obligations; and

19 "(b) the arrangements for the transfer of UK
20 captured EPW to the US do not compromise this position
21 ... and further notes that additional advice will be
22 provided to ministers in respect of possible war crimes,
23 crimes against humanity and crimes against peace and
24 individuals judged to be of high value intelligence
25 interest."

1 Over the page, under 3 and 4, "Routine", and under
2 the heading "Background" in paragraph 4:

3 "The paragraphs below set out the practical, legal
4 and presentational considerations in respect of PW
5 handling. Given the length of this minute and that no
6 decisions are required by ministers, the key points in
7 summary are:

8 "Planned arrangements are designed to ensure
9 compliance with Geneva Conventions obligations.

10 "HQ 1 (UK) Div anticipate having to hold around
11 14,000 PWs in the early days of campaign, with PWs
12 subsequently being transferred to US facilities.

13 "An MOU under consideration by the Attorney General
14 would preserve UK jurisdiction over all UK prisoners
15 transferred into US custody in respect of acts committed
16 prior to their transfer, and preclude their transfer
17 outside Iraq without UK consent.

18 "Separate advice will be put to ministers in respect
19 of war crimes and detainees of potentially high value
20 intelligence interest."

21 The last bullet point:

22 "In extremis, it may be necessary to transfer
23 wounded prisoners of war to RFA Argus, which will have
24 a 100-bed role 3 capability."

25 Then, at paragraph 5, if we can go to that, please,

1 there is some more detail on treatment:

2 "Enemy personnel in the power of the military of
3 a particular nation are the responsibility of that
4 nation (the detaining power), which is obliged to ensure
5 their rights and status as PW, as governed by the Geneva
6 Convention relative to the treatment of prisoners of war
7 (GC III). Even though responsibility for the treatment
8 of prisoners of war rests with the detaining power, they
9 may be transferred to the custody of another party to
10 the convention, and even, in some circumstances, to
11 a neutral power ... PWs must not be exposed to the
12 dangers of a combat zone and they must be evacuated
13 to a safe location as soon as is possible. They must be
14 ..."

15 Here we get to perhaps more relevant parts.

16 "... protected from physical violence or torture and
17 must not be exposed to conditions likely to be
18 detrimental to their health. In addition, they are
19 entitled to respect for their persons and honour and
20 must be allowed to exercise the rights attaching to
21 their civil capacity to the extent that the captivity
22 permits. As well as the physical aspect to the
23 protection of the rights of PWs, there is a moral aspect
24 that covers their rights to religious and intellectual
25 freedom and protection against acts, other than the mere

1 fact of captivity, that might demoralise them."

2 So it seems that this submission shows that careful
3 scrutiny was being given at PJHQ to certain aspects of
4 the rights of prisoners. It goes on to deal in some
5 detail with matters such as the legal implications of
6 transferring prisoners into US custody, capacity
7 planning, the requirement that prisoners be provided
8 with culturally acceptable food, the need for medical
9 support for prisoners, the need, as we have seen, to
10 evacuate prisoners from the dangers of the combat zone
11 and the need for the UK to conduct tribunals in
12 accordance with article 5 of the Geneva Convention in
13 order to determine the status of the prisoners.

14 As to the latter point, the submission refers in
15 particular to seeking advice from the Attorney General
16 as to whether the European Convention on Human Rights
17 would apply to article 5 tribunals. Reference to this
18 appears at paragraph 11 of the submission.

19 The submission, however, does not address in any
20 great detail the physical handling of prisoners. In
21 particular, it does not address physical handling prior
22 to interrogation. It doesn't address hooding or any of
23 the five techniques. It will be for consideration
24 whether there was anything unusual or surprising in
25 this. The Inquiry may wish to consider whether this

1 simply reflects an assessment of where the problem areas
2 were, at this stage anyway, expected to lie or whether
3 the physical handling and tactical questioning and
4 intelligence aspects of prisoner of war or detainee
5 handling were not given sufficient attention.

6 The Secretary of State's office provided a short
7 response to the submission a few days later. This is
8 17 March. We find it at MOD054361, please. Can we go
9 to paragraph 2 of the response?

10 "The Secretary of State notes the arrangements for
11 handling prisoners of war, in particular that:

12 "(a) UK planning is designed to ensure that we meet
13 our legal obligations;

14 "(b) the arrangements for the transfer of UK
15 captured prisoners of war to the United States do not
16 compromise this position."

17 I move on, sir, to the next document, which appears
18 at MOD052847. It is headed "Joint commander's mission
19 directive to the UK National Contingent Commander
20 Operation Telic". Under the heading:

21 "The context of this directive is that HMG [the
22 Government] is assumed to have concluded that the
23 present strategy of coercion will not cause
24 Saddam Hussein to comply with the United Nations
25 resolutions in an acceptable timescale and that

1 coalition military action is necessary to secure
2 national objectives for Iraq and the region."

3 It is issued, as you can see, by the joint commander
4 to the National Contingent Commander. The mission
5 directive addresses prisoners of war and detainees at
6 paragraph 25 on internal page 7 of this document,
7 please. Paragraph 25, under the heading "PW and
8 detainees":

9 "The processing of PWs ... is to be in accord with
10 the provisions of the law of armed conflict. You have
11 a legal liability to acquaint yourself with the Geneva
12 Conventions and protocols and you are responsible for
13 ensuring that all members of UK contingents and
14 components comply with them. Any PW and detainee
15 handling by UK forces is to be conducted strictly in
16 accordance with the provisions of JWP 1-10."

17 Sir, the next documents we look at comprise an
18 exchange of correspondence between the Foreign and
19 Commonwealth Office and Vivien Rose, a deputy legal
20 adviser at the Ministry of Defence and a member of the
21 Senior Civil Service. The correspondence was
22 precipitated by a request by the Ministry to use
23 sovereign base areas for the interrogation of Iraqi
24 prisoners of war and detainees.

25 In a letter to Vivien Rose, the Foreign and

1 Commonwealth Office expressed a concern about the use of
2 the word "interrogation" and raised the need for
3 compliance with various instruments of international
4 humanitarian law, in particular the Geneva Conventions.

5 Vivien Rose's reply appears at MOD053170. Sir, of
6 course, the issue of sovereign base areas has no
7 particular relevance to this Inquiry in itself, but
8 paragraph 3 of Vivien Rose's letter perhaps merits some
9 attention because of the assurance it gives about
10 interrogators being aware of their obligations under
11 international law. We can see it reads:

12 "All those who are involved in the handling and
13 questioning of detainees, whether they are PWs or
14 civilian internees, are fully aware of the legal
15 obligations that you describe. They are also aware that
16 they will be held accountable for any breach of them.
17 There are military and civilian lawyers, who are very
18 familiar with the terms of the Geneva Conventions and
19 other rules of international humanitarian law, deployed
20 at various levels of the command chain. It is their
21 task to ensure that all troops are given the guidance
22 and instruction necessary to enable compliance with the
23 UK's international obligations. Our expectation is that
24 HM Forces will comply fully with these obligations in
25 this conflict as they have done in conflicts in the

1 past."

2 Moving on, I turn to a document now dated late April
3 2003, just a few weeks after concerns were raised about
4 the use of hooding at the JFIT. It is a series, Sir, of
5 emails between civil servants and legal advisers at the
6 MoD and PJHQ in response to a question raised in
7 ministerial correspondence. The first email we find at
8 MOD053241, please. This would appear to be an email
9 from Ian Gibson, head of the Secretariat (Iraq) Group to
10 David -- we believe to be a David Lester -- PJHQ Policy.
11 We can see what it says:

12 "... a draft paragraph to insert into an MC on
13 a series of issues -- the MC sets the particular exam
14 question 'to comment on the use of hoods and handcuffs
15 on PWs'. I've interpreted this pretty narrowly to mean
16 UK use (US use is a matter for them). This is based --
17 as discussed on a conversation with [S034] -- whom you'd
18 asked to update me before briefing Min [minister] on PW
19 issues.

20 "Grateful for your views ... before I go ... (Sean
21 would also welcome your views)."

22 It seems a reference to Sean Martin, a legal adviser
23 at the MoD. The reference to "MC" is a reference to
24 "ministerial correspondence".

25 The attachment, Sir, is over the page. It is headed

1 "Lines on use of hoods and restraints".

2 "Text for the MC [ministerial correspondence].

3 "We treat prisoners of war strictly in accordance
4 with our obligations under the Geneva Conventions.
5 Detainees who do not qualify for prisoner of war status
6 (for example on account of their conduct during
7 hostilities) are still treated decently and humanely.
8 We would only restrain prisoners if we felt that it was
9 necessary to do so (for example if we felt they might
10 seek to escape, or be violent towards the guards or
11 other prisoners). [There were a couple of occasions at
12 the start of the conflict where prisoners were hooded
13 for short periods -- this practice has now been stopped.
14 [Goggles -- what do we say?]"

15 If we go down to "Background (C)" please:

16 "Handcuffs and hoods were used by UK forces at
17 an early stage of the conflict to detain (and
18 disorientate) ..."

19 Perhaps I can ask you, Sir, to note that. We will
20 come back to it:

21 "... Iraqi prisoners of war. Command in theatre
22 expressed concern about this and the practice was
23 discontinued. Handcuffs are now only used to restrain
24 prisoners who are violent (towards the guards or other
25 prisoners). Theatre have asked the ICRC locally whether

1 it would be permissible to make certain prisoners
2 (notably of those high intelligence value) wear
3 blacked-out goggles ... [redacted]."

4 Then the note:

5 "This is the position of about 2 weeks ago (as
6 briefed by [S034]) -- any developments since?"

7 So, Sir, it seems that civil servants at the MoD
8 were informed that hooding had been used early in the
9 campaign. The information passed to them and being
10 provided as background for an answer in ministerial
11 correspondence may not have been entirely accurate.
12 This document says that hoods were used only on a
13 "couple of occasions". It also says that after the
14 early statement of the conflict, hooding was
15 "discontinued". The Inquiry has heard evidence that
16 this, too, may not be entirely accurate, for example
17 recent evidence that the Black Watch was still hooding
18 prisoners when it handed over to 1 QLR in June of 2003
19 and, furthermore, that it was then an SOP.

20 Perhaps interestingly, Sir, this draft does say that
21 one of the purposes of hooding had been to disorientate.
22 The source of this information is the matter of some
23 interest. It may have been S034, who appears to have
24 been consulted for the purpose of drafting the briefing.
25 However, if we look to the next email -- we find it at

1 MOD053239 -- we can see that the reference to
2 "disorientation" was apparently removed.

3 "Sorry not to have replied sooner ...

4 "If not too late, I have suggested some changes."

5 If we go down to the text, over the page, please, to
6 the document -- forgive me -- we can now see that under
7 "Background (C)", instead of "and disorientate" in
8 brackets in the second line, we find "and control", as
9 presumably a suggested alternative, with the word
10 "disorientate" struck out.

11 Quite, Sir, why that amendment was made and why the
12 original draft stated "disorientate" is, of course,
13 a matter that the Inquiry will wish to explore. The
14 Inquiry is currently considering whether or not to take
15 a statement from Mr Martin, Sean Martin, the legal
16 adviser. but Ian Gibson, who is to be an Inquiry
17 witness, may also be able to assist you on this point in
18 due course.

19 Sir, the ministerial correspondence which this
20 appears to relate to and is apparently associated with
21 consists of a number of letters written in May, July and
22 August by the MP Adam Ingram to his parliamentary
23 colleagues. The content of the various letters is very
24 similar and a representative example of it appears at
25 MOD050332, a letter written, as we can see, to

1 a parliamentary colleague saying:

2 "Thank you for your letter of 9 April, enclosing
3 an email from your constituent ... about the treatment
4 of Iraqi detainees.

5 "Prisoners of war ... captured by British forces are
6 being treated strictly in accordance with our
7 obligations under the Geneva Conventions and
8 international law. Captured Iraqis are given prisoner
9 of war status until proved otherwise, and will be
10 treated according to our obligations under the Geneva
11 Convention.

12 "We have worked very closely with the International
13 Commission of the Red Cross ... who have expressed
14 themselves content with the way we have treated
15 prisoners and detainees throughout this conflict.

16 "We only restrain prisoners if it is felt necessary
17 to do so (for example if we felt that they might seek to
18 escape or be violent towards the guards or other
19 prisoners). There were a few occasions at the start of
20 the conflict where prisoners were hooded for short
21 periods -- this practice has now been stopped.

22 "I hope this is helpful."

23 It follows, it would seem, Sir, that Mr Ingram must,
24 therefore, have been made aware that some hooding had
25 occurred early in the Iraq campaign. It seems likely

1 from the documents we have looked at that he was
2 informed of this by Ian Gibson, following that exchange
3 of emails.

4 Indeed, he appears to have passed on various
5 assertions in those emails, namely that there had been
6 "a few occasions" where prisoners were hooded "for short
7 periods", that this practice had stopped by May of 2003
8 and that the IRC had "expressed themselves content" with
9 the way UK forces had treated prisoners and detainees
10 "throughout this conflict". Each of those assertions in
11 the letter may in fact have been inaccurate, but on the
12 face of the documents it appears that Mr Ingram may well
13 have been passing on what he had been told by his civil
14 servants.

15 So on 11 April 2003, in the House of Commons,
16 Mr Kevin McNamara MP tabled 20 written questions of the
17 Secretary of State for Defence. All 20 concerned
18 prisoner-handling, in particular at Um Qasr, but perhaps
19 the question which may most concern the Inquiry is
20 question number 18. We find it in the relevant extract
21 from Hansard at MOD050307. Just 18. Thank you very
22 much:

23 "How many interrogation rooms are situated in the
24 vicinity of camp 1 Um Qasr; what the maximum number of
25 hours each day a detainee may be interrogated is; what

1 the guidelines and rules governing interrogation
2 procedures are; and if he will place a copy in the
3 library."

4 A holding reply was given to these parliamentary
5 questions on 28 April and the substantive response of
6 the Minister for the Armed Forces, Mr Ingram, followed
7 in a letter dated on 22 May 2003. We find that at
8 MOD050303.

9 The response to that question 18, as we saw, it
10 appears two pages later, please, in the middle paragraph
11 on that page, beginning "Finally ..."

12 "Finally, you asked about what you described as
13 interrogation rooms and procedures. Eight tents were
14 set aside at Camp Bucca for questioning prisoners. The
15 Geneva Convention does not prescribe the maximum amount
16 of time during which a prisoner may be questioned each
17 day but it has been our practice in Iraq to conduct
18 sessions of no longer than two hours at a time.
19 Personnel conducting the questioning of detainees do so
20 in accordance with guidelines drawn up by defence
21 intelligence training staff. In accordance with
22 exception 1 of the code of practice on access to
23 Government information (defence security and
24 international relations) I am unable to place a copy of
25 these guidelines in the House of Commons library because

1 they contain information that, if known prior to
2 capture, may be of use to a potential future enemy."

3 Sir, the Inquiry is also in possession of earlier
4 drafts of that letter of Mr Ingram. The drafts, it
5 seems, were composed by a number of senior civil
6 servants at MoD and PJHQ, some of whom are witnesses to
7 the Inquiry. The Inquiry has asked these witnesses to
8 clarify which guidelines on interrogation are being
9 referred to by Mr Ingram in his letter.

10 I move next to a ministerial briefing relating to
11 the death in custody of a prisoner held by
12 1 Black Watch. As the Inquiry already knows from
13 evidence, a detainee died in the custody of
14 1 Black Watch on 8 May 2003. There is further evidence
15 that this detainee was hooded at some point prior to his
16 death.

17 Mr Ingram was briefed about the death in a minute
18 dated 20 May 2003, which appears at MOD052599. I do not
19 think I need to take you to any part of it, but simply
20 to indicate -- perhaps notably -- that the minute does
21 not mention that the deceased had been hooded at some
22 time. It is possible that this might help to explain
23 why it was that the ministerial correspondence
24 I described a few minutes ago -- the letters of
25 Mr Ingram of May, July and August -- stated that hooding

1 had been discontinued.

2 Sir, I move on to a document that we find at
3 MOD052218, please. It is an email from Lieutenant
4 Colonel Charles Barnett. It is raising his objections
5 to ... [redacted]. It is sent to, amongst others, as we
6 can see from the addressees, Colonel Richard Barrons,
7 the 3 (UK) Division chief of staff for Op Telic 2. It
8 seems that it is a reaction to a ... [redacted].

9 The document reads at paragraph 1:

10 "... [redacted] ..."

11 So it would seem that this email is of note in
12 several respects ... [redacted].

13 The next document, Sir, is an email from
14 Richard Hulmes to Sean Martin, which refers to the
15 hooding of the detainee who had died on 8 May. We find
16 it, please, at MOD053259. It is an exchange of emails.
17 It was prompted by an inquiry by Amnesty International
18 into a number of incidents in Iraq, including that death
19 in custody on 8 May.

20 May I read the first two paragraphs of the email?

21 "... it appears there is, hopefully, a dying flurry
22 of activity over Iraq with [parliamentary questions] ...
23 and the Al business. You may recall the latter involved
24 4 cases of alleged abuse, no names mentioned or
25 subsequently passed to us, and 6 cases of Iraqi

1 lawlessness, which they claim was due to there being no
2 law and order, for which we were ultimately responsible.
3 Again in 4 of the cases no names were mentioned. In one
4 there was either a forename or surname and one case
5 where the victim was named but it was apparently
6 a family killing and it is not clear what the complaint
7 is.

8 "The one case common to the current and previous
9 report is that of [X] ... who died in custody. I have
10 spoken to Ian Davidson S01 Casework at Upavon who has
11 the report. In short X was taken to the holding
12 facility (bound and hooded). On arrival he was put
13 through administration (name et cetera) and asked some
14 questions. He was then released into the compound. He
15 asked for and was given some water. Some (unspecified
16 but not thought to be long say 10-20 minutes) time later
17 he was noticed to be bent double and experiencing some
18 pain. This was noted by the guard who immediately
19 called for medical assistance but [X] ... collapsed and
20 died. He was seen by the MO of Black Watch who
21 pronounced him dead. He was taken to the hospital,
22 which at that time was manned by Czech medical staff and
23 the Czech medical officer handed him straight over to an
24 Iraqi doctor. The Iraqi doctor confirmed that there
25 were no signs of external injury but released the body

1 to the morgue. An examination was carried out by two
2 assistant pathologists, who also confirmed that there
3 were no marks or external injuries but were not
4 qualified to carry out a proper post mortem. They
5 recorded a verdict of cardiac arrest."

6 Sir, perhaps the main point of interest here may be
7 in the fact that one of the MoD's legal advisers was
8 told that the deceased had been hooded shortly before
9 his death on 8 May, which, of course, was some time
10 after General Brims' verbal or oral order that hooding
11 should cease.

12 THE CHAIRMAN: Pausing there, we haven't got a specific date
13 for that oral order yet, have we?

14 MR ELIAS: We haven't, sir.

15 THE CHAIRMAN: Some time towards the end of May, as
16 I recollect; is that right?

17 MR ELIAS: Probably earlier.

18 THE CHAIRMAN: Thank you. Sorry to interrupt.

19 MR ELIAS: Sir, moving on to a post operation report
20 prepared by a Captain Neil Wilson, officer in command of
21 the military provost staff during Op Telic 1. The
22 report is dated October 2003 and begins at MOD050224.
23 You see the heading "Post operation report Operation
24 Telic ... officer commanding's review".

25 Can we go, please, to paragraph 8, where some

1 criticism of JWP 1-10 is made which the Inquiry may need
2 to explore in due time. Under the heading "Concepts and
3 doctrine":

4 "All activity in relation to prisoner of war
5 handling was conducted in accordance with JWP 1-10 which
6 takes into account the Geneva Convention 1949 and
7 additional protocols. Whilst proving to be a useful
8 document overall, the JWP 1-10 has a number of
9 shortcomings, including insufficient detail regarding
10 the role and operation of the brigade CP and explicit
11 reference to the MPS capability and role at each nodal
12 point within the PW [prisoner of war] chain. In short,
13 a full review of JWP 1-10 should now be undertaken, in
14 particular, should PWHO [prisoner of war handling]
15 remain an overall J1 responsibility?

16 Then at paragraph 51(b), which we find at MOD050231,
17 Captain Wilson said this:

18 "Many units had been incorrectly briefed regarding
19 PW [prisoner of war] handling procedures prior to
20 deployment. In particular, the 'bagging' or hooding of
21 PW [prisoners of war] as a matter of routine had been
22 widely briefed. Given the potential harm to UK
23 interests, there is an urgent requirement for
24 specialists to conduct all PW [prisoner of war] handling
25 training. This task is best conducted by MPS."

1 In itself, Sir, that might be thought to be an
2 interesting comment, written as it was in October 2003.
3 Captain Wilson's view was that many units had been
4 trained to hood routinely and that this was wrong. But
5 perhaps it is all the more interesting because, looking
6 at the annexes to Captain Wilson's report, at least on
7 the face of the document, it appears to be that this
8 problem was first identified on 20 February 2003.

9 Can we look, please, at MOD050239? It is a "Lessons
10 learned" log. Operations lessons Op Telic", as one can
11 see at the top. If we look, please, at serial 2,
12 against the name of "Captain Wilson" and "PW handling,
13 training out of date":

14 "Prior to arrival in theatre many units were out of
15 date regarding the correct treatment of PW [prisoners of
16 war] in particular with regards to the routine 'bagging'
17 of PW."

18 Under the "Recommendations/action" column:

19 "MPS should be the lead arm for the delivery of PW
20 handling and detention issues throughout the services.
21 MPS training advisory teams should sponsor the relevant
22 ITD, directly support BATUS, OPTAG and all major
23 exercises involving PW/detention serials."

24 So, Sir, it seems that the military provost staff or
25 their OC, Captain Wilson, at least, considered the

1 routine hooding of prisoners to be wrong even before
2 concerns about hooding were raised in March 2003. What,
3 if anything, was done about Captain Wilson's perceived
4 problem will need to be investigated.

5 Sir, I think I am very slightly more than halfway
6 through. I don't know whether it might be convenient to
7 take a break.

8 THE CHAIRMAN: Yes, we will have ten minutes.

9 MR ELIAS: I am grateful, Sir.

10 (3.10 pm)

11 (A short break)

12 (3.20 pm)

13 THE CHAIRMAN: Yes, Mr Elias.

14 MR ELIAS: Thank you, sir. At MOD053803, please, a draft
15 document dated 1 December 2003 which, as we can see, is
16 entitled "Specific legal aspects of Op Telic
17 intelligence". The authorship of the document is
18 unclear, but it does seem to contain another account of
19 the early hooding at the JFIT.

20 If we go over the page, please, to MOD053804 -- and
21 I am reading from the middle page:

22 "The manner in which the segregation was effected
23 was by use of a hood placed over the head of the
24 detainee. This procedure attract mixed responses from
25 both the ICRC and the military legal community. In

1 essence the view of those in favour was that the use of
2 hoods protected the person hooded as the person would
3 not want to be seen to have cooperated with the
4 coalition forces. Those against argued that it was
5 inhumane and dangerous. The latter argument was borne
6 out with the death of a person hooded whilst in UK
7 'custody'.

8 "Even before the death of the detainee the practice
9 was suspended although this prompted 15 of the 40
10 persons being questioned to request the reinstatement of
11 the use of hoods. A proposal to adopt the use of
12 goggles was not put into effect.

13 "The confusion surrounding the use of hoods could
14 have been eliminated by clear legal assessment of the
15 techniques proposed for use prior to the conduct of the
16 operation."

17 And the lesson:

18 "Potentially controversial aspects of detainee
19 handling need to be resolved so that appropriate
20 training can be conducted in preparation for
21 operations."

22 In addition, Sir, to the conclusion that there
23 should have been clearer legal advice on hooding prior
24 to the operation, there is an interesting suggestion
25 here that at least some hooding was, if I can use the

1 word, consensual, in that some detainees requested to be
2 hooded, presumably to protect their identities from
3 other detainees.

4 I next move to a large series of documents, which
5 date from May 2004. The Inquiry may recall that May
6 2004 is when the abuse of prisoners in a military
7 context rose high on the political agenda. It was
8 around this time that the media-published photographs
9 from the US facility at Abu Graib, the fake abuse
10 photographs appeared in the Daily Mirror and extracts
11 from the Red Cross report of February 2004 were
12 published by the Wall Street Journal. There was
13 a particular focus in the Ministry of Defence on the
14 practice of hooding prisoners.

15 Whilst, of course, they postdate Baha Mousa's death,
16 the documents from this period are of some interest to
17 Module 3 of the Inquiry mainly for two reasons: first,
18 they enable us to see what the MoD's policy on hooding
19 was and should be; second, they raise questions about
20 whether the army and the MoD were completely candid
21 about the practice of hooding.

22 The first document I turn to, then, is a letter from
23 the private office of the then Secretary of State for
24 Defence, Mr Hoon, sent to the chief of joint operations
25 and the chief of defence intelligence. We find it at

1 MOD054028. We see at the top it is dated 10 May. Under
2 the heading "Iraq -- policy on hooding prisoners",
3 paragraph 1:

4 "As a follow-up to today's statement in the House of
5 Commons, the Secretary of State is keen to understand
6 the current position on the use of 'hooding' as an
7 interrogation technique. There are two specific areas
8 that he would wish to have more detail supplied.

9 "2. Firstly ... what was the policy that was in
10 place at the commencement of Op Telic, when the policy
11 was changed, what new instructions were issued, and what
12 the current policy is (if different). Secondly, Mr Hoon
13 is interested to know what the current training policy
14 is on the use of hooding as an interrogation technique."

15 The letter dated 10 May -- and I can't avoid
16 pointing it out -- asks for the urgent response by close
17 of play the following day, the 11th. I simple point out
18 that the Inquiry is not the only body that seeks
19 responses in a very short period of time.

20 THE CHAIRMAN: Wholly untypical of Government bodies, but it
21 is quite a surprising letter to be written after the
22 events, rather than before.

23 MR ELIAS: Sir, yes.

24 11 May, we have the reply. It is MOD052687. It is
25 from the private secretary to the chief of the defence

1 intelligence, General Andrew Ridgeway. We see under
2 paragraphs 1 and 2:

3 "You asked at reference for the current training
4 policy on the use of hooding as an interrogation
5 technique.

6 "2. The only formal courses in respect of
7 prisoner-handling, tactical questioning and
8 interrogation are undertaken at the Defence Intelligence
9 and Security Centre (DISC). All personnel attending
10 these courses are explicitly taught that the use of
11 hooding is unacceptable as an interrogation technique
12 and potentially harmful to the health of the detainee."

13 That last assertion, that the attendees at
14 Chicksands are explicitly taught that the use of hooding
15 is unacceptable and potentially harmful to the health of
16 the detainee, is a matter on which, of course, the
17 Inquiry has received mixed evidence and there is more
18 evidence on that point to come.

19 Certainly the evidence of some witnesses and
20 Chicksands trainers who are still to give evidence
21 supports the assertion. Some other witnesses suggest
22 that hooding was taught or used at Chicksands or that
23 the message may not have been clear, although the
24 reasons for hooding vary in these accounts.

25 Whether the assertion in the letter is correct is

1 one of the matters that, of course, the Inquiry will
2 continue to investigate, in particular when we hear from
3 the Chicksands trainers.

4 The next document, Sir, appears at MOD051978. It is
5 a minute on the 1972 Parker Report, which was provided
6 to the minister -- it seems to be the Minister for
7 Defence Procurement -- by a civil servant in the
8 Secretariat (Home and Special Forces) named
9 Nunzia-Alexandra D'Alessio. We don't have a copy of any
10 request for this minute, but it seems likely that it
11 arose out of concerns about hooding that reached the
12 political agenda in May 2004.

13 We can see that under the heading "Parker Report
14 (1972)":

15 "You asked for the conclusions of the report of the
16 committee of the privy counsellors appointed to consider
17 authorised procedures for the interrogation of persons
18 suspected of terrorism chaired by Lord Parker ...

19 "The committee considered ..."

20 Then it set out the terms of reference and under 3:

21 "You are aware that the committee was unable to
22 agree and accordingly submitted two reports ...", the
23 majority and the minority.

24 The minute then sets out the conclusion of the
25 majority, that the five techniques could be morally

1 justified subject to particular safeguards. It then
2 addressed the decisions of the European Commission on
3 Human Rights and the European Court on Human Rights in
4 the following way. If we go, please, to paragraph 10 of
5 the letter, under the heading "European Commission on
6 Human Rights":

7 "You may also wish to note that in September 1976,
8 the European Commission on Human Rights announced its
9 findings in the case brought by the Republic of Ireland
10 against the UK on the treatment of IRA suspects in 1971.
11 The Commission found that the deep interrogation
12 techniques used constituted a breach of the European
13 Convention on Human Rights 'in the form not only of
14 inhuman and degrading treatment but also of torture'.

15 "11. However in January 1978, the European Court of
16 Human Rights in Strasbourg ruled on the 1976 findings,
17 rejecting the use of the word 'torture', because
18 interrogation techniques 'did not occasion suffering of
19 the particular intensity and cruelty implied by the word
20 torture'. The court accepted the phrase that suspects
21 suffered 'inhuman and degrading treatment'."

22 There are, Sir, two aspects of this minute that one
23 might note. First while the minute, in terms, sought to
24 summarise the conclusions of the Parker Report, it is
25 notable that it did not go on to refer to Prime Minister

1 Heath's subsequent statement, undertaking that the
2 techniques would not be used again as aids to
3 interrogation. Second and similarly, there is no
4 mention of the 1972 Directive which prohibited the use
5 of techniques in internal security operations.

6 If we move on, please, to MOD053825, this, Sir, is
7 a memorandum sent by David Horrocks, an MoD civil
8 servant in the Secretariat (Home and Special Forces) to
9 the Minister for the Armed Forces, Adam Ingram. It is
10 dated 13 May 2004 at the top of the page, which is the
11 day after the Prime Minister had told the House of
12 Commons that hooding had ceased. The memorandum, as we
13 can see, says this at paragraph 1:

14 "UK special forces ... in Iraq continued to 'hood
15 'detainees up until yesterday morning.

16 "Recommendation ...

17 "2. That the Secretary of State

18 "(a) Notes that UKSF continued to 'hood' personnel
19 until yesterday morning.

20 "(b) Notes that this undermines the Prime Minister's
21 categorical assurances during yesterday's
22 Prime Minister's Questions that British forces stopped
23 hooding prisoners well before the [Red Cross] ...
24 February report."

25 The use of hooding by special force personnel is, of

1 course, not of direct interest to this Inquiry, save
2 perhaps in terms of Module 4. However of relevance
3 within this memorandum are the lines to take which was
4 appended to it. I think we see that over the page,
5 please -- perhaps over two pages. Thank you.

6 "Defensive lines on hooding of prisoners."

7 I think I should just read all the bullet points.

8 "Hooding as a means of detaining and transporting
9 prisoners was used during Operation Telic in Iraq as
10 standard operating procedure available if required.

11 "UK forces operating in the MND(SE) stopped hooding
12 prisoners following an instruction issued by PJHQ in
13 September 2003."

14 Then the next four, against the bracket (if
15 pressed):

16 "The practice was continued by UK forces conducting
17 some of the most sensitive detention operations in Iraq.

18 "(If pressed on whether the practice is continues
19 today) This is no longer the case.

20 "(If pressed for more detail on these operations)
21 Not prepared to comment, for reasons of operational
22 security.

23 "(If pressed on whether these operations involve
24 UKSF) As you will be aware, it is our policy not
25 normally to comment on matters relating to UKSF."

1 Then:

2 "Hooding prisoners was a temporary measure and was
3 only used to achieve safe arrest and transit of
4 suspects.

5 "Hooding is not a recognised technique for
6 interrogators. The Defence Intelligence and Security
7 Centre explicitly teaches interrogators not to use this
8 technique.

9 "Any abuse of the hooding technique is treated
10 extremely seriously and if required disciplinary action
11 will be taken."

12 There is now, Sir, perhaps, in light of evidence,
13 little doubt that the third from last of these points --
14 that is hooding prisoners was a temporary measure used
15 to achieve the safe arrest and transit -- that point was
16 not accurate. Hooding was not, of course, used only for
17 arrest and transit; it was also used during detention in
18 some UK facilities, not only it would seem by 1 QLR, but
19 also, of course, in the early stages of the JFIT.
20 Whether or not with the benefit of hindsight, it might
21 be said that this would appear to be another example of
22 incorrect information being passed to the Secretary of
23 State.

24 Moving on, on 17 May 2004, Stuart Kistruck, an MoD
25 civil servant, provided a consolidated briefing on the

1 use of hooding by UK forces to the Secretary of State.
2 The briefing appears at MOD054210, please. It has
3 a date in the future which is plainly wrong. It should
4 obviously read "17 May 2004". Under the heading "UK
5 forces use of hooding":

6 "Your email of the 14 May 2004 asked for
7 consolidated advice on the practice of hooding. I have
8 drawn the following together with significant assistance
9 from PJHQ J9."

10 He describes then --

11 THE CHAIRMAN: We don't need to read the note?

12 MR ELIAS: We don't, Sir.

13 THE CHAIRMAN: No, all right.

14 MR ELIAS: Can I take you to paragraph 3, where there is
15 a reference to the interrogation course.

16 "... an additional five days of training at the end
17 of the PH&TQ [prisoner handling and tactical
18 questioning] course. It is designed for service
19 personnel who are in an appointment that could require
20 them to conduct interrogation of captured enemy
21 personnel. It teaches individuals to how to question
22 captured personnel in accordance with the Geneva
23 Convention and the laws of armed conflict, in order to
24 obtain information of potential intelligence interest.
25 The underlying tenet is that a 'broken' PW [prisoner of

1 war] cannot provide information for the interrogator to
2 achieve their aim. It identifies the following
3 techniques as totally unacceptable under any and all
4 circumstances, both because they are illegal and they
5 are counter-productive."

6 Then it lists:

7 "Physical punishment of any sort (beatings
8 et cetera).

9 "The use of any stress position.

10 "Intentional sleep deprivation.

11 "Withdrawal of food, water or medical help.

12 "Degrading treatment (sexual embarrassment,
13 religious taunting, et cetera).

14 "The use of 'white noise'.

15 "Torture methods such as thumb screws, et cetera."

16 Then at paragraph 4 it deals with hooding:

17 "The hooding of prisoners is not taught as part of
18 the annual [training] ... nor it is it part of the PH&TQ
19 course which teaches that the hooding of detainees is
20 unacceptable. However, blindfolding or obscuring of
21 a detainee's vision for operational reasons is
22 acceptable if there is a clearly justifiable military
23 reason, such as preventing a prisoner from seeing
24 sensitive material or friendly forces dispositions. It
25 should be noted that there is no prescriptive direction

1 with regard to hooding contained in any of the relevant
2 manuals, doctrines or military law."

3 Just pausing there for a moment, Sir, we can see
4 that this advice asserted that students at Chicksands
5 were expressly taught that each of the five techniques,
6 including hooding, was prohibited. As I mentioned
7 a little while ago, the evidence to the Inquiry on that
8 subject is mixed and is, on any view, an important part
9 of the Module 3 evidence.

10 It may be that this part of Mr Kistruck's briefing
11 was based on the letter from the private secretary to
12 the chief of defence intelligence, which we saw a few
13 moments ago, which contained the same assertion.

14 Paragraph 5 of this briefing note goes on to say the
15 following, if we could turn to it please -- under the
16 heading "Op Telic guidance":

17 "The Land Warfare Centre's op law branch briefing on
18 Op Telic OPTAG PDT packages made it clear that hooding
19 is not permitted ..."

20 It goes on to address further guidance at
21 paragraph 7, if I may take you to that.

22 "No advice was sought on hooding for arrest or
23 transit and no direction given. PJHQ were not aware of
24 the Heath ruling until it was raised in the last two
25 weeks. Hooding for the purposes of arrest and transit

1 was normal procedure on operations (as is the case for
2 most armed forces in the world). PJHQ do not believe
3 that the use of hoods had not been significantly
4 challenged in practice since PJHQ was established in
5 1996 and so there was no apparent reason to seek
6 specific advice for Operation Telic. The hooding of
7 detainees for arrest or transit of detainees was
8 a standard procedure for UK troops prior to Telic.
9 Hoods were used in Afghanistan and it is likely that
10 they were used in every other operation where
11 individuals were detained. However, as this was
12 standard procedure, this would not necessarily have been
13 reported and so records are not immediately available.
14 PJHQ are investigating further but currently have no
15 firm data."

16 Under "Extent of hooding", paragraph 8:

17 "Interrogations -- we have found no evidence that
18 would suggest that interrogators ignored their training
19 and hooded prisoners at any point during Telic. Guards
20 at interrogation centres may have used hoods to move
21 prisoners around and we understand that in some cases
22 prisoners may have requested hoods to preserve their own
23 anonymity."

24 That paragraph, sir, appears to reflect the advice
25 previously seen, suggesting that early hooding at JFIT

1 had been only for the purposes of security.

2 If we move on, please, to paragraph 9, under the
3 heading of "Tactical questioning":

4 "Tactical questioning ... was more widespread than
5 interrogation and all formations have personnel trained
6 in TQ. We do not believe that there were any instances
7 of hooding being used during TQ. This would also have
8 been in contradiction to TQ doctrine as laid out in
9 JWP 1-10 where hooding (or even blindfolding) is
10 considered counter-productive since it prevents direct
11 contact between the questioner and prisoner and inhibits
12 rapport. PJHQ have set in train actions to trawl all
13 units that operated in Iraq to form a definitive
14 understanding."

15 Sir, the belief expressed in this paragraph, that
16 there were no instances of hooding being used during
17 tactical questioning, seems now to be accurate only in
18 the most literal of senses, in that, of course, hoods
19 apparently did not remain on during the actual tactical
20 questioning. Whatever the knowledge of the author of
21 this document and those he consulted, the SIB
22 investigation into Baha Mousa's death itself had, by
23 this stage, already uncovered significant evidence that
24 1 QLR had been using hoods as part of a conditioning
25 process as an aid to tactical questioning.

1 However, one should note from the document that
2 further information was being sought. PJHQ is recorded
3 as having set in train actions to trawl all units to
4 form a definitive understanding. Indeed, we should see
5 that Mr Kistruck sought to provide an update to the
6 advice following a review of SIB investigations. The
7 paragraph also appears to contain an error in suggesting
8 that JWP 1-10 contains some sort of advice against
9 hooding for, as we have seen, it does not.

10 Now I move to paragraph 10 and 11 of the document,
11 please, under the heading "Arrest/transit":

12 "Hooding during transit between the point of capture
13 and the detention facility was widespread, as there were
14 very few enclosed vehicles in which detainees could be
15 transported. This was the established norm for UK
16 troops but the extent to which it was used varied from
17 unit to unit. As with TQ, PJHQ have initiated a trawl
18 of units, but it will take time to collect returns and
19 collate them into a coherent overall picture."

20 At 11:

21 "By May 2003 General Brims had issued direction that
22 1 Div should cease hooding (despite being given legal
23 advice in theatre that under specific and limited
24 circumstances -- those under which UK troops routinely
25 used hooding -- it was not unlawful)."

1 Just coming back, Sir, to the point that you made
2 about timing, it would seem from the preponderance of
3 evidence that General Brims' order would have been
4 issued late March or very early April of 2003. We think
5 that Colonel Mercer may put a date on it of 3 April, but
6 that is the only stab, as it were --

7 THE CHAIRMAN: I think, when I intervened, I in fact was
8 looking at May and I meant -- March is obviously right,
9 yes.

10 MR ELIAS: Reading on:

11 "When 1 Division handed over to 3 Division on
12 12 July 2003 this direction was lost. 3 Div therefore
13 reverted to normal procedure and the practice began
14 again until CJO issued his formal direction in late
15 September 2003 that it [hooding] should cease."

16 Paragraph 12:

17 "There is no firm evidence that the hooding of
18 prisoners at the PW [prisoner of war] camp Joint Forward
19 Interrogation Team (JFIT) facility, during major combat
20 operations, went beyond the normal use for
21 arrest/transit activity. Anecdotally there may have
22 been problems stemming from the very large numbers of
23 PWs [prisoners of war] in civilian clothing being held
24 at a facility designed for military prisoners. There
25 were very limited facilities for separating prisoners so

1 it appears hooding was used on prisoners held at the
2 centre. It was concern about this that General Brims
3 noted when he visited the [JFIT] and which prompted him
4 to direct 1 Div to cease the practice. PJHQ are
5 investigating more details on the use of hoods at the
6 JFIT."

7 Paragraph 13, under the heading "Special forces":

8 "The UK special forces have not used hooding ...
9 other than in Iraq. This is not representative of
10 a general apologise not to hood ... Detainees have been
11 hooded throughout this transit period, apart from when
12 they have been subject to tactical questioning and when
13 they are given a medical examination ... From May 2004,
14 UK special forces have used blacked-out goggles rather
15 than hoods."

16 Paragraph 14, Sir, "Concerns about hooding":

17 "The [International Red Cross] ... expressed
18 concerns about the duration for which some detainees
19 were being hooded at the JFIT prior to General Brims'
20 order to cease hooding but although this was early in
21 the conflict we cannot be certain of the date ...
22 [redacted] ... It was, however, agreed that goggles or
23 blindfolds would be acceptable and serve the same
24 purpose. PJHQ are investigating any documentation,
25 which might exist to support this suggestion. The use

1 of hoods outside of detention centres has not to our
2 knowledge been raised as a concern."

3 Over the page, please, to paragraph 16:

4 "PJHQ have now issued instructions to all
5 operational commanders that hooding is to cease;
6 blindfolds are to be used in Afghanistan while
7 blindfolds will not even be used in the Balkans."

8 In turn, Sir, Mr Kistruck's briefing to the
9 Secretary of State was the basis for a briefing sent by
10 the Secretary of State to Number 10 two days later on
11 19 May. The latter advice appears at MOD054177.
12 I think I need not take you through the text of the
13 briefing since it is in almost identical terms to the
14 advice that we have just looked at.

15 Sir, I mentioned a few moments ago that, following
16 his advice to the Secretary of State of 17 May,
17 Mr Kistruck subsequently sought to provide an update,
18 having further investigated possible links between
19 hooding and SIB investigations. He drafted a further
20 advice -- it is dated 21 May 2004 -- and it appears at
21 our MOD054029. If we can just pick up the handwriting
22 at the top right-hand corner, please, initially. We can
23 see, I think, from the handwriting the advice was not in
24 fact submitted to the Secretary of State, but was held
25 in case the subject was re-raised.

1 But if we look at the advice and the body of it,
2 under the "UK forces use of hooding", this first
3 paragraph indicates he has now reviewed the details of
4 SIB investigation and it says this at paragraph 2:

5 "The majority of the 54 SIB investigations in Iraq
6 relate to shootings or vehicle accidents, but some
7 relate to allegations of abuse during arrest and
8 detention. It was common practice to use hoods while
9 transporting detainees with battlegroups until they were
10 transferred to detention centres and so some of the
11 allegations are unavoidably linked to the use of hoods.
12 We are not aware of any allegations of abuse that
13 involved hooding and interrogation. There are
14 potentially links between hooding and the Baha Mousa
15 case. There [are] three other cases that involve
16 fatalities, one of which concerns ... an individual who
17 was forced to jump into the Shat Al Arab and drowned.
18 In the other two cases (both heart attacks), we have
19 been able to confirm that they had been hooded during
20 their detention but have been unable to ... ascertain
21 whether they were hooded at the time of their death."

22 So this updated advice, Sir, does mention the
23 possible involvement of hooding in the Baha Mousa case,
24 albeit it maintains the line that they were not aware of
25 any allegations of abuse that involve hooding and

1 interrogation.

2 The advice goes on to address hooding at the JFIT,
3 setting out the rationale for this practice. We find it
4 at paragraph 3:

5 "My minute also identified anecdotal evidence about
6 the use of hoods at the JFIT facility. The details are
7 as follows. The detainees were required to wear hoods
8 until they had been processed into the centre. In some
9 cases we understand that this may have taken some time,
10 however this is understood to have been for a maximum of
11 a matter of hours and not days. The military rationale
12 for obscuring vision was as follows:

13 "To deny the prisoners the opportunity to observe
14 details of the area they were being held in. Many of
15 the prisoners were suspected terrorists but they were
16 eventually released back into the community. Knowledge
17 of the layout of the facility would have been invaluable
18 should they have wished to attack it in the future.

19 "The position of the holding area was such that it
20 would have allowed the prisoners to observe the living
21 accommodation inhabited by the interrogators."

22 Moving on from that, Sir, the next document we look
23 at concerns written answers to two questions asked of
24 the Secretary of State in the House of Commons and the
25 background note produced for those answers. The answers

1 which were given on 28 June 2004, of course, appear in
2 Hansard and are set out at MOD050418. It is the
3 right-hand column of the page, second half, from
4 "Interrogation techniques".

5 Question, by Mr McNamara:

6 "To ask the Secretary of State for Defence when he
7 was first informed that UK forces in Iraq were
8 practising the banned interrogation technique of hooding
9 prisoners; if he will list the regiments in which the
10 practice was identified; and on what date and on whose
11 authority an order was issued to cease the practice."

12 Mr Ingram in reply said:

13 "We are not aware of any incidents in which
14 United Kingdom interrogators are alleged to have used
15 hooding as an interrogation technique."

16 Then a question from Norman Baker:

17 "To ask the Secretary of State for Defence what
18 account he took of (a) the judgment of the
19 European Court of Human Rights in Ireland v
20 United Kingdom to outlaw the use of the five techniques
21 of interrogation found to be in breach of Article 3 of
22 the European Convention and (b) the response of the then
23 Government to that judgment in setting the parameters
24 for conduct by British forces in Iraq in respect of
25 individuals held."

1 Mr Ingram referred the honourable member to his
2 answer of 26 May 2004. We can see his answer of 26 May
3 at MOD050422, please. Under the heading
4 "Interrogation", what had been said then was this.
5 Mr McNamara, his question:

6 "To ask the Secretary of State for Defence what
7 steps were being taken ... to outlaw the use of the five
8 techniques ..."

9 Mr Ingram's answer was this:

10 "In 1978 the Government's presentation to the
11 European Court of Human Rights set out that the then
12 Prime Minister had declared on 2 March 1972 ..."

13 The Prime Minister's statement is then extensively
14 quoted. Mr Ingram, having quoted that, went on to say:

15 "Given that the necessary directives had been issued
16 in April 1972, no further steps were deemed necessary
17 following the court's judgment."

18 So moving back, Sir, to the answer being given in
19 June, MOD050418, we can see that following on it -- it
20 follows on from the bottom of the page, please:

21 "I refer the hon Member to my answer of ... May ..."

22 He goes on to say:

23 "This remains the Government position. It is made
24 clear to all armed forces personnel undergoing training
25 in interrogation that the five techniques, hooding, wall

1 standing, sleep deprivation, food deprivation and white
2 noise, are in all circumstances unacceptable as methods
3 of interrogation."

4 Sir, the first answer reproduces the assertion we
5 saw a little earlier in Stuart Kistruck's advice of
6 17 May about hooding not being used as an aid to
7 interrogation. Again, it appears to reflect advice that
8 the JFIT was hooding for security purposes only and it
9 appears to overlook the Baha Mousa case.

10 The second answer reproduces another assertion from
11 Stuart Kistruck's advice, namely that courses at
12 Chicksands expressly taught that the five techniques
13 were prohibited.

14 The background note to the minister's answer appears
15 at MOD050421. This background note, as we can see from
16 the foot of the page, is apparently drafted by
17 Mr Kistruck. It contains the same information about
18 Chicksands teaching, a prohibition on the five
19 techniques. Then it says this, if we go to the foot of
20 the page, please and the last paragraph before the bold:

21 "As this doctrine is fundamental to all interrogator
22 training there was no requirement to issue a specific
23 directive to set parameters for troops in Iraq."

24 Sir, may I take you to a further answer to
25 a parliamentary question, this one posed by Lord Lester

1 of Herne Hill. We find it at MOD050408. I think we
2 find the question at the top of the left-hand column,
3 Lord Lester of Herne Hill appearing in Hansard, 1 July
4 2004.

5 "Lord Lester asked Her Majesty's Government ... when
6 and in what circumstances ministers were first informed
7 of the practice of hooding; what was nature of the
8 practice; and what were the reasons for its
9 abandonment."

10 And the answer:

11 "The hooding of detainees for the purposes of arrest
12 or transit was a standard procedure for UK troops prior
13 to Operation Telic and, as such, was not specifically
14 brought to the attention of ministers. The UK believes
15 that hooding during arrest and transit is acceptable
16 when there is a strong military reason, for example to
17 offer security to our own forces and locations and to
18 provide protection to the detainee (through the
19 prevention of identification by other detainees).

20 "The practice of hooding was discontinued when there
21 was no longer a military justification for continuing to
22 do so."

23 Sir, this explanation for the cessation of hooding,
24 that it was discontinued when there was no longer
25 a military justification for continuing to do so, may be

1 thought, Sir, to be open to considerable doubt. The
2 Inquiry may need to consider whether that was an
3 accurate description of variously the reason behind
4 General Brims' verbal order, FRAGO 152, the production
5 of SOI 390 on 26 September 2003 or, indeed, Lieutenant
6 General Reith's prohibition on hooding in his letter to
7 General Lamb of November 2003.

8 I shall, in a moment, if I may, take you to a later
9 answer to a parliamentary question, which might be
10 thought to be a more accurate description of the
11 circumstances in which hooding ceased.

12 As to the assertion that prior to Op Telic hooding
13 was a standard procedure and was therefore not
14 specifically brought to the attention of ministers, the
15 Inquiry has indeed seen no evidence that hooding was
16 brought to the minister's attention in the run-up to the
17 invasion of Iraq.

18 However, the Inquiry expects to hear evidence from
19 S034, the senior political adviser of the National
20 Contingent Command headquarters, that in early April
21 2004 she contacted the Secretary of State's office about
22 the International Red Cross's hooding concerns, albeit
23 the concerns may have been resolved by the time of this
24 contact.

25 As we saw not long ago, by 2 May 2003 at least,

1 correspondence from Adam Ingram MP shows that he then
2 knew that hooding had been used in theatre, albeit the
3 message he conveyed in his correspondence was that
4 hooding had by then ceased.

5 Sir, that answer to a later parliamentary question
6 to which I referred a moment ago, can we look, please,
7 at Hansard 21 July 2004 at MOD050470? Go to the
8 right-hand column and Mr Ingram, at the top of the
9 right-hand column. Thank you very much.

10 As one can see, the question from Sir Menzies
11 Campbell, asking in what circumstances ministers were
12 first informed of the practice of hooding, what the
13 nature of the practice was and what the reasons were for
14 its abandonment.

15 "Mr Ingram: The hooding of detainees for the
16 purposes of arrest or transit was a standard procedure
17 for the United Kingdom troops prior to Operation Telic
18 and, as such, was not specifically brought to the
19 attention of ministers. The UK believes that hooding
20 during arrest and transit is acceptable when there is
21 a strong military reason, for example to offer security
22 to our own forces and locations or to provide protection
23 to the detainee ...

24 "Military commanders became aware that the practice
25 of hooding could be harmful to prisoners, especially if

1 it was applied inappropriately. They judged that these
2 concerns outweighed the military justification for the
3 continued use of hooding as a means of blindfolding, and
4 that the most prudent, immediate response was to
5 introduce a ban."

6 There is a further much later parliamentary
7 question -- we find it at MOD051133 -- a written
8 question posed by Adam Price:

9 "To ask the Secretary of State for Defence when
10 officials and ministers in his department were first
11 informed of the direction by the General Officer
12 Commanding 1 (UK) Armoured Division banning hooding in
13 April 2003."

14 We find at the foot of the page, please, the answer:

15 "Officials were aware of the direction by General
16 Officer Commanding 1 (UK) Armoured Division in the days
17 after it was issued. Ministers were formally made aware
18 of this verbal order in May 2004.

19 "The direction was issued because it was assessed
20 that it was no longer militarily necessary to continue
21 the practice of hooding."

22 There is then, in a background note to that answer
23 which we find at MOD051135, please, this section at the
24 foot of the page, the last two paragraphs and briefly
25 over. This is the background note:

1 "We have not been able to locate any records that
2 ministers were informed formally around the time that
3 General Brims' April 2003 verbal order was issued. The
4 ministers may have been unofficially informed of the
5 order prior to this, but we have not unearthed any
6 evidence to support this. In May 2004, however, the
7 issue of hooding received extensive parliamentary
8 interest following allegations of abuse in the Daily
9 Mirror and references to hooding that became public in
10 an [International Red Cross] report. Ministerial
11 briefing at that time made reference to General Brims'
12 verbal order.

13 "Unfortunately, due to the passage of time, we have
14 not been able to establish exactly when MoD officials
15 became aware of the order. The best evidence available
16 suggests some officials in the UK were aware very soon
17 after it was issued and the POLAD in theatre advised on
18 the decision at the time."

19 Sir, that, in essence, takes you, I hope, reasonably
20 helpfully anyway, to some of the documents that were
21 uncovered in those revealed last year. As I stress,
22 they are but some.

23 THE CHAIRMAN: Yes. Well, thank you very much. That is
24 very helpful.

25 That is all for today, isn't it?

1 MR ELIAS: It is, Sir.

2 THE CHAIRMAN: Very well. 10 o'clock tomorrow.

3 (4.04 pm)

4 (The Inquiry adjourned until 10.00 am, Thursday,

5 25 February 2010)

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