

Thursday, 25 March 2010

1

2 (10.00 am)

3 THE CHAIRMAN: Good morning, ladies and gentlemen.

4 Yes, Mr Elias.

5 MR ELIAS: Sir, good morning. May I call

6 Brigadier Forster-Knight, please.

7 THE CHAIRMAN: Yes. Good morning, Brigadier. If you would

8 remain standing for a moment, I will ask that you take

9 the oath.

10 EDWARD OLIVER FORSTER-KNIGHT (sworn)

11 THE CHAIRMAN: Please sit down. If you were to speak in

12 that voice you wouldn't need the microphone, which would

13 be excellent, but you can use it if you wish.

14 A. Thank you, Sir.

15 Questions by MR ELIAS

16 MR ELIAS: Brigadier, would you give the Inquiry your full

17 name, please?

18 A. Yes, Edward Oliver Forster-Knight.

19 Q. If you look at a folder which I hope is to your

20 right-hand side --

21 A. It is, sir, thank you.

22 Q. -- you will find in it two statements that you have made

23 to this Inquiry. The first, if you go to the last page

24 of it, is our BMI05906. Do we find your signature above

25 the date of 16 November 2009?

1 A. It is, sir, yes.

2 Q. As to the second statement, the last page of which we
3 find at our BMI07486, have you signed that -- is it in
4 fact undated?

5 A. I have signed it, Sir, yes.

6 Q. Was that signed, I think, last month?

7 A. Yes, I think about -- actually last week, Sir, I think
8 I signed it off.

9 Q. I think received --

10 A. Sorry, sir, we submitted a copy to the Inquiry first and
11 I think I signed off the final copy last week.

12 Q. I understand. So it's a statement that you signed in
13 March 2010, just for the record?

14 A. Yes, sir.

15 Q. Thank you very much.

16 Now I ask every witness whether the contents of
17 those statements are true under the signatures that have
18 been applied, but your counsel has indicated to me that
19 there are certain corrections that you wish to make to
20 certain parts of the statement.

21 A. There are, sir, I would.

22 Q. I gather you would be happier if we dealt with that at
23 this stage.

24 A. I would, sir, indeed.

25 Q. Then let's deal with it. Where do you want to take us

1 to please?

2 A. And I would be happy, sir, to offer an explanation for
3 each, if the Inquiry ...

4 Q. Let's go to the corrections or additions and alterations
5 and we can see where we go from there.

6 A. Thank you, sir.

7 Q. Which is the first?

8 A. Paragraph 40 of statement 1.

9 Q. Thank you very much.

10 A. It should read, line 4, sir:

11 "HQ DSG was also responsible for the rear area of
12 the division's operation and initially provided logistic
13 support to the prisoner of war handling organisation."
14 But that changed?

15 A. Yes, sir.

16 Q. Thank you. And the next?

17 A. The next, sir, is after the end of that sentence, where
18 it says "QDG", to add in the words:

19 "... although this was later transferred to the
20 JFLogC ..."

21 Q. "... commanding officer of the Queen's Dragoon Guards
22 (QDG) but this later transferred ..."?

23 A. "... to the JFLogC".

24 Q. Thank you.

25 A. Paragraph 41, sir.

1 Q. 41.

2 A. Where it reads "While I was SO1 HQ DSG", add in the
3 words, "I was ordered to take command of and build the
4 divisional concentration area in the desert of northern
5 Kuwait for 22,000 UK ground troops from the beginning of
6 February 2003 to around mid-March 2003 and ..."

7 Then continue with the rest of the sentence, sir.

8 Q. Indicating that you have no role in the provision of
9 guidance or instructions?

10 A. Yes, sir. I was only in theatre for about a week, sir,
11 and then I was pushed forward by the general to build
12 the divisional concentration area, which was
13 a requirement that needed to be undertaken.

14 Q. Thank you?

15 A. Paragraph 45, sir, subparagraph (a), where it says,
16 "Lieutenant Colonel Rob Davey was CO5 RMP and PM JFLogC
17 ...", he was actually -- formally, I think it was -- the
18 joint force provost marshall, not the PM JFLogC. He was
19 joint force provost marshall.

20 Q. Joint force provost marshall and not JFLogC?

21 A. That's correct, sir. And after the "... 101 provost
22 company RMP" of that line, add in the words "1 Squadron
23 TPW [that is tactical provost wing] RAF police". He
24 also had that sub-unit under command, sir.

25 Q. Thank you very much.

1 THE CHAIRMAN: You say "provo". "Provost" is not the right
2 way of describing it?

3 A. I always say "provo", sir, but some say "provost".
4 I think the terminology is interchangeable, Sir.

5 MR ELIAS: All right. I think there are some other
6 additions I have been alerted to or amendments; is that
7 right?

8 A. That's correct, sir. At paragraph 46, to delete that
9 paragraph, sir, and insert the following words --

10 THE CHAIRMAN: Where do the insert?

11 A. Paragraph 46, sir. Delete 46 and insert the following
12 words.

13 THE CHAIRMAN: Yes.

14 A. "War fighting commenced on 19 March 2003 and I was based
15 in HQ DSG in Kuwait. On or about 24 March I was ordered
16 by the deputy chief of staff 1 Div to lead a small DSG
17 forward headquarters into Iraq to support planned
18 war-fighting operations northwards. We based ourselves
19 some 20 miles into Iraq, west of Basra, and consequently
20 I was not involved with supporting the PWHO or
21 prisoner-handling."

22 MR ELIAS: Thank you.

23 The next?

24 A. Paragraph 54, sir.

25 Q. 54.

1 A. Line 3, sir, where it says "force PM", delete "force"
2 and put in "division" and make that "DPM", and I was the
3 senior RMP officer in the division, sir, not the
4 theatre.

5 Q. Thank you.

6 A. The next one, sir, is paragraph 86.

7 Q. 86?

8 A. That's correct, sir.

9 Q. Yes.

10 A. I don't necessarily wish to amend this, sir, but I can
11 clarify why that change occurred. It says:

12 "Due to the passage of time I cannot remember why
13 this change was made."

14 I would like to point out to the Inquiry that I can
15 contribute as to why that change occurred, sir, having
16 read all of the evidence.

17 Q. You can expand on that, in other words?

18 A. I can indeed.

19 Q. I follow. Thank you.

20 A. Paragraph 93, sir.

21 Q. 93.

22 A. This event, sir, of myself talking to
23 Lieutenant Colonel Mercer did occur, but it could not
24 have occurred in this context. The reason for that is
25 that I moved across the border on 24 March and by that

1 stage the PWHO and JFIT was not established. Therefore
2 the conversation must have taken place, sir, in the
3 first half of April of 2003 and I would just like to
4 make the Inquiry aware of that. I can discuss that in
5 evidence if you so wish, sir.

6 Q. Well, I am going to ask you some questions about those
7 passages and we can come back to that.

8 A. The reason I am aware of that, sir, is because of the
9 time I crossed the border in relation to the battle of
10 Um Qasr still being on at that stage.

11 Q. I understand. Thank you.

12 A. Paragraph 101, sir, finally.

13 Q. 101 in this statement?

14 A. Yes, sir. Where it says, near the bottom, "JWP 1-10",
15 that is a spelling mistake, it should be "JDP 1-10".
16 JWP 1-10 was, of course, the old publication which was
17 extant at this time. The new publication issued is
18 called "JDP 1-10".

19 Q. Thank you.

20 A. Finally, sir, a couple of minor amendments to my
21 statement number 2. At page 4, sir, paragraph 9 --

22 Q. Give me a moment. We find it at BMI07483.

23 A. At the top, sir:

24 "At some point in late January/early February ...
25 I was made commander of the divisional concentration

1 area."

2 Then moving down, sir, to the sentence that reads,
3 seven lines down, "At the end of March ..." delete "At
4 the end of March" and insert "Around 24 March".

5 Q. Yes.

6 A. The outbreak of operations was actually on 19 March,
7 sir, not the 23rd.

8 Q. Is that the list of corrections?

9 A. That is indeed, sir.

10 Q. Thank you very much.

11 MR GARNHAM: Can I say that we will prepare and submit
12 amended versions of both those statements so you have
13 them in proper form.

14 THE CHAIRMAN: That is very kind.

15 MR ELIAS: We are very grateful.

16 I am grateful for that, Brigadier. With those
17 amendments, are the contents of the statements now, to
18 the best of your knowledge and belief, the truth?

19 A. They are, sir, yes.

20 Q. In fact I am not going to ask you -- you may be relieved
21 to know -- about all that is contained in the two
22 statements that you have made in this Inquiry or indeed
23 go to perhaps the bulk of it. The chairman of the
24 Inquiry has read the statements that you have made and,
25 as you have probably been told, they form part of the

1 evidence to the Inquiry, even though you may not be
2 asked direct questions about them.

3 A. Yes, sir, I understand.

4 Q. I am going to ask you only about certain areas that may
5 be now of interest to the Inquiry. May I begin,
6 Brigadier, by just dealing very briefly with your career
7 history, which you set out in the first 12 paragraphs of
8 your first statement to this Inquiry.

9 A. Yes, sir.

10 Q. You were commissioned into the Royal Military Police in
11 1984, you tell us.

12 A. I was, sir.

13 Q. You have been an instructor at the Royal Military
14 training school in Chichester.

15 A. Yes, sir.

16 Q. You have served in Northern Ireland.

17 A. I have, sir, yes.

18 Q. In 1998 you assumed command of 111 Pro Company,
19 1st Regiment Royal Military Police in Germany.

20 A. That's correct, sir.

21 Q. You have served in Bosnia, in Kosovo.

22 A. That's correct, sir. I was detached from the company
23 there, sir, and -- for the first tour in Bosnia, sir,
24 I was detached into Bosnia and then, on the second tour,
25 which I went to in the Balkans I took that company, 111,

1 with me, sir.

2 Q. Thank you. In 2000 you were promoted to lieutenant
3 colonel.

4 A. That's correct, sir.

5 Q. In January 2003 you deployed to Iraq on Op Telic 1.

6 A. Correct, sir.

7 Q. What was your rank and role at that stage?

8 A. I was a lieutenant colonel, sir, and I was appointed as
9 SO1 divisional support group, which was a war-fighting
10 establishment increment to the divisional headquarters,
11 HQ 1 Div, sir.

12 Q. Then from 1 May 2003, you tell us in your statement, you
13 assumed the appointment of commanding officer of the
14 1st Regiment Royal Military Police and provost marshall
15 of the first UK Armoured Division.

16 A. That's correct, sir, from Lieutenant Colonel Baillie.

17 Q. We are going to hear from him I think as the next
18 witness.

19 In 2005, just to finish your career history -- I am
20 only touching on parts, as you appreciate -- you were
21 appointed deputy provost marshal investigations,
22 responsible for the Royal Military Police Special
23 Investigation Branch. From September 2007 to May 2009
24 you were the deputy chief of staff 4th Division in
25 Aldershot, you tell us.

1 A. That's correct, sir.

2 Q. And in May of last year, 2009, you were appointed
3 provost marshall army in the rank of brigadier.

4 A. That is correct, sir, yes.

5 THE CHAIRMAN: Does that mean you are the most senior
6 provost officer?

7 A. It does, sir. I am the chief officer of the Military
8 Police in civilian parlance, sir.

9 THE CHAIRMAN: Thank you.

10 A. I am the chief constable, sir.

11 MR ELIAS: You describe yourself in paragraph 12 as the head
12 of the provost branch of the Adjutant General's Corps,
13 which includes the Royal Military Police, the military
14 provost staff and the military provost guard service.

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

16 Q. The Inquiry has heard some evidence about these
17 component parts, the RMP, the SIB and so on, but,
18 Brigadier, in your statement you helpfully set out, as
19 it were, the whole structure. If I may, I will just
20 take a couple of minutes to run through that structure
21 and responsibility.

22 You begin, at paragraph 13 in your statement, by
23 telling us that the RMP, along with the Royal Navy
24 police and the Royal Air Force police, are collectively
25 known as the "service police".

1 A. Yes, sir. That is the new terminology that came into
2 force under the Armed Forces Act of 2006, which came
3 into force on 31 October 2009.

4 Q. You tell us in paragraph 15 of your statement that the
5 RMP -- reflecting the size of the wider army -- is the
6 largest element.

7 If I can help you, you have it, I think, in hard
8 copy, but it is coming on the screen, which may be
9 easier for you to refer to.

10 A. Thank you, sir.

11 Q. You say in paragraph 15:

12 "Reflecting the size of the wider army, the RMP is
13 the largest element of the service police."

14 A. That's correct, sir.

15 Q. That, you say, is broken down to into main two elements,
16 the GPD, general police duties, and the SIB, Special
17 Investigation Branch.

18 A. That's correct.

19 Q. And, as you tell us, the SIB conducts serious and
20 complex investigations and is the principal
21 investigative agency that deals with criminal offences
22 committed by or against British personnel.

23 A. It is, sir, in relation to serious crime. The GPD
24 investigate the lower level offences, sir, but serious
25 offences committed against the forces and by the forces

1 are normally dealt with by the Special Investigation
2 Branch.

3 Q. You then go on to describe the role of the GPD, general
4 police duties. At paragraph 17 you say that
5 traditionally traffic control and regulations may have
6 been their role, free movement of vehicles on military
7 routes, but "... since the recent conflicts in Iraq and
8 Afghanistan the role of GPD has changed considerably and
9 they are now more likely to find themselves in the front
10 line in support of the fighting troops conducting close
11 combat policing; providing surety for detention
12 operations; close protection; host nation police
13 mentoring; forensic and evidence gathering and acting as
14 first responders for the investigations on attacks on
15 British troops".

16 A. Yes, sir, and those are roles we have incrementally
17 assumed since 2002 to this date, based on our capacity
18 to undertake them, sir.

19 Q. You go on to refer to the SIB, the Special Investigation
20 Branch. You say, as to that, that it operates under
21 your direct command, as provost marshall army. You
22 describe its two units. I don't think I need trouble
23 you with that. You say at paragraph 19:

24 "All members of the SIB are volunteers recruited
25 from within the RMP and are specifically selected for

1 their appointment through a rigorous and lengthy
2 selection process."

3 A. That's correct, sir.

4 Q. You then refer to the training that they receive in the
5 next paragraph. I don't trouble you with the detail of
6 that. At paragraph 21, if we could go to that, please,
7 you then refer to the military provost staff, the MPS.
8 You say about them:

9 "The MPS are the army's specialists in custody and
10 detention, providing advice, inspection and surety
11 within custodial establishments. Day to day they run
12 the Military Correction Training Centre in Colchester
13 and provide expert custodial and detention advice on
14 operations."

15 A. That's correct, sir. The MPS are what we colloquially
16 call the smallest corps in the army, sir. There are
17 only just over 100 of them. They were principally
18 designed to run the Military Corrective Training Centre
19 at Colchester and a small number deploy forward on
20 operations to assist with corps detention business on
21 operations, sir.

22 Q. As we know from the evidence the Inquiry has heard, they
23 do operate from time to time outside the UK --

24 A. They do, sir.

25 Q. -- unlike the next category which you set out at

1 paragraph 22, the military provost guard service, who
2 you describe as:

3 "... trained professional soldiers [trained] to meet
4 armed security requirements in units of all three
5 services ... based in Great Britain."

6 You say that they are home based and don't deploy on
7 operations.

8 A. That's correct, sir. They are all ex-soldiers who leave
9 the service and rejoin under a different terms of
10 service, which essentially sees them as home only
11 soldiers for guarding purposes, sir.

12 Q. The Inquiry has heard evidence of soldiers who are
13 described as "RP staff". I think you deal with those in
14 the next paragraph, don't you, paragraph 23?

15 "Unit Regimental Police, sometimes referred to as RP
16 staff or provost staff, are distinct from RMP and MPS."

17 A. That's correct, sir.

18 Q. You tell us in what ways they are distinguished. They
19 are not trained service police. They don't undergo the
20 police training that the others would.

21 A. Yes, that's correct, sir. I think they are a spin-off
22 of the days of the peninsula wars, sir, when each
23 regiment deployed with its own regimental police or
24 regimental provost into the field. They now are not
25 service policemen, they are not trained policemen, and

1 just provide that corps facility of guarding for the
2 unit or regiment that they are part of, sir.

3 Q. You make the additional point in paragraph 23 that
4 regimental police are under the command of the
5 individual unit commanding officers.

6 A. Correct, sir.

7 THE CHAIRMAN: Would they normally be recruited from the
8 regiment or would they be inserted into the regiment
9 from the provost --

10 A. You are quite right with your first assumption, Sir.
11 They are recruited normally from within the regiment.
12 They wear the cap badge of that regiment and are part of
13 the regimental family, sir.

14 THE CHAIRMAN: I follow, yes.

15 MR ELIAS: So those soldiers, as you say at the very foot of
16 that page, undergo a unit custody course currently
17 provided at MCTC, Colchester, that qualifies them to run
18 a unit custody facility in peace-time in barracks?

19 A. That is correct, sir, yes.

20 Q. Does it follow, Brigadier, that the provost staff within
21 a regiment will not have had what might be called the
22 "expert training" assisting them in handling prisoners
23 to the extent which your forces would have?

24 A. That is correct, sir. They will have only undertaken
25 a very short course and they will not have that same

1 level of training.

2 Q. I now want to move on just to ask you a little, please,
3 about training and your own training. You tell us that
4 you have been a military police officer for 25 years.
5 You have had extensive dealings with the principles of
6 the law of armed conflict and you are very familiar with
7 the Geneva Conventions --

8 A. Yes, sir.

9 Q. -- the terms thereof, applicable particularly to the law
10 of armed conflict.

11 A. Yes, sir, I have had such training.

12 Q. Have you given training in these areas, the law of armed
13 conflict?

14 A. Not specifically, not law of armed conflict training.
15 That is normally done by lawyers within the army, sir.

16 Q. Can I ask you in relation to certain specifics with
17 which this Inquiry particularly concerned, as you will
18 know, have you received any training in respect of the
19 use of hooding, hoods on prisoners?

20 A. No, sir, I have not.

21 Q. Does that mean, Brigadier, that you were never
22 instructed either way, as it were, as to whether hooding
23 prisoners was or was not appropriate or permitted?

24 A. I think -- from my military training, sir, I think
25 that's so. From my police training it was clearly not

1 something that one could do. I think I had, if you
2 like, a twin track of training throughout my career,
3 sir, of military training formalised for warfare and
4 police training as a service police officer.

5 Q. I don't think it need be put on the screen, but you say
6 in paragraph 28 of your statement to this Inquiry that
7 hooding is not a technique that is commensurate with
8 police practice for arrested persons.

9 A. That's correct, sir.

10 Q. You mean it would not be used in a police context?

11 A. That is correct, sir, yes.

12 Q. Is that what you mean by your police training giving you
13 that message, if you like?

14 A. Yes, sir, I think it does. It gives you a separate
15 strand of training which perhaps is much more focused in
16 dealing with prisoners and much more specialised in that
17 area.

18 Q. Had you received any training in the use of blindfolds
19 or goggles?

20 A. No, sir, I have not.

21 Q. At the time of your deployment to Iraq in 2003,
22 can I ask you what your understanding would have been as
23 to whether it was permissible for prisoners, whatever
24 category or status, to be hooded?

25 A. It would be my understanding, sir, that it would not be

1 acceptable practice.

2 Q. Under any circumstances?

3 A. To hood, sir -- just clarifying your question, to hood,
4 sir, for me it would not be acceptable practice.

5 Q. Under any circumstances?

6 A. Under any circumstances, sir.

7 Q. The use of blindfolds or goggles, if they are being used
8 for the same purpose, would that have been permissible?

9 A. I think there are occasions, sir, for security and other
10 reasons where it would be appropriate to wear goggles or
11 blindfolds, sir.

12 Q. What rules or strictures would you have applied to the
13 use of goggles or blindfolds?

14 A. Well, for me, sir, it would be that they should only be
15 placed on the individual for as long as the reason for
16 them to be there persisted. So if a person was being
17 taken through a secure area, whatever, into a base, then
18 they could be blindfolded for that purpose, but as soon
19 as that reason for them to be goggled or blindfolded
20 ceased to exist, they should be removed.

21 Q. In 2003, what would your attitude have been towards the
22 use of stress positions on prisoners?

23 A. I don't believe that stress positions are appropriate,
24 sir.

25 Q. Because ...?

1 A. Because I don't believe they are necessary, sir, and
2 I don't believe they are conducive to the nature of the
3 operation we were involved in. Would you like me to go
4 on, sir?

5 Q. Please.

6 A. I mean, I just believe that when you are detaining
7 someone at that point of capture, clearly one has to use
8 reasonable force to detain that person, but after that
9 the use of stress positions I do not believe is, you
10 know, accepted practice.

11 Q. You are conversant with the term "shock of capture" --

12 A. Yes, sir, I am.

13 Q. -- that state in which a prisoner is likely to be --
14 state of mind if you like -- on immediate capture. Did
15 you receive any training in ways in which that shock of
16 capture might be maintained or extended?

17 A. No, sir, no specific training in methodology. I was
18 aware of the generics of "shock of capture" itself as
19 a term and what it meant -- what I had been taught it
20 meant was that nothing positive should be done to reduce
21 that natural apprehension that a person feels on being
22 first detained.

23 Q. And by nothing positive being done, other witnesses have
24 talked about, for example, fraternisation, talking and
25 so on and so forth.

1 A. Correct, sir.

2 Q. Those are the matters you have in mind?

3 A. Absolutely, they are, sir.

4 Q. Would you have regarded the use of stress positions as
5 being appropriate to maintain shock of capture?

6 A. Absolutely not, sir.

7 Q. Were stress positions humane treatment for prisoners in
8 your view?

9 A. This is a very precise legal question, sir. It could
10 be. I mean, from my own personal point of view of
11 common terminology, I don't approve of stress positions.
12 I don't think that they are the sort of practice that we
13 should be undertaking. "Inhumane" can have a very legal
14 meaning, sir, but if you want -- you know, if you were
15 asking me whether I regard them as unacceptable, I do,
16 sir, yes.

17 Q. Thank you. Can I take other conditioning techniques,
18 such as the use of noise, white noise, deprivation of
19 sleep or of food and water. Were any of those
20 techniques appropriate to be used in any circumstances
21 with prisoners?

22 A. No, sir. I mean, white noise should not be used and,
23 you know, we do not -- that is not an accepted practice,
24 and in relation to the others, such as food and sleep,
25 the converse is true. We should be ensuring that the

1 person who is captured is appropriately watered, fed and
2 allowed appropriate sleep and provided and afforded the
3 correct level of protection, sir, as they are in our
4 care.

5 Q. May I ask you, please, specifically as a military
6 policeman, about training you may have received in the
7 use of plasticuffs.

8 A. Yes, sir.

9 Q. You have received training in that area, have you?

10 A. Yes, sir.

11 Q. And is there an acceptable form of the use of
12 plasticuffs?

13 A. For me, sir, yes, it is. It has always been to the
14 front of the body, with the rule of thumb applied --
15 ie you should be able to insert a thumb between the
16 plasticuff and the wrist of the individual so as not to
17 block off blood supply. The reason the cuff is to the
18 front, sir, is that, should the individual fall, at
19 least they can break their own fall with their hands,
20 should that happen, sir.

21 Q. Had your training or experience indicated there were
22 ever circumstances where plasticuffs could be applied to
23 the hands behind the back?

24 A. It had certainly been indicated that at times --
25 I suppose, in my training, occasionally if a person was

1 extremely violent and was being non-compliant, one might
2 do it in very exceptional circumstances, but I have
3 never had to do that, sir, or witnessed it being done.

4 Q. Now let me ask you, please, about your roles in Iraq.
5 Have I understood this correctly, Brigadier?
6 Notwithstanding the amendments that you have now made to
7 paragraphs 40 and on, in your first role in Iraq you had
8 no role in the provision of guidance, orders or
9 instructions in relation to prisoner-handling or
10 detention policy?

11 A. That's correct, sir.

12 Q. So does it follow from your statement that you did get
13 involved, to some extent anyway, in that aspect of
14 matters from 1 May onwards?

15 A. I became involved in the policy for detention and
16 overarching business, sir, but -- it's quite
17 a complicated piece, unless you wish me to break it down
18 now.

19 Q. I am simply anxious that we should understand when it
20 was that you assumed any responsibility for areas of
21 policy or practice in relation to prisoner-handling and
22 detention.

23 A. I understand, sir. It is, then, from 1 May, when
24 I became provost marshal 1 Div.

25 Q. Prior to that, however, you had had some discussions,

1 had you, on issues bearing on detention?

2 A. I had, sir, with my predecessor, Lieutenant

3 Colonel Baillie, and some other individuals in --

4 Q. Did they include Colonel Mercer?

5 A. At that juncture, sir, yes, but only in probably about

6 the last two weeks, from about mid April onwards.

7 Q. I will come back to that, if I may. Can we look at

8 paragraphs 52 and on in your statement at BMI05890?

9 A. Thanks.

10 Q. Here you refer under the heading "provost marshall role

11 and responsibilities in relation to captured personnel

12 ... handling and/or detention policy".

13 A. Yes, sir.

14 Q. You say, at paragraph 53, that captured personnel

15 handling policy and practice for both the war fighting

16 and the post-conflict phase was overseen by the G3

17 operational staff.

18 A. That is correct, sir, as laid down in JWP 1-10, which

19 was the extant doctrine at the time.

20 Q. You say that legal advice provided by

21 Lieutenant Colonel Mercer.

22 A. That's correct, sir.

23 Q. And your predecessor and then you from 1 May provided

24 custody and detention advice?

25 A. Yes, sir. We were not the only people providing custody

1 and detention advice from a provost point of view,
2 though, sir, because CO5 RMP, supporting the JFLogC --
3 the joint force logistic component -- had the military
4 provost staff under command and also the PWHO was based
5 within the JFLogC area of operations, so he was
6 providing support in there, sir, whilst we were
7 providing -- I was providing and Colonel Baillie was
8 providing support across the divisional area of
9 operations.

10 Q. Now if we look at paragraph 54 of your statement -- the
11 Inquiry, I think, has already heard about this from
12 other witnesses -- from about 1 May a significant part
13 of the effort in which you were engaged was the
14 restoration of some semblance, anyway, of police and
15 judicial authority in Iraq.

16 A. That's correct, sir.

17 Q. I don't take you to the detail of it, but you set it out
18 I think quite fully in your statement. There had been,
19 in the conflict itself, the result of a sweeping away of
20 police, the courts and so on.

21 A. That is correct, sir, and the Iraqi police wore
22 a military style uniform. The only difference was that
23 their badges of rank were silver, as opposed to the army
24 being gold, and quite naturally they were keen not to
25 appear in uniform after the war, sir.

1 Q. You indicate, I think in this statement, if I paraphrase
2 it accurately, that much of your effort, anyway, was
3 channeled in that direction, the restoration of some
4 semblance of policing and court system.

5 A. Yes, sir, it was the main effort given to me by the GOC
6 in the post-conflict phase.

7 Q. You say at paragraph 57:

8 "The MPS staff (who are the ... custody and
9 detention experts) [as we remind ourselves] were spread
10 thinly across the theatre and initially they provided
11 training and technical expertise to the brigades and
12 battlegroups ..."

13 Would it be right to say they did the best they
14 could, but they were small in number?

15 A. Sir, I believe they were about 12 in number, under
16 command of CO5 RMP, and you are absolutely right in your
17 assumption, sir, they did the best they could with the
18 small number of people they had.

19 THE CHAIRMAN: Yes, Captain Wilson told us that there were
20 about 11 or 12 and there were never more than that; is
21 that right?

22 A. That's my understanding, sir. As I say, they were under
23 the command of CO5 RMP, so I can't give you an
24 accurate -- but that's my understanding, sir.

25 MR ELIAS: Can we look at 59, please, because you raise

1 an issue here we should investigate a little. You say:
2 "In April and May of 2003, as we transitioned from
3 the war-fighting phase to the post-conflict phase, the
4 embedded RMP MPLOs were re-roled as 'custody sergeants'
5 and from memory were placed in every main battlegroup
6 level detention facility. (There were insufficient
7 numbers of RMP in theatre to place custody sergeants at
8 every UK force location in Iraq because the prime effort
9 of the RMP Regiment was to retrain the Iraqi police and
10 prison services)."
11 As we have just been talking about.
12 A. Sir, that's correct. Colonel Baillie can answer for
13 what happened before 1 May, but he and I agreed that the
14 custody sergeants were needed. The MPLOs were very much
15 his business, sir, because they occurred during the
16 war-fighting phase, but after that he and I agreed that
17 custody sergeants perhaps were the best way forward and
18 that he would place them in and I would maintain them
19 after I took command, sir.
20 Q. Perhaps at least two issues arise. One, it may be from
21 the evidence that this Inquiry has heard anyway, that it
22 wasn't every battlegroup or perhaps even every main
23 battlegroup who received the RMP "custody sergeant".
24 A. I can't remember in detail that, sir. That would have
25 been -- I was operating at divisional level. I would

1 have had company commanders operating at brigade level
2 and below that I would have had platoon commanders
3 operating. So the intricate detailed support of each
4 and every battlegroup location would have been very much
5 down to my company commanders to oversee, sir.

6 Q. I understand. But it's a matter I am going to come back
7 to in just a little more detail. Whether or not an RMP
8 was embedded, as it were, as a custody sergeant would to
9 some extent, would it, depend upon available resources?

10 A. It was, sir, and I had to balance concerns about the
11 custody chain of our own troops with that of the Iraqi
12 police and prison service because there was a custody
13 centre in each Iraqi police station eventually and, of
14 course, we had to ensure that they too were not engaging
15 in malpractice. So there was a balance to be had, sir,
16 right across the theatre of operations.

17 Q. The Inquiry has heard in very recent days, Brigadier, of
18 the reduction that seems to have been foreshadowed at
19 about the time that you were taking over at the
20 beginning of May of three companies down to one RMP.

21 A. That's correct, sir, in the divisional area of
22 operations.

23 Q. Yes.

24 A. There was a separate company, sir, supporting the JFLogC
25 under 5 RMP and that was replaced by a company under

1 4 RMP. But in the divisional area of operations
2 initially there were three companies.

3 Q. Yes. Did you know about that, what was to happen, when
4 you assumed command on 1 May or thereabouts?

5 A. No, sir, I did not.

6 Q. Do you remember when did you become aware of the --

7 A. I think I first became aware of it when 150 Provost
8 Company came out on their recce some time towards the
9 end of May, sir. I seem to remember it was late
10 May/June some time.

11 Q. I am not, in my questions, going into the rights and
12 wrongs of deployment, do you follow, and I don't think
13 the Inquiry terms of reference require that to be
14 considered. But it may be that the Inquiry will want to
15 look at the facts, as it were, and how they bore upon
16 the issues.

17 A. I am very happy, sir, to answer questions on that.

18 Q. The reduction from three companies to one, in relation,
19 for example, to the placement of a custody sergeant, as
20 you explain here, in every main battlegroup level
21 detention facility, what impact must that sort of
22 reduction have had upon that aspiration, if you like?

23 A. Well, in short, sir, it would have reduced the
24 governance and surety of -- within that unit.

25 Q. We will come back to the question of resource more

1 generally in a few minutes. Just staying with
2 paragraph 59, can we understand what you believed the
3 role of the custody sergeants, as you called them in
4 this paragraph, was to be?

5 A. Yes, sir. I mean they were really processing. They
6 were receiving the individual in, checking the evidence,
7 checking that -- the evidence from the patrols on the
8 ground, the physical evidence. They were bagging and
9 tagging it -- you know, the usual thing that you would
10 expect a custody sergeant to do in a police station. So
11 it was very much the processing role of overseeing
12 people coming in and making sure that they were properly
13 processed, sir, onto the next facility.

14 Q. Would that have included, for example, as I think is the
15 case in the UK in the police custody sergeant role, if
16 there were no evidence, releasing the individual?

17 A. Yes, it might well have done, sir, yes.

18 Q. So were they to be -- that is the custody sergeants --
19 the filter for all prisoners -- the initial filter, if
20 you like, for all prisoners detained?

21 A. From memory, sir, yes. I mean, the trouble is, sir,
22 this was a continually changing operation as we went
23 through, so it wasn't ever a black and white position.
24 We found ourselves in post Iraq in the most dreadful
25 situation in the terms of breakdown of law and order,

1 the lack of an indigenous judicial system and law
2 enforcement capability. Of course, we were then trying
3 to reconstruct it and, as we brought things on line,
4 then the position, I would argue, changed over time
5 during the time between the end of the war, sir, and
6 when we left on 11 July.

7 Q. So on the one hand you had -- and you paint the picture,
8 but I have not taken you to the detail of it --
9 the breakdown that you describe and the resources needed
10 to rebuild that were presumably significant --

11 A. They were indeed, sir, yes.

12 Q. -- and on the other, almost from the time of your
13 assuming command, you had the indication that your
14 resources were going to be depleted by two-thirds?

15 A. I would say probably certainly within four weeks, sir,
16 that is correct.

17 Q. You say at paragraph 48, the first sentence of that
18 paragraph in your statement, BMI05889:

19 "From 1 May onwards, the deployment of RMP staff in
20 theatre altered to reflect the general draw-down of
21 troops."

22 A. That's correct, sir.

23 Q. Is "the general draw-down of troops" a reference to the
24 reductions?

25 A. Well, the reductions had already started, sir. After

1 the war, 3 Commando Brigade were sent home pretty
2 quickly. We had deployed 22,000 ground troops, sir,
3 which is essentially a fifth of the whole total of the
4 army. So it was clear from the -- I think from the sort
5 of MoD/PJHQ end, that they had to get troops back to the
6 United Kingdom.

7 It started with 3 Commando Brigade. They took
8 obviously Royal Marine Police Troop with them that had
9 been out in theatre supporting them. Then 16 Brigade
10 went home, sir, I think some time in June, or parts of
11 16 Brigade. They left up in Maysan Province
12 1 Para Battlegroup, which was a battlegroup centred on
13 1 Parachute Regiment, with all armoured support,
14 engineers, military police, et cetera, but the rest of
15 the brigade also went home in June. Again this was
16 because of a general draw-down and transition of the
17 force from war fighting to post conflict, sir.

18 So the transition had already started during
19 Op Telic 1 and continued through to Op Telic 2. In
20 that, sir, of course, 156 Provost Company, that was
21 supporting 16 Air Assault Brigade, reduced to a platoon
22 in about June of 2003.

23 Q. Just go back to paragraph 59. In the light of what you
24 have told us now, the last two lines of this paragraph,
25 you say this:

1 "The aim [the aim of the custody sergeants, putting
2 it shortly] was to provide an independent RMP 'check and
3 balance' of the detainee system ..."

4 That was important, was it, an independent check and
5 balance?

6 A. It was to me, sir, as the divisional provost marshall.

7 I felt that that was an important issue that we had to
8 make sure was in place.

9 Q. "... allowing RMP to highlight any problems and thus
10 reduce risk within the detainee handling system."

11 A. That was important to me, sir, yes, as --

12 Q. Forgive me, was the reduction of risk to which you are
13 referring there incorporating, in part anyway, any risks
14 there may be to the detainee himself --

15 A. That's correct, sir.

16 Q. -- which would include a risk of assault?

17 A. That could be one of its -- but it was also reducing the
18 risk of loss of people in the handling as they were
19 handled through the system. This was a post-conflict
20 environment where command and control was incredibly
21 difficult. We found ourselves in a city of 1.5 million
22 people in Basra, sir, with very poor communications, no
23 electricity, no photocopies, no IT. Much of the
24 communication between people was verbally passed by
25 messenger. Therefore, it was important that we provided

1 some extra controls, in my view, as the divisional
2 provost marshall, into that handling system, sir.

3 Q. You go on in the rest of that paragraph -- and I am not
4 going to read it out because you can see it and you have
5 said it, Brigadier -- to refer to the draw-down of
6 troops and the effect of, if I can put it broadly,
7 diminishing resources. Did it become apparent to you
8 that what you had hoped to do -- for example, in the
9 custody sergeant area -- was now going to be something
10 that could not be appropriately done?

11 A. Yes, sir, it did, and I took various measures to try and
12 mitigate that in theatre when I was the CO and provost
13 marshall.

14 Q. If it could not be appropriately done, it follows from
15 what you say in paragraph 59, doesn't it, that the risks
16 to detainees -- and that's what this Inquiry is
17 concerned with particularly, as you know -- was likely
18 to be thereby increased?

19 A. Yes, sir.

20 Q. Was this something, Brigadier, that you brought to the
21 attention -- can I put it in the round -- of the powers
22 that be?

23 A. I was concerned with the totality, sir, of the proposed
24 draw-down of military police support and I went and
25 spoke with both the GOC and the chief of staff over the

1 draw-down of the military police and we tried to put in
2 place a number of measures, sir, to reverse the
3 situation.

4 Q. By "reverse the situation", just so we understand it,
5 you couldn't presumably get the numbers back, could you?

6 A. Well, the issue was, sir, they didn't have to be royal
7 military policemen; what we were after was policemen.

8 Q. I follow.

9 A. Therefore what we did was we took a number of measures
10 which -- firstly, sir, we invited the ACPO lead, the
11 Association of Chief Police Officers lead, for
12 international policing, Mr Paul Kernaghan, who was the
13 chief constable of Hampshire, to Iraq in 2003.

14 I hosted him to a visit, I took him up to Baghdad. We
15 impressed upon him the need to deploy civil policemen
16 from the UK into Iraq. That unfortunately did not
17 happen because of the security situation.

18 We invited the head of the Coalition Provisional
19 Authority, policing element in Baghdad, the American
20 lead, to Southern Iraq and I hosted him to a visit in
21 Basra to impress upon him the need that if the Americans
22 were going to bring in -- because they had a grand plan
23 to bring in large numbers of civilian policemen under
24 contract -- that the south got its fair share of those
25 policemen to provide the support.

1 I wrote a paper to the GOC in June, highlighting the
2 detailed need for up to -- I seem to remember, it was
3 around 200 military policemen to support the development
4 of the Iraqi police and prison service. We also asked
5 whether PJHQ could establish whether policemen from
6 other coalition armies could be provided in the
7 transition to -- from 1 Div to 3 Div and MND South-East,
8 to provide more military police support amongst their
9 force generation of their troops that were coming out.

10 The difficulty with all of these things, sir, was
11 that -- and particularly the last thing -- was that
12 MND South-East, as you know, was a much bigger AOR than
13 1 Divs and, of course, whilst the Italians and the Dutch
14 and others were coming and bringing military police with
15 them, they were going off into Dhi Qar and Al Mathana
16 provinces and there was no additional military police or
17 civilian police for Basra and Maysan.

18 Q. There is a lot of detail there, Brigadier, and I don't
19 think we need to go down too much of the detailed
20 avenue. But the position was, from what you told us,
21 was it, you needed more policemen?

22 A. We did, sir.

23 Q. You appreciated that without them, for example, the
24 risks to detainees themselves might increase?

25 A. I did, sir, yes.

1 Q. Was that specific point, that unless you had more
2 resources from wheresoever they may come -- was that
3 specific point made to the GOC, chief of staff or anyone
4 else?

5 A. The issue was one in the context of the round of more
6 military policemen for all the tasks we were doing --

7 Q. Yes.

8 A. -- rather than specifically the issue of detainee
9 handling, sir --

10 Q. I follow.

11 A. -- you know, because I was looking at it, as the
12 divisional provost marshall, as the military police
13 capability for the theatre.

14 Q. So the main message that you needed more policemen was
15 given, but it may not have gone down to the detail -- or
16 didn't go down to the detail of saying "I think
17 detainees might be at risk if we don't have them"; would
18 that be fair?

19 A. I think that's fair, sir. I don't think I ever said
20 that specifically to the GOC. I talked about the
21 generics of military police capability and civil police
22 capability to the division.

23 Q. There was a change of personnel over the time that you
24 were in Iraq. As Mr Moss is reminding me, of course, it
25 would be as well if we understood to whom you

1 communicated these concerns. Can you remember?

2 A. They would have been under normal briefings through to

3 the DCOS, chief of staff, GOC.

4 Q. Can you remember who was in those posts?

5 A. Sorry, sir. Yes, I understand. The DCOS was still

6 Colonel Cowling, the chief of staff was Colonel Marriott

7 and the GOC at the time was General Wall.

8 Q. So it would have been to those three that you would have

9 communicated these concerns?

10 A. That's correct, sir.

11 Q. Thank you very much.

12 THE CHAIRMAN: Did any of your subordinate officers in their

13 respective companies raise with you the fact that they

14 were not able to provide custody sergeants?

15 A. No, sir, they did not. You know, I can't offer

16 comments -- Sir, I can't remember -- no.

17 THE CHAIRMAN: No.

18 MR ELIAS: You are conversant now, Brigadier, with FRAGO 29?

19 A. I am, sir, yes.

20 Q. You say in your statement to the Inquiry that you were

21 not directly involved in drawing up the FRAGO.

22 A. That's correct, sir.

23 Q. But it was, was it, a significant change of direction in

24 prisoner-handling terms?

25 A. Sir, could I have a copy of FRAGO 29, please, on the

1 screen?

2 Q. Can we have MOD016186 on the screen, please?

3 A. Thank you very much indeed, sir.

4 Q. 26 June 2003, as you see from the date on the top.

5 A. That's correct, sir. Could the person please just flick
6 through, sir, so I could just have a quick scan of the
7 document to remind myself.

8 Q. Of course. It refers, on the second page, to preplanned
9 lift operations.

10 THE CHAIRMAN: Can you read it all right?

11 A. I am fine, sir.

12 The next page, please.

13 MR ELIAS: If we go through to MOD016189, you may recall
14 that under "Timings", coordinating instructions towards
15 the end, "internees are to be delivered to the TIF
16 within 14 hours of capture", where earlier instruction
17 had required handover to the RMP as soon as possible
18 and, in any event, not later than six hours after
19 detention, matters of that kind. Do you recall these --

20 A. I recall this, yes, sir.

21 Q. Were you aware of these changes that were wrought by
22 FRAGO 29 at the time that it was brought in?

23 A. I was aware, sir, that -- in details of timing, sir, are
24 you talking about or the operation of the process?

25 Q. The operation of the process, the BGIRO who was created

1 by FRAGO 29, for example.

2 A. This FRAGO, sir, was signed out on 26 June. I have to
3 say I was very busy over this time and, of course,
4 geographically I was not ever based at the divisional
5 HQ. My headquarters was down in Basra City, some miles
6 away. I visited the divisional headquarters probably
7 three times a week. So I was not intimately involved in
8 staffing bits of paper within -- and FRAGOs and orders
9 within the divisional headquarters. That's the first
10 thing I think I need to say, sir. That is the reason,
11 of course, that I put Major Wilson, as the SO2
12 detention, into the headquarters, to specifically offer
13 advice on these matters.

14 I did have a discussion with him because it was
15 evident to us that with the lack of military police or
16 civilian police coming in on the transition, units would
17 have to take responsibility for this area. But the
18 detail of the BGIRO and the detail of the FRAGO, no,
19 I was not aware of it, sir.

20 Q. It's not necessarily the detail -- if I may say so --
21 that I am interested in asking you about, but it did
22 bring about these changes; it is rather the policy. It
23 is the reduction in the role of the RMP that is
24 envisaged hereafter. Was that a matter that concerned
25 you, given what you have said about the need for

1 independent and, if you like, specialist custody
2 sergeants?

3 A. It is, sir. Could I have page 1 of the document,
4 please?

5 Q. Yes.

6 A. That's the wrong document, I am afraid.

7 Q. FRAGO 29?

8 A. FRAGO 29.

9 Q. MOD016186?

10 A. That is to what you are referring, sir?

11 Q. Yes, yes.

12 A. Thank you, sir. I think the first thing to say is yes,
13 I was concerned about the lack of involvement in RMP,
14 and there is an issue with this FRAGO. It says at the
15 top in "Date time group":

16 "G2 assumes this function from SO2 detention will be
17 published in a subsequent sweep-up FRAGO."

18 I don't believe that SO2 detention ever had that
19 level of authority within this area, sir. This was a G3
20 responsibility, as clearly outlined in FRAGO --
21 I think -- 163, which is the previous FRAGO. That FRAGO
22 did not devolve authority from G3 to the SO2 detention
23 for this process and I was involved in that -- or I saw
24 that FRAGO before it was published, sir.

25 Q. But did you appreciate that the system that was being

1 brought in by FRAGO 29, as it has been outlined to the
2 Inquiry, devolving, if you like, to battlegroups the
3 responsibility for holding detainees for longer periods
4 of time, dropping, if not entirely out of the picture,
5 at least substantially out of the picture, RMP
6 involvement in the process, enlarging the period of time
7 over which detainees might be held at battlegroup level
8 before being handed over to what is said to be the
9 experts in guarding and so on -- did you regard all
10 those matters as increasing the risk to detainees of the
11 sort of thing that in fact happened which this Inquiry
12 is concerned about; that is assaults to them?

13 A. Yes -- yes, indeed I did, sir.

14 Q. And did you appreciate that risk, that increased risk,
15 at the time that FRAGO 29 and that new policy, if you
16 like, was being discussed?

17 A. Yes, sir, I did.

18 Q. Did you bring those --

19 A. But --

20 THE CHAIRMAN: I am sorry --

21 A. Sorry, I did appreciate those, but they were a direct
22 consequence of having been informed by the incoming
23 force that they were only bringing 1 Provost Company
24 with them and discussions that had clearly been
25 articulated to us that the new force coming in would

1 devolve responsibilities down to battlegroup commanders
2 within their areas of operation. Since these were
3 measures which would apply to them during their tour and
4 not to us during our tour, these were issues for the
5 incoming force to deal with, sir.

6 Q. Were they issues that you raised with the chief of
7 staff, the GOC or anyone else, that you had concerns
8 that if these measures were brought about, the
9 diminution in the role of the RMP and so on, the matters
10 that I have referred to, that this might increase risk
11 to prisoners?

12 A. Sir, I had a generic discussion, as I say, with the GOC
13 and others with regard to the consequences of the lack
14 of RMP on the rotation of 1 Div to 3 Div. Whether
15 I specifically said to him "Detainee handling will be
16 substantially riskier" I cannot remember, but
17 I certainly brought it to the attention that I was
18 concerned about the huge difference in military police
19 support and this would have an impact on our ability to
20 deliver the spectrum of work we had been delivering on
21 Telic 1.

22 Q. Do you recall whether you had, yourself, any direct
23 input into the policy discussions, if you like, for
24 FRAGO 29?

25 A. No, sir, and I think I must explain at this point where

1 I was and what I was doing. At this time, in mid June,
2 there was a transfer of authority from 7 Brigade to
3 19 Brigade and, of course, I was withdrawing part of my
4 force off the ground. I was also spending a lot of time
5 on the ground because we were unembedding from the Iraqi
6 police and prison services. So I was spending a great
7 deal of time speaking to my Iraqi police officers to
8 explain how support would be provided in the future to
9 them and explaining why we were pulling out of their
10 police stations. And, of course, on 24 June, sir, I was
11 having to deal with the issues of the death of the
12 RMP 6.

13 Q. Yes.

14 A. So I wasn't specifically involved in drawing this up and
15 I wasn't specifically involved in the discussions
16 behind it, although I understood the intent, sir, of why
17 it was coming in, because of the changes in force
18 elements between 1 Division and 3 Division.

19 Q. So was it essentially again, do you say -- the changes
20 resource-driven?

21 A. I believe so, sir, and also the consequent expansion of
22 the AOR from two provinces to four, which again could be
23 put down to resources, sir.

24 Q. Thinking about it now, Brigadier, was it in fact your
25 role or function, if you like, to alert the GOC or the

1 powers that be that maybe, in relation to the handling
2 of prisoners, there were these additional risks if these
3 steps were taken?

4 A. Sir, the way force generation for operations works is
5 that the in-place force gets on with its job that it has
6 to do on the ground. It is extremely busy, we were
7 under a huge amount of pressure, having just fought
8 through a war and in a post-conflict situation. It is
9 down to the permanent joint headquarters to generate the
10 follow-on force in agreement with the Ministry of
11 Defence and they work out, liaising into theatre with
12 their PJHQ away team, on the requirements for the future
13 force elements. We, as part of our structure, took part
14 in discussions with those PJHQ elements as part of the
15 divisional inbriefing.

16 So they were fully aware of what everybody was doing
17 on the ground at that time, apart from the fact that
18 they weren't on the ground themselves. They were aware
19 in theory of what people were doing. So it was very
20 clear, sir, that we -- that the force generation process
21 was being done from outside of theatre and, of course,
22 it has to start months before the operation itself. It
23 would have started on -- you know, on the deployment of
24 the troops for Op Telic 1.

25 Q. Understanding all of that -- and I think we do -- wasn't

1 it nonetheless, Brigadier, your responsibility to
2 bring -- to alert, if you like -- the powers that be to
3 the specific risks that may be increased in relation to
4 the handling of prisoners?

5 A. Sir, I brought to the attention of the powers that be
6 the overall risk of the reduction in the military police
7 element or the police element support from -- as
8 a result of the transition to 3 Div. I cannot remember
9 specifically saying the word to the GOC of "detainees",
10 but I talked through and indeed wrote a paper on the
11 specifics of supporting the Iraqi police and prison
12 service so that people were aware of the scale and
13 magnitude of the requirement.

14 Q. Thank you.

15 Now you tell us in your statement to the Inquiry, if
16 I move on, please, that you enjoyed an excellent working
17 relationship with Lieutenant Colonel Mercer.

18 A. I did, sir.

19 Q. If we go to paragraph 93, it's a paragraph you made an
20 alteration to, you refer in the original of that to
21 recalling a conversation in about late March 2003. You
22 now think it would have been early April.

23 A. Yes, sir. Would you like me to explain that, sir?

24 Q. If you would.

25 A. Sir, the reason of this is that I remember having

1 a conversation with Colonel Mercer. The question is
2 when did it take place. The reason it cannot have taken
3 place in this context is because the dep chief of staff
4 ordered me across the border on 24 March. The reason
5 I know it has to be that date is that when we crossed
6 the border, sir, the battle of Um Qasr was in full rage
7 between 21 and 25 March --

8 Q. Can I just interrupt you to say simply -- because
9 I think we all know in this Inquiry -- that
10 Colonel Mercer, from a diary that he has, indicates that
11 what he saw, which he described to you, occurred very
12 late in March.

13 A. That's correct, sir. What I am saying is that at that
14 point I had already moved into Iraq into a separate
15 location. I was not with Colonel Mercer in Kuwait. He
16 was in Div Main; I was in the DSG. I then moved across
17 the border on or about 24 March and took up a position
18 west of Basra in the middle of nowhere, sir. I was in
19 an isolated location and not able to move from that
20 location and Colonel Mercer was not located with me
21 because he was still at Div Main.

22 Q. So this could have occurred in early April is what you
23 are saying?

24 A. It must have occurred some time in April, sir, in the
25 first half of April.

1 Q. What I am really saying to you is that I think you would
2 get support in that from what Colonel Mercer has already
3 told the Inquiry.

4 A. All right, sir. I am unaware of that, sir, sorry.

5 Q. You go on in paragraph 93 to say:

6 "I remember him saying to me that in the JFIT he had
7 seen detainees hooded prior to being interrogated ..."

8 He asked you about that practice. You told him that
9 it was unacceptable.

10 A. Yes, sir, I did. From memory, sir, the context was he
11 mentioned that he had seen it and seen people seated
12 with hoods on and I just said to him at the time "That
13 I regard as unacceptable".

14 Q. Was there any qualification to Colonel Mercer in your
15 telling him you found it unacceptable?

16 A. What I said to him, sir, was "Was there anything else
17 that was going on associated with that?" and he said to
18 me, from my recollection, "No, they were seated there
19 and hooded". Then he informed me about the ensuing --
20 he informed me, then, that that had been the genesis of
21 the banning order issued by the GOC in early April and
22 subsequently, then, he made me aware that there was
23 legal conflict, shall I say, up the chain of command
24 through PJHQ and MoD as to whether or not hooding per se
25 was legal.

1 Q. But you understood it went to MoD, did you?

2 A. I understood it went on from PJHQ to MoD, although I was
3 not aware of the detail.

4 Q. Do you remember where that understanding came from --

5 A. From Colonel Mercer, sir.

6 Q. Thank you. Did you also understand from him or from any
7 other source that the ICRC, the Red Cross, were involved
8 in this issue?

9 A. No, sir, I was not aware of that.

10 Q. Did Colonel Mercer indicate to you that there was
11 a difference of opinion as to whether hooding or
12 deprivation of sight may be used in any circumstances,
13 particularly, for example, for security reasons?

14 A. What he indicated to me, very briefly, sir, was that
15 certain people felt that in certain circumstances for
16 security reasons hooding may be acceptable. He did not
17 agree with that and I regarded the practice as
18 unacceptable. I was satisfied, sir, having talked to
19 him, that appropriate action was being taken and that he
20 had raised the matter not only with the GOC, who is the
21 commander in theatre, but had appropriately raised it
22 out of theatre as well, sir.

23 Q. Were you, in fact, in your time in Iraq, aware of
24 prisoners, whatever category or status, being hooded?

25 A. No, sir, I wasn't. My major effort was towards the

1 Iraqi police and prison service and that sort of
2 practice I never saw going on within the confines of the
3 Iraqi police stations and the Iraqi prisons, sir.

4 Q. But you never saw it anywhere in Iraq so far as British
5 forces handling Iraqi detainees?

6 A. Not personally, no, sir, no.

7 Q. Was it reported to you that it was happening?

8 A. No, sir, it wasn't.

9 Q. Could you help us, please, about a document that we find
10 at MOD049917? You refer to it at paragraph 82 of your
11 statement. Could you tell us what this is, please?

12 A. Yes, sir, as I said in my statement, I believe it's
13 a generic SOP relating to the handling and treatment of
14 prisoners of war produced within the logistic brigade.

15 Q. So a generic --

16 A. A standard operating procedure, sir.

17 Q. Standard operating procedure?

18 A. Yes, sir.

19 Q. Can we go to the bottom of the page and just confirm
20 what I think you say in your statement, "Amended
21 12/06/2000". So this would appear to be operative in
22 June of 2000. Would that be right?

23 A. Well, that is my suggestion, sir. I don't know that.
24 As I said in my statement, I did not serve in the
25 logistic brigades, either of them, and have never served

1 in them, so I can't comment, sir, accurately.

2 Q. I understand. Can you help -- if you can't, you will
3 tell us, of course -- this was a standard operating
4 procedure for whom?

5 A. Well, it would have been for the logistic brigade
6 personnel, sir, and for all the troops within it,
7 I presume.

8 Q. Under the heading "Handling and treatment of prisoners
9 of war and surrendered enemy personnel", and if we go
10 down the page to "Handling of prisoners of war" and
11 3.13.002 we see under "Treatment":

12 "Prisoners of war are to be treated humanely at all
13 times. They are not to be subjected to humiliating
14 treatment nor are they to be subjected to disorientating
15 or conditioning treatment."

16 So thus far quite clear, isn't it?

17 A. That's correct, sir.

18 Q. "(No hooding or blindfolding except when being moved
19 through critical areas of friendly concentration, which
20 may provide intelligence to the enemy should the
21 prisoner of war escape. Such blindfolding is to be
22 authorised by an officer and a record maintained by the
23 IC escort)."

24 A. I can't comment on that, sir. As I say, I never served
25 in the logistic brigades, so I have not seen this

1 generic SOP before.

2 Q. But the SOP would seem to provide, wouldn't it, quite
3 clearly, that hooding or blindfolding may be used for
4 what would in shorthand be termed "security reasons"?

5 A. It would appear to suggest that, sir.

6 THE CHAIRMAN: Just so that I am clear, the RMP are not part
7 of whatever part of the logistics brigade; is that
8 right?

9 A. They are, sir. They are -- the 5th Regiment that was
10 out in Iraqi, sir, was supporting the JFLog C.

11 THE CHAIRMAN: I see, that is the JFLog C.

12 A. "Logistic Brigade" is the army title. When they get
13 together with other logistic elements from the navy and
14 the air force, they become a joint force logistic
15 component, sir. I know it is all very confusing, the
16 terminology.

17 THE CHAIRMAN: Well, I suppose every particular profession
18 has its own confusing acronyms --

19 A. It does, sir.

20 THE CHAIRMAN: -- and the army would not be alone.

21 MR ELIAS: That may be quite important. If we go back to
22 the top of the document, please, we can see it is headed
23 "RMP Logistical Brigade SOPs". So this would have been,
24 would it, in 2000, if that date be correct, an
25 instruction that it was an SOP -- an instruction given

1 to elements of the RMP anyway -- that it was an SOP that
2 hooding could be used for security purposes?

3 A. That would appear to be the case, sir, but, as I say,
4 I did not serve with them and have never served within
5 the Logistic Brigade.

6 Q. Perhaps more importantly, did you ever receive
7 instruction of that kind yourself as an RMP?

8 A. No, sir, I didn't.

9 MR ELIAS: Thank you.

10 THE CHAIRMAN: Yes. We will break off in a moment, but we
11 will start, I think, other questioning from other
12 counsel.

13 A. Thank you, Sir.

14 THE CHAIRMAN: Yes, Mr Singh.

15 Questions by MR SINGH

16 MR SINGH: Can I first start with the topic of hooding that
17 we have just been looking at? In paragraph 93 of your
18 first witness statement to the Inquiry -- and if you
19 want it on the screen again it is BMI05902, just at the
20 bottom there, in brackets, you say:

21 "In essence we were operating in temperatures of
22 40+ degrees centigrade and hooding in such temperatures
23 would restrict the ability of captured personnel to
24 breathe."

25 Just so I can be clear, please, of your thinking

1 about the subject of hooding, was it only because of the
2 special features in Iraq at that time, in particular the
3 hot temperatures, or was it your view that inherently
4 hooding is unacceptable?

5 A. For me, sir, hooding is not acceptable.

6 Q. Earlier in that same paragraph you made some reference
7 to it being contrary to law. Would that be your view in
8 relation to hooding inherently?

9 A. Could you please refer me to that, sir?

10 Q. Yes, just in the penultimate line on that page we are
11 looking at at the moment.

12 "I believe such practices are unacceptable given the
13 requirements in international law."

14 A. Are you asking me, sir, whether I believe that hooding
15 per se is illegal?

16 Q. Yes.

17 A. That is not my intent in that line, sir. I regard it as
18 unacceptable.

19 Q. I understand. Later on in the same paragraph -- just
20 over the page -- you tell the Inquiry that you told
21 Colonel Mercer that he could, if I can paraphrase, use
22 your name in discussions that he might have with other
23 people; is that right?

24 A. That's correct, sir.

25 Q. Why did you feel the need to tell him that?

1 A. Because, sir, it was clear to me that there was still
2 conflict within the legal chain, from what he had told
3 me, as to the rights and wrongs of hooding. I was about
4 to become the force provost marshall and it was very
5 clear to me that hooding was an unacceptable practice
6 and, therefore, I was quite clear to offer
7 Colonel Mercer my support on that matter should there be
8 any further issues with it, sir.

9 Q. Is it possible that another reason for that was that you
10 were aware that there might be obstruction from the
11 intelligence community, as it were?

12 A. Sir, there are all sorts of competing demands when one
13 is on a war-fighting operation. My concern at that
14 stage, which he had raised with me, was the conflict up
15 the legal chain. Therefore that was primary in my mind
16 when I offered him my personal support.

17 Q. Did you have a view as to whether there might be undue
18 deference paid to the intelligence community by others
19 in relation to this issue?

20 A. That did not come to my mind at the time of the
21 conversation, sir, because the conflict that he had
22 raised with me was that of the legal conflict and it was
23 in that regard that I offered him my support because
24 that was foremost in my mind, obviously, when we were
25 discussing it.

1 Q. I understand. You say "not at that time". Has it come
2 into your mind since then?

3 A. No, sir, it has not.

4 Q. I see. Can I move to a different topic, please, and
5 look at your first statement to this Inquiry at
6 paragraph 70, which is at BMI05896.

7 You refer there to Article 43 of the Hague
8 Convention --

9 A. Yes, sir.

10 Q. -- as one of the obligations of this country under
11 international law. You don't make any specific
12 reference, as I read it anywhere in your statement, to
13 the European Convention on Human Rights. Is there
14 a reason for that?

15 A. Sir, the bit related to that is because of the
16 responsibility under Article 43 for public order and
17 safety.

18 Q. Yes.

19 A. Given the main effort that had been set on me by the
20 general officer commanding to restores the Iraqi police
21 and prison service, that was the concern that I had with
22 the mass breakdown of law and order in Iraq that I faced
23 and the complete absence of any indigenous police or
24 prison capability or legal framework.

25 Q. But you were aware, I take it, that the ECHR did, in

1 principle, have some application to detention of Iraqi
2 civilians in Iraq at the time?

3 A. Those are your words, sir.

4 Q. Were you aware of that?

5 A. I was -- those are your words, sir. I would not say
6 that it was known at the time that the ECHR had
7 applicability --

8 Q. Can we just --

9 A. -- in 2003, sir, when we were out on the ground.

10 Q. Can we look, please, at MOD019141? Do you recall this
11 document which is dated 8 May 2003?

12 A. I do indeed, sir. This was drafted by Major Wilson on
13 my behalf.

14 Q. Just to see page MOD019143, we see that it bears your
15 name as the person signing it off. Is that right?

16 A. Yes, my signature block, sir, but I instructed
17 Major Wilson to draft this and to get a letter out on
18 the ground as soon as possible in relation to detention
19 matters as I had only just assumed command eight days
20 before, sir. And he drafted this and put it out, sir.

21 Q. Going back to the beginning of that document, do you see
22 the references at the beginning? "A" is "UN Declaration
23 of Human Rights".

24 A. I do, sir.

25 Q. And "B" is "ECHR".

1 A. Yes, sir.

2 Q. And in paragraph 1, if we can read that, but
3 particularly the last sentence:
4 "It may also be argued that current procedures are
5 inconsistent with Article 5 of reference B."
6 A. I think it is "It may also be argued", sir.

7 Q. Yes. And reference B is clearly a reference to ECHR,
8 isn't it?
9 A. That's correct, sir, but with the qualifying words of
10 "It may also be argued".

11 Q. Are you aware of people, for example, in PJHQ who
12 regarded having these sorts of procedures as being, as
13 it were, a rod for our own backs?
14 A. I was not, sir. As I explained already, I was not
15 working day to day in the divisional headquarters and
16 I had no contact with PJHQ. My regimental headquarters
17 was on the ground in the centre of Basra and, therefore,
18 I didn't have that familiarity with divisional staff
19 work back to the permanent joint headquarters.

20 Q. Was that sort of concept -- not those exact words
21 necessarily -- but that sort of idea as being the view
22 of some senior people, "a rod for our own backs" -- was
23 that conveyed to you?
24 A. I was completely unaware of that, sir, at the time.

25 Q. Were you aware from your training or for any other

1 reason of the Heath ruling banning the five
2 techniques --

3 A. In specifics, sir, no, I was not.

4 Q. -- although you had served in Northern Ireland; is that
5 right?

6 A. Yes, sir, I have done one -- less than one year in the
7 late 1990s, sir, so it was, in Northern Ireland terms,
8 very late on in the operation.

9 Q. Had you heard of or been told about in any way
10 a judgment of the European Court in a case called
11 Ireland v UK?

12 A. No, sir, I had not.

13 Q. I want to move to a different topic, please. It starts
14 with your first statement at paragraph 23, which is
15 BMI05881. You were asked some questions earlier about
16 this and the provost staff not being trained police
17 officers. As I understand it from the last part of your
18 paragraph, over the page, they are qualified to run
19 a unit custody facility, you say, in peace-time. Was
20 there any specific significance to be attached to the
21 phase "peace-time"?

22 A. Well, I don't think, sir, their training is specifically
23 orientated towards war. It has been accepted, I think,
24 that it is more orientated towards the peace-time
25 running of a unit guard room.

1 Q. Is the thinking behind that that essentially, in that
2 role, they will be guarding soldiers?

3 A. That's correct, sir.

4 Q. Not civilians, for example?

5 A. That's correct, sir.

6 Q. Just to explore a little further the rationale behind
7 the thinking, is it this, that they are in a sense
8 acting on behalf of the commanding officer in relation
9 to disciplinary functions?

10 A. That's correct, sir.

11 Q. You have said that you are effectively the chief
12 constable of the RMP. Do you have a view, sir, of how
13 appropriate it is to allow an arresting multiple also to
14 act as the guard force of the detainees?

15 A. Are you asking me for my personal view, sir?

16 Q. Well, your professional view as the most senior police
17 officer in this role.

18 A. Well, sir, I think we must realise the nature of
19 conflict. The military police or someone independent
20 cannot be everywhere on the ground. May I use the
21 analogy of a ship? If someone tells the captain to
22 steer starboard, the whole ship and the whole crew goes
23 starboard. With 22,000 ground troops on the ground in
24 Operation Telic, you can't have a military policeman or
25 someone independent at every single nodal point. So,

1 yes, clearly, it would be, in an ideal world, best if
2 someone independent or the military police were running
3 every single aspect of this and providing surety and
4 governance, but it's just not practical and we simply
5 don't have the numbers to do it or the ability to do it.

6 Q. So it really comes down to resources?

7 A. Well, not just resources because, as I have said, with
8 so many nodes in the land component on the ground, so
9 many fighting elements, it would be impossible to have
10 an independent surety mechanism at every one of those
11 contact points where someone picks up a prisoner of war,
12 a detainee or an internee. It is a simply not possible.

13 Q. Were you aware of what happened at BG Main and what is
14 your view on that?

15 A. Sorry, could you repeat the question? You have not set
16 the context, I am sorry.

17 THE CHAIRMAN: Well it is really the whole focus of the
18 Inquiry. Were you aware of the incident that happened
19 between 14 and 16 September 2003 at Battlegroup Main of
20 1 Queen's Lancashire Regiment?

21 A. Well, I am aware of it, Sir -- not because I was there
22 at the time, but I am aware of it in general
23 circumstances.

24 THE CHAIRMAN: It would be difficult for you not to be aware
25 of it.

1 A. Absolutely, Sir.

2 THE CHAIRMAN: I am sorry. I interrupted both of you.

3 Go on. Do you want to say something?

4 A. No, that's all right.

5 THE CHAIRMAN: Are you going to be much longer, Mr Singh?

6 MR SINGH: Sir, I have a few more questions. My estimate is

7 about five minutes.

8 THE CHAIRMAN: Well, I am quite anxious to see that we get

9 through those before our break.

10 MR SINGH: Can we do that? Can I turn to a different topic,

11 please, and for this purpose we can look at FRAGO 29 at

12 MOD016186 please. If we turn two pages further on to

13 MOD016188, at the bottom of that page, if we can just

14 have that enlarged. Thank you. It is talking about the

15 BGIRO role. It states that:

16 "This is likely to be the battalion ops officer or

17 IO. It may not be a service police officer as

18 a conflict of interest is likely to arise."

19 Do you accept the thinking behind that, that there

20 was a conflict of interest with the RMP?

21 A. Well, there is always a potential conflict of interest,

22 sir, in that our primary responsibility is to police the

23 army, you know, so, involvement in these matters is

24 always difficult for us. But clearly advice, as it says

25 there, can be sought from the service police.

1 Q. But can you see any reason, as the most senior officer
2 in the RMP, why the RMP should not have at least an
3 initial filter role?

4 A. I think the initial filter role is appropriate. Again,
5 it does come down to resources.

6 Q. Well there it's not talking about resources, is it? It
7 is saying there is a conflict of interest. Do you agree
8 with that?

9 A. Yes, there could be a potential conflict of interest.

10 Q. What's the conflict?

11 A. Well, the conflict is between -- I would suggest between
12 the G2 role and the role to conduct a criminal
13 investigation.

14 Q. You said in evidence this morning to the Inquiry that it
15 was a dreadful situation in relation to law and order,
16 the judicial function and so on and so forth, that you
17 didn't have enough police officers. I think the period
18 you were referring to was around June/July 2003. Would
19 that be right?

20 A. That we didn't have enough police officers?

21 Q. Yes.

22 A. What I said was that we could have -- yes -- had more
23 police officers over that time, but what I was conscious
24 of was the fact that the incoming force was going to
25 have substantially less.

1 Q. Would you agree with this, that it would have been
2 a misplaced optimism to think that the Iraqi criminal
3 justice system would be up and running in the summer of
4 2003?

5 A. Personally, I do not think so, sir, but I think that the
6 issue was that, in that critical time, we needed to
7 reinforce and maintain our support -- intimate
8 support -- to the Iraqi police and prisons and courts
9 and I think, if we had done that, we would have seen the
10 Iraqi criminal justice system, certainly in
11 Basra Province, take off.

12 THE CHAIRMAN: We are getting very close to your time,
13 Mr Singh.

14 MR SINGH: This is my last point, Sir. You have told the
15 Inquiry that you were not directly involved in the
16 formulation of FRAGO 29. Looking back on it now, do you
17 think that you should have been?

18 A. No, sir, I don't, in that I had placed a staff -- two
19 staff officer, an SO2 policing and an SO2 detention
20 within the divisional headquarters. This matter and the
21 FRAGO itself refers to MND South-East, which is the
22 incoming force. One can't be responsible for things on
23 the ground when one is not going to be operating those
24 procedures and physically be there in theatre. Clearly
25 the incoming force were responsible for ensuring that

1 appropriate measures were in place.

2 MR SINGH: Sir, those are my questions.

3 THE CHAIRMAN: Thank you very much. We will break off for
4 ten minutes now, please, Brigadier. Do not talk to
5 anybody about your evidence during the course of the
6 break and be ready to start in ten minutes' time. Thank
7 you.

8 (11.32 am)

9 (A short break)

10 (11.42 am)

11 THE CHAIRMAN: Ms Dobbin, do you want to ask any questions?

12 MS DOBBIN: No, thank you, Sir.

13 THE CHAIRMAN: Thank you. Ms Edington?

14 Questions by MS EDINGTON

15 MS EDINGTON: Thank you, Sir. Brigadier, at paragraph 83 of
16 your statement concerning FRAGO 29, which is at
17 BMI05900, you say that it would have been normal
18 procedure for this to have been done with the support of
19 Colonel Mercer. You are not in a position, are you, to
20 say whether it did or it didn't on this occasion?

21 A. That is absolutely correct.

22 Q. Thank you. The other thing is you said to Mr Elias that
23 Colonel Mercer, when he spoke to you about what he had
24 seen at the JFIT, said that they had been sitting with
25 sandbags. Is that actually accurately what he said,

1 rather than he said they were kneeling with sandbags on?

2 A. To my best recollection -- and this was a passing
3 conversation in the headquarters seven years ago -- he
4 said to me they were sitting with hoods on their heads,
5 awaiting interrogation. That is how he described it to
6 me.

7 MS EDINGTON: Thank you very much. Thank you, Sir.

8 THE CHAIRMAN: Mr Garnham?

9 Questions by MR GARNHAM

10 MR GARNHAM: Sir, just two matters.

11 Firstly on RMP resources, how many RMP companies
12 were there in theatre in total in March 2003?

13 A. There were four -- probably four and a half out of the
14 ten operational military police companies that exist,
15 sir.

16 Q. You anticipate my next question. So it is four and
17 a half out of ten?

18 A. That's correct, sir.

19 Q. If, at the end of Op Telic 1, the four and a half go
20 home, is it possible to bring out another four and
21 a half?

22 A. It's not, sir.

23 Q. Why?

24 A. The army works or the MoD works on a force generation
25 cycle of a five to one ratio. So if you are deploying

1 one force element, you need five in order to sustain the
2 operation and ensure sufficient time between for
3 soldiers to rest and spend time with their family. So
4 on that basis, if you wanted four for the next
5 operation, we would need 20 military police companies in
6 the UK ORBAT and we only have ten.

7 Q. The second matter -- I wonder if we could have back on
8 the screen, please, MOD049917. Mr Elias took you to
9 this document and in particular to the next page,
10 please. And again, please, and again.

11 Sir, forgive me, it's the first page. I am very
12 sorry. The first page of that. If you go back another
13 page. Thank you. If you could highlight the bottom
14 half of the page under "Handling of prisoners of war".

15 Mr Elias showed you the passage in brackets at the
16 end of 3.13.002:

17 "(No hooding or blindfolding except when being moved
18 ...", and so on.

19 Mr Elias suggested to you -- and you accepted as
20 a fact -- that that implies that there might be hooding
21 in moving through critical areas.

22 A. That is correct, sir, yes. That's what that suggests.

23 Q. On your reading of it, is that clear or is it ambiguous
24 as to whether the words following the "or" constitute
25 a single clause, namely "or blindfolding except when

1 being moved"?

2 A. I would suggest it reads to me "no hooding or

3 blindfolding ..." --

4 Q. So that the words "except" qualify both?

5 A. Absolutely, sir.

6 Q. It then reads on:

7 "Such blindfolding is to be authorised ..."

8 Does that throw any light on your reading of what is

9 meant by the preceding sentence?

10 A. In that it must be authorised by a person of officer

11 rank.

12 Q. No, the use of the word "such", "such blindfolding".

13 A. I am just not familiar with this document, sir, and I am

14 not familiar with the context in which it was

15 constructed, so I am --

16 Q. That's fine. If you can't help, just say so.

17 A. I can't help because I have never seen -- you know, the

18 only time I have seen this document is when it was

19 initially referred to me by the Inquiry.

20 MR GARNHAM: Thank you. Thank you, Sir.

21 Further questions by MR ELIAS

22 MR ELIAS: Just one matter, Brigadier. You were asked by

23 Mr Singh a little earlier -- I think his question was

24 about the desirability, if you like, of prisoners being

25 guarded by the arresting group of soldiers and you

1 answered it, perhaps perfectly understandably, in the
2 context of "We can't have RMP everywhere". Leaving
3 aside the question of RMP everywhere, the desirability
4 of prisoners being guarded by those who arrested them,
5 for example, where the arrest may have been inflamed, it
6 may have involved violence, the opportunity for
7 retribution and so on there stands out -- presumably you
8 would agree, would you, that the desirability of having
9 at least an "independent" force of soldiers guarding is
10 obvious?

11 A. Yes, sir.

12 MR ELIAS: Thank you.

13 Questions by THE CHAIRMAN

14 THE CHAIRMAN: Your words about force ratio -- do I have it
15 right?

16 A. The force element generation, sir, the five to one.

17 THE CHAIRMAN: Force element generation.

18 A. There is a -- we literally have a maximum that it is
19 five to one. If you need one force element on
20 operations, you need five to sustain that, Sir, in the
21 long term for deployment.

22 THE CHAIRMAN: If you have four and half companies out, as
23 you rightly pointed out, you didn't have a force element
24 generation correctly at that time, did you?

25 A. That's correct, sir, which is why we were looking at

1 whether the Coalition Provisional Authority, through the
2 deployment of civilian police, could help. That's why
3 we asked the ACPO police lead for the UK to come out and
4 that's why we looked at other nations to see whether
5 they could provide military police. The important
6 thing, I think, sir, was to have people with police
7 skills.

8 THE CHAIRMAN: None of that happened?

9 A. No, sir, it didn't, because of all of the limitations of
10 the -- the nature of the operation, the security state
11 in theatre and the lack of ability to generate those
12 elements.

13 THE CHAIRMAN: All right. Thank you. Thank you very much,
14 Brigadier, for coming and giving your evidence to the
15 Inquiry. Those are all the questions that you are going
16 to be asked and I am extremely grateful to you for
17 coming here to give your evidence. You are now free to
18 go.

19 A. Thank you very much indeed, Sir.

20 MR MOSS: Sir, I call Colonel Philip Baillie, please.

21 THE CHAIRMAN: Yes.

22 Colonel, if you would be kind enough to stand up for
23 the moment, I will ask that you take the oath.

24 PHILIP FRANCIS BAILLIE (sworn)

25 THE CHAIRMAN: Thank you very much. Do sit down.

1 If I could ask you to get close enough to speak
2 clearly into the microphone, then we will all be able to
3 hear you. Thank you.

4 Questions by MR MOSS

5 MR MOSS: Colonel, could I ask that you start by giving the
6 Inquiry your full name, please?

7 A. Yes, sir, I am Philip Francis Baillie, formerly
8 a colonel in the Royal Military Police.

9 Q. You should have, in a folder to your right, your
10 statement to this Inquiry. I think at quite short
11 notice -- for which the Inquiry is grateful -- you
12 provided a statement to this Inquiry dated 9 March. We
13 have the final page at our BMI07378. Do we see there
14 that it was a statement that you were providing to the
15 Inquiry on 9 March of this month?

16 A. That's correct, sir.

17 Q. When you were providing that statement to the Inquiry,
18 were you telling the Inquiry that the contents of the
19 statement were true to the best of your knowledge and
20 belief?

21 A. I was, sir.

22 Q. I am only going to pick up certain aspects arising out
23 of your written statement. May I start, please, with
24 just briefly matters relating to your career history.
25 You tell us in your witness statement, is this right,

1 that you were a graduate entrant to Sandhurst in 1981?

2 A. Yes, sir.

3 Q. That you then went on to Royal Military Police

4 specialist training?

5 A. Correct, sir, yes.

6 Q. That you have seen service in Northern Ireland and you

7 had a two-year period as an infantry platoon commander?

8 A. Correct, sir.

9 Q. Thereafter it seems from your witness statement that

10 your service was mainly in provost and military police

11 roles, would that be right?

12 A. Split between military police roles and general staff

13 roles.

14 Q. You had a post as a staff officer in HQ Land, for

15 example?

16 A. Correct, sir, yes.

17 Q. In 2000 you tell us in your statement that you were

18 promoted to lieutenant colonel. Is that right?

19 A. That's right.

20 Q. Was it in that rank that you served as the CO of the

21 1st Regiment RMP in Op Telic 1?

22 A. It was, yes.

23 Q. You tell us in your statement, so that we have the

24 overview, that you were involved in the planning stage

25 and pre-deployment and that you held that post only

1 until a short period after the war-fighting phase.

2 I think you tell us in your witness statement that it

3 was only about a week after the war-fighting phase that

4 you moved on to a different role. Is that your

5 recollection now?

6 A. It is, sir, yes.

7 Q. You may have heard our previous witness --

8 Brigadier Forster-Knight -- tell us that he thought that

9 he took over from you on about 1 May, so perhaps

10 a little bit later. Might he be right about that?

11 A. He might be, sir, yes.

12 Q. Thank you. I think, subsequent to Op Telic 1, Colonel,

13 you were promoted full colonel; is that right?

14 A. That's correct.

15 Q. You served as the provost marshall for HQ Land --

16 A. Yes, sir.

17 Q. -- and subsequently as provost marshall for the HQ

18 Allied Rapid Reaction Corps, a NATO post; is that right?

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

20 Q. And you retired from the army as a full colonel in 2008?

21 A. Correct, sir.

22 Q. May I turn then to aspects relating to your military

23 training. You tell us, not surprisingly, that your

24 first military training was at Sandhurst. Whilst you

25 were at Sandhurst, what was the essence of any training

1 you received about how prisoners should be treated?

2 A. It would have been included as part of our instruction
3 on the law of armed conflict.

4 Q. What was, in a nutshell, the essence of what you learned
5 at Sandhurst about how enemy prisoners should be treated
6 and handled?

7 A. Be treated humanely in accordance with the
8 Geneva Conventions, sir.

9 Q. But did that training descend into any detail as to what
10 humane treatment would actually mean on the ground?

11 A. I can recall some examples, sir. It included, for
12 example, that prisoners had to be kept safe, had to be
13 allowed to keep their gas masks, they had to be fed,
14 watered, allowed to sleep and treated generally
15 humanely.

16 Q. And that message and those sort of examples, was that
17 something which you later went on to, first of all,
18 receive as part of your individual training directives
19 in annual training that you yourself received?

20 A. It was, sir.

21 Q. And were you involved in giving similar training to more
22 junior officers and to soldiers?

23 A. As a junior officer myself, sir, one of my
24 responsibilities would have been training my men in
25 those rules.

1 Q. As part of the standard, if you like, annual training,
2 would that be?

3 A. Correct, sir.

4 Q. You tell us in your statement that when you went to
5 Staff College, as you remember it, the training in
6 relation to prisoners dealt principally with the
7 logistics of prisoner-handling. Would that be right?

8 A. Yes, sir.

9 Q. Do you, in fact, recall at any stage at Staff College
10 having a part of the training which dealt with
11 counter-insurgency?

12 A. Yes, sir.

13 Q. As part of that part of the course at Staff College, did
14 you come across the Heath ruling or the report from
15 Lord Parker from 1972?

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

17 Q. At any stage prior to deployment on Op Telic 1, do you
18 think that you were aware of the so-called Heath ruling
19 about the five techniques?

20 A. I think I may have been aware as a member of the general
21 public, sir, rather than through anything I was formally
22 told by the army.

23 Q. It wasn't something covered, for example, in
24 pre-deployment training for Northern Ireland?

25 A. No, sir.

1 Q. You tell us, though, I think, that you did have specific
2 RMP training in Chichester as to how to handle your own
3 soldiers and prisoners -- that is when the RMP took
4 soldiers into custody. Would that be right?

5 A. That's correct, sir, yes. Sorry, can I adjust that?

6 Q. Yes, of course.

7 A. The training we received as military policemen is
8 handling of prisoners at the time of arrest, prior to
9 being handed over to a detention facility, whether it is
10 a guard room or elsewhere. So it is not the custody so
11 much; it is the arresting.

12 Q. The arrest phase.

13 Now, in dealing with that -- it may be an obvious
14 point, but I should cover it -- was anything said at all
15 about depriving prisoners -- in that sense British
16 soldiers -- of their sight at all? Would that have been
17 covered one way or the other?

18 A. Not specifically, but it would be included as part of
19 the Police and Criminal Evidence training and the
20 Judges' Rules training which we received, which gave
21 direction on how prisoners were to be handled.

22 Q. In relation to that training, then, was anything said
23 one way or the other about deprivation of sight of
24 prisoners?

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

1 Q. So far as handcuffing or plasticuffing is concerned, is
2 that a matter on which you would have had training?

3 A. Yes, sir.

4 Q. How did you understand that prisoners should be cuffed?

5 A. Are you talking about plasticuffing or handcuffing now,
6 sir.

7 Q. Plasticuffing.

8 A. Plasticuffing should be only undertaken when required
9 for safety or security reasons and plasticuffs must be
10 applied sufficiently tight to keep the prisoner secure,
11 but in such a manner that it doesn't restrict the blood
12 circulation around the hands, and they should be
13 plasticuffed to the front of their body to allow them to
14 break their fall if they trip.

15 Q. So far as RMP training is concerned, that requirement to
16 cuff to the front of the body, to the rear [sic], was
17 that something which was common currency within the RMP
18 before 2003?

19 A. To the front, sir, yes.

20 Q. Yes. You tell us that, as part of pre-deployment
21 training, there was an exercise that took place in
22 Germany -- is that right -- in December 2002.

23 A. Yes, sir.

24 Q. If I can paraphrase it, you say that your approach to
25 that was effectively to seek to overload the companies

1 that were under your command on the exercise to see how
2 they dealt with the pressures. Would that be, in
3 general terms, correct?

4 A. That was one of the aims, sir, yes.

5 Q. Of course. As one part of that exercise -- no doubt
6 only a small part of it -- is it right that one of the
7 tasks that you gave was for the RMP to simulate the
8 transport of a high value prisoner of war?

9 A. Correct, sir.

10 Q. Do you know, in relation to that part of the
11 pre-deployment training, whether the high value prisoner
12 would have been hooded or otherwise had his sight
13 deprived?

14 A. They would not have been hooded, sir. They may have had
15 blacked-out goggles or a blindfold applied when entering
16 a secure location.

17 Q. You say not hooded, but perhaps blacked-out goggles or
18 a blindfold. How would those carrying out the exercise
19 have known that hooding wouldn't be appropriate?

20 A. Because that would have been part of the standard
21 training, sir.

22 Q. Can we turn to that, then, in terms of your training
23 generally on sight deprivation? Had you come across the
24 deprivation of sight of prisoners at all during your own
25 training?

1 A. Only in the context that they may be -- they may have
2 blacked-out goggles or blindfolds applied when they
3 enter a secure location to keep information safe.

4 Q. The distinction you appear to draw -- I do want you to
5 correct me if I am wrong -- in your statement is that,
6 insofar as you saw sight deprivation during training, it
7 was by blindfolding or goggles and not by hooding. Is
8 that right?

9 A. No, sir, that's not correct. What I'm saying is that
10 I read of the allowance of blindfolding and blacked-out
11 goggles. I did not see it being undertaken on exercise.

12 Q. Can we just have a look in that case -- thank you -- at
13 paragraph 19 of your statement at BMI07360? You did
14 tell us in the middle of the paragraph:

15 "In the RMP we were taught to use blindfolds or
16 goggles ..."

17 What, then, did you mean by that? That that was
18 purely theoretical training that you had read about?

19 A. Either read about or had been presented at lectures,
20 yes, sir.

21 Q. Had anything been mentioned one way or the other about
22 the use of hoods in such training, either saying it was
23 allowed or saying that it was prohibited or was it just
24 something that wasn't covered?

25 A. I don't recall it being specifically mentioned, but the

1 implication that blindfolding and goggling were
2 mentioned but hooding wasn't was that only the former
3 two could be used.

4 Q. It may be asking a lot and I don't want you to guess,
5 but are you able to help us with what documents or what
6 training materials it was that you saw that contained
7 the instruction about the use of blindfolds or goggles?

8 A. I don't recall, sir.

9 Q. So come the time of your deployment -- we will come on
10 to what actually happened in Iraq in due course -- but
11 just on the eve of deployment, as it were, what would
12 your understanding have been about whether hessian
13 hoods, for example, could be used to deprive prisoners
14 of their sight?

15 A. They were not to be used.

16 Q. Not to be used at all?

17 A. Not to be used at all, sir.

18 Q. If you look just in paragraph 19, it may be thought that
19 you were saying something slightly different in your
20 statement, where you said, "... I expect that I would
21 have thought that it was legitimate to hood a prisoner
22 where absolutely necessary for security reasons and
23 where there were no other methods of blindfolding
24 available", and then, "only for the minimum time
25 necessary".

1 A. What I'm referring to here, sir, is a unit in contact
2 fighting a war and where no other means are available
3 and we still have to take that prisoner to somewhere
4 secure. It may be that the only method possible is to
5 cover them with some form of hood or a jacket or
6 something like that. It is not desirable, but in
7 a war-fighting crisis, when lives are at risk, you may
8 have to take a balanced judgment on that. But if you
9 do, you have to be able to explain to a court or an
10 inquiry why you used such methods and it has to be for
11 the minimum amount of time possible and with a minimum
12 use of force.

13 Q. In extremis, if nothing else is available, and then only
14 for security purposes and then only for the minimum time
15 possible. Would that be right?

16 A. And if you could justify it afterwards, yes, sir.

17 Q. Had you come across any suggestion or concept in
18 training that the use of sight deprivation -- whether by
19 hooding or by blindfolds or goggles -- might have an
20 ancillary effect or an ancillary benefit of maintaining
21 the shock of capture?

22 A. No, sir.

23 Q. So far as stress positions are concerned, had you had
24 any training one way or the other on whether or not
25 stress positions could legitimately be used?

1 A. As a military policeman, sir, I had training that stress
2 positions were not to be used.

3 Q. Where had that come in during your training?

4 A. That came in during my general police training with
5 regards to how we were allowed to interview British
6 soldiers who we were interviewing for discipline reasons
7 or for crime.

8 Q. Let us just have a look at paragraph 23 of your
9 statement, please, at BMI07361. It did appear to be
10 saying there -- perhaps you can clarify it for us --
11 that you did not recall -- three lines up from the
12 bottom of paragraph 23:

13 "I do not recall ever specifically being told by
14 anyone in the army that these techniques were banned."

15 A. That is my recollection, yes, sir.

16 Q. So your understanding that stress positions were
17 prohibited came from where exactly?

18 A. It came from my police training, sir.

19 Q. Forgive me, it may be me, but when you say in your
20 statement, "I do not recall ever specifically being told
21 by anyone in the army ...", was your police training not
22 being delivered by people in the army?

23 A. It was. I think what I am trying to differentiate
24 between, sir, is my understanding as a policeman was
25 I could not apply stress positions or white noise

1 because evidence gathered in that way would not be
2 admissible in court or a court martial. I do not recall
3 being told by the general army that stress positions and
4 white noise were not to be used anywhere else in the
5 army.

6 Q. Well, whoever had provided you with the training --
7 whatever branch of the army they came from -- had you
8 been told specifically that stress positions were not to
9 be used?

10 A. I go back to my previous answer, sir. I was told by
11 military police specialists within the army that we were
12 not to use stress positions or white noise when
13 interviewing suspects. I don't recall at any time being
14 told by anybody in the army that nobody in the army was
15 to use stress positions or white noise.

16 Q. I follow. Again, then, taking matters on the eve of
17 your deployment, if you like, what would your
18 understanding have been as to whether or not it was
19 legitimate for stress positions to be used on prisoners
20 of war or detainees taken by British soldiers?

21 A. My understanding would be that they were contrary to the
22 Geneva Convention and therefore not allowed.

23 Q. Thank you. You tell us in your statement -- is this
24 right -- that you did fully understand that food and
25 water had to be provided for prisoners --

1 A. Correct, sir.

2 Q. -- and that they should not be deprived of sleep.

3 A. Correct, sir.

4 Q. May we move on then, please, to Op Telic 1 and to
5 preparations for it and your rank and role and so on.
6 You told us that you commanded the 1st Regiment of the
7 RMP, but that you had a dual role in that you were also
8 provost marshall for 1 (UK) Div. Is that right?

9 A. That's correct, sir.

10 Q. Dealing then with those two roles, first of all, you
11 were heading the RMP, is this right, effectively as the
12 commanding officer of that regiment?

13 A. Correct, sir.

14 Q. And you had principally two companies under your
15 command?

16 A. For Op Telic 1, yes.

17 Q. In the other role as provost marshall, should the
18 Inquiry understand that you were the senior staff
19 officer advising the division on provost and RMP
20 matters?

21 A. Yes, sir.

22 Q. In that sense you were acting effectively as a staff
23 officer at grade 1; would that be right?

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

25 Q. In the role of CO of the RMP -- perhaps we don't need to

1 go into the detail because you've set it out in your
2 statement -- but would a significant part of your role
3 in the war-fighting phase have involved road movements
4 and the complications of getting the traffic flow right
5 for the battle?

6 A. That was very much the main concern, yes, sir.

7 Q. And it may have changed since and been supplemented
8 since, but, at least as of 2002/2003, was that
9 a traditional part of the responsibilities of the RMP in
10 an operational theatre?

11 A. Yes, it was, sir.

12 Q. Your chain of command, who did you report to?

13 A. I reported directly to the deputy chief of staff,
14 Colonel Andrew Cowling.

15 Q. And through him, ultimately, to the GOC?

16 A. Correct, sir, yes.

17 Q. Can you help us, then, with those who reported in to you
18 perhaps just briefly? The two companies would have been
19 commanded -- is this right -- by officers at the rank of
20 major?

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

22 Q. What about in the provost role? Did you have people
23 reporting to you in your provost role as well?

24 A. I had one staff officer, a grade 2 staff officer, who
25 work in the divisional main headquarters.

1 Q. You tell us in your statement that of the two companies,
2 it was, I think, 111 Provost Company that was deployed
3 forward with 7 Armoured Brigade; is that right?

4 A. Correct, sir, yes.

5 Q. Was it that company then, 111 Provost Company on
6 Op Telic 1, that was responsible for the area of Basra?

7 A. Correct, sir, yes.

8 Q. Can you help us with this? As well as Basra, did that
9 company have to cover a wider area?

10 A. Yes, they did, particularly during the start of
11 operations when they had to support the deployment
12 routes from the Kuwaiti border through to Basra as the
13 formation advanced.

14 Q. We don't perhaps need every detail about it, but can you
15 give us an understanding of how many officers there
16 would have been, roughly speaking, in that company and
17 what sort of area they would have been covering
18 geographically?

19 A. There would have been approximately 100 or so junior
20 NCOs. They would have been deployed in groups of four
21 to eight. They would have been covering a distance of
22 several -- sorry, a couple of hundred kilometres of hard
23 terrain. They would have been working in isolation for
24 much of that time.

25 Q. Now dealing still, if I may, please, with the

1 war-fighting phase -- and we will look to what happened
2 after in due course -- dealing with the war-fighting
3 phase, in the planning for that phase, was it envisaged
4 that the RMP, under your command, would have any
5 significant role in relation to prisoners of war?
6 A. No, sir.
7 Q. The task of moving prisoners of war from point of
8 capture back to brigade and then divisional holding
9 points, in general terms who had that responsibility?
10 A. That was the responsibility of the capturing unit and
11 then it was the responsibility of the brigade and
12 divisional troops.
13 Q. We heard from Brigadier Forster-Knight -- is this
14 right -- that so far as the divisional holding centre is
15 concerned at the TIF, that there was a different
16 regiment of the RMP who were involved with the Logistics
17 Brigade who would have been assisting with the prisoner
18 of war handling organisation --
19 A. Yes, sir.
20 Q. -- and indeed a small detachment of the military provost
21 service there as well?
22 A. Correct, sir.
23 Q. Did you have anything to do with them?
24 A. No, sir.
25 Q. Now against that background, please, Colonel, of what

1 your responsibilities were and the role of the RMP for
2 the war-fighting phase, would you nevertheless have been
3 present at some of the planning meetings before the war
4 fighting broke out where prisoners of war were
5 discussed?

6 A. I was at meetings where discussion on prisoners of war
7 formed part of a general discussion, yes, sir.

8 Q. Were you aware, for example, in general terms, about the
9 concerns of resourcing of dealing with prisoners of war
10 and whether the Logistics Brigade and the prisoner of
11 war handling organisation would have enough boots on the
12 ground to deal with the number of prisoners of war?

13 A. Not in the terms you just asked me, sir, no. I was
14 aware of prisoners of war being discussed at the
15 divisional headquarters in terms of being a logistic
16 concern because they would require to be fed, watered,
17 medically evacuated, et cetera, and all that would place
18 strain on divisional logistics support.

19 THE CHAIRMAN: Pause a moment, please, Colonel. You speak
20 rather quickly. All that you say is being put on
21 a running transcript and it is very difficult if you
22 talk very fast.

23 A. I apologise, sir.

24 THE CHAIRMAN: Please be kind enough to slow down.

25 MR MOSS: During the sort of meetings that you did attend,

1 would Colonel Mercer have been present?

2 A. Yes, sir.

3 Q. Do you have any recollection of any concerns that

4 Colonel Mercer was raising before the war fighting broke

5 out in relation to prisoners of war?

6 A. Not with regards to prisoners of war, sir, but I do

7 recall him having concerns with regards to internees and

8 detainees.

9 Q. Still dealing with the planning stage before war

10 fighting broke out, what do you remember about his

11 concerns so far as detainees and internees were?

12 A. Sir, his concerns were that there may be confusion as to

13 the various statuses of prisoners of war, internees and

14 detainees, and he expressed concerns that, when we ended

15 the war fighting and became an occupying force, that we

16 had responsibilities to discharge as an occupying force.

17 Q. Did Colonel Mercer give any guidance as to what should

18 be done, if there was any doubt, as to the status of

19 somebody who had been taken prisoner?

20 A. Yes, sir. If in doubt we were to treat the prisoners of

21 any sort as a prisoner of war and give them the surety

22 that's afforded to prisoners of war by the Geneva

23 Convention.

24 Q. Now if you just pause there for a moment, I am just

25 going to ask, do you have a cipher list on the table in

1 front of you with soldiers' names -- do not use any of
2 the names, but do you have a cipher list there?

3 A. I do, sir, yes.

4 Q. Please do not read the name out or use the name at all,
5 but would you just look at the name that is alongside
6 the cipher "S002"?

7 A. Yes, sir.

8 Q. Again do not use the name, but is his name familiar to
9 you?

10 A. No, sir.

11 Q. At any of these meetings, prior to the war fighting
12 breaking out, do you remember the subject of hooding
13 coming up and the possible need to hood prisoners of
14 war?

15 A. No, sir.

16 Q. If that had arisen during a meeting at which you had
17 been present, do you think that's something that would
18 have stuck in your mind and which you would have
19 remembered?

20 A. Yes, sir.

21 Q. There is some suggestion that at those sort of meetings,
22 prior to the war fighting breaking out, that hooding had
23 come up and that it may be said that Colonel Mercer had
24 agreed at that stage that hooding for security purposes
25 might be legitimate. Did you ever hear him say anything

1 along those lines?

2 A. Not to my recollection, sir, no.

3 Q. Now, you have explained the focus that you would have
4 had on the traffic movements and told us that that would
5 have been the majority of your work and you told us
6 about the RMP who were with the Logistics Brigade and
7 the involvement of the military provost service.
8 Understanding all of that, would you nevertheless have
9 had some role in advising the deputy chief of staff, the
10 chief of staff and the GOC on matters relating to
11 prisoners and detention?

12 A. In terms of process, yes, sir. If I was asked, for
13 example, "How do we ensure that we backload prisoners
14 effectively?" or "What is the best form of
15 documentation?" or "How do we record evidence against
16 them?" -- so the process and procedures may be something
17 that I could be asked about.

18 Q. What about on the physical side of prisoner-handling,
19 how they should physically be treated?

20 A. No, sir, that is a legal matter.

21 Q. Do you remember at all a debate coming up -- perhaps in
22 late March/early April -- about whether or not it was
23 legitimate for prisoners at the JFIT, within the TIF at
24 Um Qasr, to be hooded?

25 A. No, sir.

1 Q. Might it be that you were aware or even involved in that
2 at the time and you've forgotten or would you be
3 confident that you simply weren't aware of it and were
4 not involved?

5 A. The latter, sir.

6 Q. May we look in that context, please, at a meeting which
7 I think the record shows you did attend on 2 April. If
8 we look, first, at MOD011491, please. This is the
9 agenda for a meeting between the NCC, the national
10 contingent command, and 1 (UK) Armoured Division for
11 2 April. If we go on, please, to some minutes of that
12 meeting at MOD019801 -- can we just have the top quarter
13 of the document highlighted, please -- do we see first
14 of all that the date of the meeting is 2 April and that
15 those attending included Colonel Mercer and yourself?

16 A. Correct, sir, yes.

17 Q. You have that. Thank you. Just a couple of matters
18 about that first, please. In paragraph 2 one sees that
19 the first item on the agenda was prisoners of war and
20 Colonel Mercer was explaining that the current number of
21 PWs at the divisional collection point was now over
22 3,000.

23 Jumping down just a little later to paragraph 2, it
24 was being recorded that you agreed that you would
25 provide between four to six members of 5 Regiment RMP,

1 headed up by the SIB, to start drawing together evidence
2 in relation to UK prisoners of war. This is in the
3 context of Article 5 tribunals to determine their
4 status. Do you have any recollection of that matter?

5 A. Yes, I do, sir, and I recall that conversation. What
6 I would correct is that I wasn't in a position to agree
7 to provide, but what I was in a position to do was to
8 arrange for members of 5 RMP to provide that support.

9 THE CHAIRMAN: A bit slower, please.

10 MR MOSS: I think you told us earlier in your evidence that
11 they were separate to you in the chain of command,
12 5 Regiment RMP; would that be right?

13 A. Yes, sir.

14 Q. Were they represented at the meeting?

15 A. Not directly, sir, no.

16 Q. Just this, then, on paragraph 5. We see that law and
17 order was the next item on the agenda and that
18 Colonel Mercer was producing a simplified outline of
19 powers available for law and order, both for the troops
20 on the ground and for the Royal Military Police.

21 "This met with general approval and was seen as
22 being workable on the ground."

23 You were then recorded as saying that the RMP was in
24 a position to attend the scene of a crime if a person
25 was temporarily detained by the brigades and that you

1 hoped to have police stations in each brigade area
2 shortly.

3 "The issue of trials for those who committed
4 a criminal offence was discussed and it was recognised
5 that court martial was an option but there might be
6 political sensitivities."

7 Just pausing there, does that help to bring back the
8 stage that had been reached by 2 April and this
9 reference to you talking about hoping to have police
10 stations in brigade area of operations?

11 A. Yes, it does. The war fighting had been, to all intents
12 and purposes, completed. We became aware that there was
13 a breakdown in law and order. The Iraqi police weren't
14 in place and therefore we had to assume responsibility
15 for providing law and order within Iraq.

16 Colonel Mercer's concern was that we provided an
17 appropriate level of evidence in order to detain what
18 I would call "ordinary decent criminals" and the role of
19 the Royal Military Police was to assist the ground
20 troops in recording such evidence.

21 Q. Now, the Inquiry has heard quite a lot of evidence that
22 at around this time -- the end of March/beginning of
23 April -- there was a discussion going on -- to an extent
24 a debate and a dispute -- about the use of hooding and
25 that that had involved Colonel Mercer. We see that

1 Colonel Clapham was attending this meeting. Do you
2 remember what his role was?

3 A. I don't recall, sir. If I could go to the top of the
4 document, it might remind me of who he is.

5 Q. Yes. I think we see him listed as Adjutant General
6 Corps in the Army Legal Service.

7 A. Correct, sir, so it looks as if he would have been
8 representing the permanent joint headquarters in a legal
9 capacity.

10 Q. Do you remember either Colonel Mercer or Colonel Clapham
11 or anybody else at this meeting touching upon aspects
12 relating to the physical handling of prisoners, hooding
13 or what was happening at the JFIT or anything like that?

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

15 Q. Moving on, then, to the period after the immediate war
16 fighting -- and I think that we have heard that Basra
17 fell towards the end of the first week in April. Does
18 that sound about right, to put it in context?

19 A. It does, sir, yes.

20 Q. You tell us that there were some RMP -- you gave the
21 example of 111 Provost Company -- who were forward with
22 the brigades. Once 7 Armoured Brigade had entered
23 Basra, what would the role of the RMP within Basra have
24 been?

25 A. It might be useful at this stage, sir, if I can explain

1 something about the relationship between an MP company,
2 a general police duties company and a brigade. Unlike
3 the Special Investigation Branch, which are independent
4 and belong to the provost marshall army, the general
5 police duties companies, the ones we are discussing, are
6 part of a brigade and support the brigade directly.
7 They are trained by the brigade and operate under the
8 auspices of the brigade. So the short answer to your
9 question is they would do whatever the brigade required
10 them to do.

11 In this particular case they were used to support
12 the logistic re-supply movement and they were used to
13 provide policing-type advice and expertise to the
14 battlegroups who were patrolling the streets.

15 Q. I want to obvious concentrate on the latter, but perhaps
16 it would be helpful just briefly if you could give us
17 a flavour of the former responsibility where you talked
18 about the logistic resupply movement. What, in real
19 terms, just in essence, did that involve?

20 A. What that involved -- the implication was that not all
21 military policemen were available to do a policing role.
22 Some of them were still deployed on the main supply
23 routes, manning critical points, ensuring that traffic
24 continued to move and deconflicting traffic congestion
25 whenever it arose.

1 Q. So this area of operations of 7 Armoured Brigade was
2 quite a large area of operations geographically; is that
3 right?

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

5 Q. 111 Provost Company around about 100-strong?

6 A. Correct.

7 Q. Some of those, you say, totally tied up with matters
8 relating to logistics and manning points and so on?

9 A. Yes, sir.

10 Q. In terms of dealing, then, with policing matters and
11 taking detainees -- criminals or suspected insurgents,
12 that sort of thing -- can you help us with what the RMP
13 in Basra may have been involved in?

14 A. Yes, sir. Their main role would be for one or two
15 members of the Royal Military Police to accompany
16 infantry patrols. If that infantry patrol then detained
17 an Iraqi civilian, the intention was that the military
18 policeman would record a short notebook entry from the
19 arresting foot soldier and they would then retain any
20 physical evidence, putting it into evidence bags and
21 putting exhibit labels onto those bags.

22 Q. Now we will come on to FRAGO 79 and the early orders in
23 a moment. Just dealing with that period in April and
24 the weeks after Basra had fallen when you were still in
25 this post -- it's not a criticism of you, please

1 understand, in any way -- but were the RMPs present in
2 Basra in sufficient numbers to carry that out in any
3 meaningful way?

4 A. No, sir, because there won't have been sufficient RMP to
5 go out with every patrol.

6 Q. If we just have a look at paragraph 51 of your
7 statement, if we may, at BMI07368. I think you give us
8 some examples of sort of things that the forward
9 deployed RMP companies would have been doing. You say
10 that you would have been kept informed of it. In
11 relation to prisoners you give us a first example, the
12 fact that the RMP may be responsible for escorting high
13 value prisoners. Is that right?

14 A. That's correct, sir.

15 Q. Secondly, that they may have provided support and advice
16 to the military provost service commanders if required
17 about the availability of vehicles and those sort of
18 matters.

19 A. That was just an example, sir, yes.

20 Q. Perhaps more relevantly, at 51(c), procedural tasks in
21 relation to prisoners of war, for example completing
22 documentation for prisoners captured by 7 Brigade. Is
23 that right?

24 A. That's right, sir.

25 Q. Would that have continued, after the war fighting, with

1 civilians who might be detained, that sort of
2 responsibility?

3 A. It would, sir, yes.

4 Q. Fourthly, when dealing with criminals:

5 "... as an occupying power, the RMP role was to
6 ensure that proper legal processes were being followed
7 in relation to evidence being collected and records
8 being kept."

9 A. Correct, sir.

10 Q. Does that tie in with the evidence you gave earlier
11 about what Colonel Mercer's concerns were for the RMP to
12 achieve continuity of evidence and that sort of thing?

13 A. It was, sir, yes.

14 Q. Can we look, then, in that context at one of the early
15 orders which was 1 (UK) Division FRAGO 79. We have that
16 at MOD030980. MOD030979 I think we should go to first.

17 Do we see that this was a divisional order of
18 3 April 2003? It is just at the top of the screen,
19 perhaps expanded --

20 A. Correct, sir, yes.

21 Q. -- to put this into context. If we go down to "Legal"
22 in paragraph 2, first of all, please.

23 "Law and order. See annex A. Attached is a guide
24 for brigades on their legal powers in enforcing law and
25 order in their brigade areas of operations for phases 3B

1 and 4."

2 "Phases 3B and 4", can you remember the meaning of
3 that?

4 A. Phase 4, sir, was the restoration of Iraq as a nation,
5 so 3B, I would imagine, is the prior stage to that. We
6 are talking about post-war fighting.

7 Q. Do you see there:

8 "This direction will evolve to meet requirements and
9 changing circumstances and any questions should be
10 directed to legal branch at Div Main."

11 Do you see that there?

12 A. I do, sir, yes.

13 Q. Do you recall that at the meeting that we looked at
14 earlier of 2 April, Colonel Mercer was saying that he
15 had provided the note that dealt with what the powers
16 were? Does it look like this is the note being
17 distributed -- if we go over now to the next page,
18 MOD030980 -- a guide to public order and safety for
19 phase 3B and 4?

20 A. That looks like it's a document that evolved from that
21 discussion, yes, sir.

22 Q. Thank you. We will just look at a few of the more
23 pertinent aspects of it together for a moment, if we
24 may. On that page at MOD030980, do we see first of all
25 under paragraph 6 that the rules of engagement -- or an

1 aspect of them -- was being set out in that soldiers had
2 the power to stop, search and temporarily detain, and
3 680 Bravo, from the ROE, was being set out, permitting
4 "... the temporary detention of persons posing a threat
5 to coalition forces"; is that right?

6 A. That's right, sir.

7 Q. In paragraph 7, is this familiar, that "It should be
8 noted that the power to stop, search and temporarily
9 detain can be used [at this stage] either if a person is
10 a threat to force security or where someone has
11 committed criminal offences. Both are regarded as
12 'interfering with ... the ... mission". Is that right?

13 A. That's correct, sir.

14 Q. If we go, please, to paragraph 10 over the page, still
15 dealing, I think, at this stage, with the detaining
16 soldier who effects the temporary detention:

17 "Once a person has been temporarily detained, he
18 should either be released or handed over to the RMP (or
19 equivalent) as soon as practicable and, in any event,
20 within six hours. The detainee should always be handed
21 over to the RMP where threat to force security or where
22 he has committed a specified arrestable offence ..."

23 And the specified arrestable offences were set out
24 in a schedule.

25 Just pausing there, should the Inquiry understand

1 that to an extent, when this order was issued on 3
2 April, this was somewhat aspirational, paragraph 10?

3 A. Correct, sir.

4 Q. The Inquiry heard evidence from members of
5 1 Black Watch, who were one of the battlegroups in
6 7 Armoured Brigade, in relation to this very order, that
7 at this time, when they first received it, there simply
8 weren't any RMP in Basra at all to hand those who had
9 been detained over to. Do you follow?

10 A. It would be incorrect for them to say there were no RMP
11 in Basra at all. It may be that they did not have
12 access to those that were in the city.

13 Q. So those that were available would not have been
14 involved in these sort of custodial matters?

15 A. Not at that stage, no, sir.

16 Q. Thank you. We see then, just moving on in the document,
17 so far as the RMP powers are concerned at paragraph 15:
18 "Once the Royal Military Police have attended the
19 scene and the temporary detainee has been handed over or
20 delivered to a police station, then the military police
21 may arrest the temporary detainee."

22 Do we then see, over the page, that various matters
23 such as a caution and then matters such as photographs
24 and fingerprinting were all set out to guard the RMP in
25 terms of what they should do?

1 A. You do, sir, yes.

2 Q. Just this, then, paragraph 16, just a little bit further
3 down the page:

4 "After making the arrest and completing the written
5 custody record, any person arrested for a specified
6 arrestable offence or for reasons of force security
7 shall be transferred to the theatre internment facility
8 within 24 hours."

9 So it seems, doesn't it, that at this stage the
10 timescales that were being dealt with was handing over
11 to the RMP as soon as practicable and, in any event,
12 within six hours -- we saw that earlier on -- and then
13 the duty on the RMP to transfer to the theatre
14 internment facility within 24 hours. Is that right?

15 A. The last part of that isn't a correct assertion, in my
16 understanding. The way perhaps to describe it is that
17 the arresting unit would hand the detained person over
18 to the military police, in effect for booking in, for
19 the recording of facts for the securing of evidence.
20 The Royal Military Police would then hand that person,
21 who had now been formally arrested, back to the
22 arresting unit for them to transport to the theatre
23 internment facility.

24 Q. I follow. So in terms of who was actually doing the
25 transfer down to the theatre internment facility, it

1 would be going back to the arresting troops to effect
2 that transfer?

3 A. Correct. The Royal Military Police role was, in effect,
4 the booking in of that person.

5 Q. But the timescale was, at that stage of it, they are
6 passing on to the theatre internment facility to be done
7 within 24 hours?

8 A. Correct, sir.

9 THE CHAIRMAN: Pausing there, as a matter of practicability,
10 handing over to the RMP, would that mean, in fact, that
11 the RMP would come to where the soldiers or the
12 detainees were or people who had been captured? The
13 processing took place at the same place and then off
14 they went down to the TIF?

15 A. The aspiration, sir, was that that process would take
16 place in the newly identified police stations.

17 THE CHAIRMAN: I follow. So you take them to the police
18 station, wait until they have been processed and then
19 down to the TIF?

20 A. Correct, sir.

21 MR MOSS: Colonel, you explain in your witness statement
22 that, following on from FRAGO 79, one of the areas that
23 you did have direct involvement in in this area was in
24 relation to translating that FRAGO, if you like, into
25 what the RMP responsibilities would be acting under

1 FRAGO 79. Can we look in that context at 1 RMP FRAGO 1?
2 We have that at MOD017012.

3 We see that the date on this is 9 April, so just
4 a few days after that FRAGO that we were just looking
5 at; is that right?

6 A. That's right, sir.

7 Q. Thank you. May we just go to the signature block,
8 please, at MOD017015? We see Major Elmes as the
9 "authenticate" and you as the "acknowledge". Major
10 Elmes, who was she?

11 A. Major Elmes was my second in command. The importance of
12 that in this context was that she remained in the DSG
13 headquarters whilst I was forward deployed with my
14 troops in the centre of Basra. It would have been
15 Major Elmes who drafted this order on my behalf
16 reflecting my intention in it.

17 Q. Thank you. Would you have approved it once it had been
18 drafted by her?

19 A. Given the difficulty with communication, it may have
20 been difficult for me to physically sign a copy of it
21 and approve it, but I would certainly approve the tone
22 and the intention of it.

23 Q. Thank you. Do we see then, just going to MOD017013,
24 which is the second page of this FRAGO, being set out
25 the sort of scenarios where the RMP would be required to

1 make arrests, essentially if they themselves happened to
2 observe activity in 4(a), and then also in 4(b):

3 "A member of the coalition has detained a member of
4 the public ... and has called RMP to the scene to arrest
5 and begin custody procedures."

6 Would that be right?

7 A. Correct, sir, yes.

8 Q. I just want to deal with what some of the technical
9 arrangements were at this stage, just because it bears
10 on custody records and treatment of people who were
11 detained. Could we have a look, please, at paragraph 7?
12 You see there in paragraph 7:

13 "On arrival at the platoon/company headquarters or
14 police station the subject must be presented to an RMP
15 SNCO who will become the 'custody SNCO' and who will
16 initiate custody procedures as follows."

17 Then some details are set out. The concept of the
18 custody SNCO and an RMP SNCO acting in that role, was
19 that something that you were involved in bringing into
20 play?

21 A. It was something -- I was involved in discussing the
22 concept.

23 Q. Why was this concept being introduced of a custody SNCO
24 at this stage?

25 A. Sir, there were two drivers. The first driver was to

1 make sure that we, the British forces, provided the
2 required evidence to continue to detain Iraqi civilians,
3 and it was felt that the Royal Military Police, with
4 their expertise, were best placed to record such
5 evidence.

6 The second driver was that the infantry was still
7 very heavily engaged with patrol activities and what we
8 wanted to ensure was that we weren't tying up infantry
9 men in production of documentation, the securing of
10 evidence, when they would be better used back out on the
11 streets. So it was in order to allieve(?) the arresting
12 infantrymen of their responsibilities as soon as
13 possible.

14 Q. Was there any sense in which the role of having
15 a custody SNCO from the RMP was seen to be a safer means
16 of securing the prisoner?

17 A. That wasn't the intention at the time, sir. The
18 intention was to make it a safer means of recording the
19 evidence.

20 Q. If we just have that put on to the left-hand side of the
21 screen, please, and if we just have paragraph 65,
22 Colonel, of your statement on the right-hand side of the
23 screen at BMI07372. Thank you. Paragraph 65 perhaps
24 can just be expanded. Thank you very much.

25 I think you set out here the five-fold role as the

1 RMP SNCO:
2 "To ensure that there were proper grounds for
3 arrest."
4 Would that be right?
5 A. Correct, sir.
6 Q. "To ensure that there was sufficient evidence to support
7 the arrest."
8 A. Yes, sir.
9 Q. That is the matter that you just referred to.
10 "To ensure that physical evidence was properly
11 bagged and tagged."
12 A. Yes.
13 Q. "To ensure that notification procedures had been
14 followed, notifying both the chain of command and the
15 arrestee's next of kin."
16 A. Yes, sir.
17 Q. And then, next:
18 "To make sure the detainee was passed up the chain
19 as soon as possible."
20 A. Correct, sir.
21 Q. So we should understand, should we, that it was these
22 motivations principally about evidential matters and
23 ensuring that they were followed that was the principle
24 driver, as well freeing up the infantry?
25 A. That is correct, sir.

1 Q. The statement can be taken off the screen and can we go
2 back to the FRAGO, please?

3 Do you recall that, alongside this FRAGO, there were
4 annexes providing forms that were to be completed? Can
5 we just look at the first one, please, at MOD017017,
6 a stop and search form, for example. Do you know who
7 would have drafted these?

8 A. I don't recall, sir, whether they were generic documents
9 or whether they were created specifically for this
10 purpose.

11 Q. Thank you. If we just go on, there are several other
12 forms which I don't perhaps need to take you to. Could
13 we look, please, at MOD017021, annex E, which is
14 a custody record. Is that form familiar to you? Do you
15 know where it comes from?

16 A. Its content is familiar, but I cannot recall whether --
17 again, whether it's a specific form for this operation
18 or whether it was a generic one that pre-existed. But
19 it's based on the sort of information that we would
20 record in peace-time when arresting soldiers.

21 Q. Thank you. If we just go over the page, do we see that,
22 certainly in this FRAGO and this part of the annex that
23 was sent out at the time, under "Record of events during
24 custody", there was a requirement to note all meals and
25 refreshments offered and accepted, all visits and

1 contact with the suspect, all requests and all other
2 events during the custody period? Then there was a box
3 for those to be completed.

4 Do you know where that part of the form would have
5 come from? Again is that something relating to civilian
6 custody back in the UK or --

7 A. It is, sir, yes.

8 Q. Thank you.

9 I just want to move from those orders to ask you
10 some questions about prisoner-handling more generally.
11 Were any concerns raised with you up through the chain
12 of command about how prisoners were being handled at
13 battlegroup level?

14 A. No, sir.

15 Q. Did you, in fact, yourself, have any involvement with
16 how prisoners were being treated at battlegroup level?

17 A. No, sir.

18 Q. What was your understanding, then, of how prisoners
19 would be treated if they were taken by the infantry at
20 battlegroup level? Can you help us with that?

21 A. My understanding, sir, was that they would be treated in
22 accordance with the Geneva Convention.

23 Q. Would they be treated, as far as you understood, in the
24 same way as a British soldier who was detained back in
25 the UK for an offence or would there be any difference

1 as you understood it?

2 A. There would be some practical differences. For example,
3 a soldier detained in the UK would have the right to
4 make phone calls, to have a solicitor, et cetera. Those
5 sort of safeguards wouldn't be applied to a prisoner of
6 war. But in terms of the quality of treatment, in terms
7 of humaneness and keeping them safe, the same sort of
8 standards would be applied, yes, sir.

9 Q. In terms of how that would be organised, perhaps we can
10 look at paragraph 70 of your statement at BMI07373. You
11 tell us there in the second sentence that you had no
12 involvement in prisoner-handling at battlegroup level,
13 not knowing how the details of how in practice it
14 operated, but your understanding was that
15 responsibilities largely reflected those that applied to
16 the holding of your own soldiers in guard rooms during
17 peace-time. Is this right, namely that the provost
18 sergeant was responsible for running the guard room and
19 he reported ordinarily to the RSM?

20 A. That is correct, sir.

21 Q. But the details of how that might be effected actually
22 in theatre, that was beyond your knowledge and
23 experience, was it?

24 A. Yes, sir.

25 Q. Were you aware at all, one way or the other, as to

1 whether hooding was something that was going on at
2 ground level while you were there present on Op Telic 1?
3 A. I was not aware of it going on, sir.
4 Q. If you had have been aware of it going on, would it have
5 been a matter that concerned you?
6 A. Yes, sir.
7 Q. Because ...?
8 A. Because it would be contrary to my understanding of the
9 Geneva Convention.
10 Q. Can I ask you very finally, please, about the tactical
11 questioning? I think you tell us that you have not have
12 any training in tactical questioning or interrogation;
13 is that right?
14 A. That's right, sir.
15 Q. You explain in your statement, indeed, that that's
16 something that you think is deliberately kept away from
17 the RMP. Can you just explain that for us?
18 A. Yes, sir. As a matter of policy the Royal Military
19 Police do not become involved in tactical questioning or
20 interrogation of prisoners of war. That is because any
21 evidence that Royal Military Police gather may be used
22 in criminal proceedings or similar and, therefore, we
23 don't want to taint that evidence if it's being gathered
24 in a way that doesn't comply strictly with the Police
25 and Criminal Evidence Act or similar laws.

1 Q. Now you tell us in your witness statement -- and this is
2 the only part of your evidence relating to subsequent
3 changes that I want to touch upon just briefly -- that
4 you are aware that the provost marshall army has been
5 made accountable -- the accountable officer and the
6 inspectorate for detention in guarding -- but you say
7 that there's an exception to that which was secured,
8 that the responsibilities did not include the wellbeing
9 of prisoners during tactical questioning. Do you
10 remember writing about that in your witness statement --

11 A. I do, sir, yes.

12 Q. -- at paragraph 81. We don't need to have it on the
13 screen. I only want to ask you this: do you understand
14 why that exception to those responsibilities was
15 secured?

16 A. My understanding from the previous provost marshall army
17 was that it was secured because he did not feel that he
18 had sufficient visibility of what took place during the
19 interrogation phase.

20 Q. Yes. Thank you. There may be some more questions for
21 you.

22 A. Thank you, sir.

23 THE CHAIRMAN: I think we will make a start, Mr Singh.

24 Questions by MR SINGH

25 MR SINGH: Can I start with your witness statement at

1 paragraph 8, which is at BMI07357.

2 A. Yes, sir.

3 Q. In the middle of that paragraph, as we can see, you
4 state:

5 "I recollect that we were taught that prisoners were
6 to be treated humanely and in a way that we would want
7 to be treated ourselves if we were taken prisoner."

8 A. Yes, sir.

9 Q. Just starting with the basics, if I may, that presumably
10 would include the well-known proposition that a prisoner
11 can only be required to give certain details, name,
12 rank, number and date of birth; is that right?

13 A. It does, sir, yes.

14 Q. So far as your training was concerned, there were no
15 different rules as to what would constitute humane
16 treatment, were there, in relation to civilian detainees
17 as contrasted with prisoners of war?

18 A. No, sir. If in doubt, we were to treat everyone as
19 a prisoner of war and give them those safeguards.

20 Q. Thank you. Just to state the obvious, it would follow,
21 therefore, wouldn't it, that things like swearing at
22 people, insulting them, threatening them, those would be
23 your no go areas, wouldn't they?

24 A. They would, sir, yes.

25 Q. Can I just go to another aspect of your statement at

1 paragraph 22, please? It's at BMI07361. Here you are
2 dealing with stress positions and you state:

3 "My understanding of a stress position is that it is
4 a physical position that someone may be forced to adopt
5 which is designed to cause discomfort, for example,
6 being made to squat with your arms stretched out."

7 A. Yes, sir.

8 Q. Just to be clear about some answers you gave to Mr Moss
9 earlier, was it your view that stress positions as
10 defined by you there were contrary to the
11 Geneva Conventions?

12 A. Yes, sir.

13 Q. From your experience and your training, is that
14 something that was generally conveyed in training?

15 A. I would need to qualify my answer, sir.

16 Q. Yes.

17 A. In general training I don't recall it being specifically
18 mentioned or prohibited.

19 Q. I see.

20 A. I don't know, because I have never been trained in
21 interrogation techniques, whether or not it's covered in
22 tactical questioning.

23 Q. I see. Turning on to that topic, then, if I may.

24 A moment ago, in answer to questions from Mr Moss, you
25 said, I think -- in substance, what you say at

1 paragraph 18 of your witness statement at BMI07360, if
2 we could just have that please -- that the RMP are
3 deliberately not involved in tactical questioning or
4 interrogation "... because the evidence that the RMP
5 gather on cases must be admissible in criminal
6 prosecutions, hence our training to question in
7 accordance with PACE ..."

8 A. Correct, sir.

9 Q. The implication appears to be from that paragraph that
10 there may be techniques used in tactical questioning or
11 interrogation which would make things inadmissible in
12 evidence. Is that a fair reading of that paragraph?

13 A. I haven't been trained in tactical questioning, sir, so
14 I don't know what methods they would use. But it is
15 designed to make sure that there is no doubt in the
16 court's mind that evidence being given by a royal
17 military policeman has been gathered in a way that
18 satisfies civilian law.

19 Q. Forgive me if I just press you a little further on this.
20 If the RMP are expected to conduct questioning in
21 accordance with PACE and if, as you have told us, all
22 people in the army are expected to treat prisoners
23 humanely in accordance with Geneva Conventions, then
24 what techniques do you have in mind when you write that
25 paragraph that might go beyond what would be permissible

1 for the RMP?

2 A. There are safeguards put into, for example, the Police
3 and Criminal Evidence Act that don't apply to prisoners
4 of war; for example, provision to make telephone calls,
5 provision have a solicitor present, the timing of
6 breaks, the recording of evidence -- verbal evidence --
7 on an audio tape, for example. All those safeguards
8 which are put into PACE would not necessarily apply to
9 a prisoner of war.

10 Q. I see. Just to be clear, then, you are not suggesting,
11 are you, Colonel, in relation to the physical or
12 psychological treatment of a detainee, that there's
13 something that you are aware of that might be done in
14 tactical questioning or interrogation which couldn't be
15 done, for example, by the RMP?

16 A. I am not aware, because I have not been trained in
17 tactical questioning, of methods that they might use for
18 tactical questioning which would -- which a royal
19 military policeman couldn't do were it not for this
20 concern about tainting evidence.

21 Q. Moving on to a different topic if I may. It arises from
22 paragraph 74 of your witness statement, which is at
23 BMI07374. You state there, Colonel, that:

24 "Nor was I aware of any concerns being raised in
25 relation to prisoner-handling, by the ICRC or anyone

1 else, during the time I was deployed on Op Telic 1."

2 Then you helpfully remind us of the time of your
3 handover, to the extent that you handed over command in
4 around mid April 2003. Are you sure about the evidence
5 you give in that paragraph?

6 A. That's correct to the best of my recollection, yes, sir.

7 Q. It's just that the Inquiry now has heard quite a lot of
8 evidence about concerns that were being raised by the
9 ICRC in late March and early April, which is before your
10 handover. Were you not aware of any of that?

11 A. No, sir. It may be helpful if I explain my geographical
12 position as well as the command status. At the time we
13 are now talking about, I was forward deployed with my
14 companies in Basra City. We didn't have telephone
15 contact, we couldn't guarantee radio contact, and so my
16 contact with the divisional headquarters, which is where
17 such complaints might eventually reach, would have been
18 every three or four days. During my visits to those
19 divisional headquarters every three or four days, I was
20 not made aware of any such concerns.

21 Q. You had dealings, you told us, with Colonel Mercer.
22 From any discussion with him, were you not made aware of
23 the ICRC's concerns about hooding, for example?

24 A. No, sir.

25 Q. I see. Turning to a different topic, if I may, you were

1 shown a document a moment ago which begins at MOD017012
2 from 9 April 2003. You remember that? Just two pages
3 further on, if I can look at one passage, please, at
4 MOD017014, paragraph 7, in the middle of that, can I ask
5 you specifically about subparagraph (e):

6 "The subject's NOK ..."

7 I take it that is "next of kin".

8 A. It is, sir.

9 Q. "... is to be informed of the arrest unless this will
10 hinder the administration of justice or adversely affect
11 force security."

12 That would accord with best practice, wouldn't it?

13 A. It would, sir, yes.

14 Q. That would be, wouldn't it, something which helps to
15 protect the welfare of the detainee as opposed to
16 safeguarding evidence, for example?

17 A. Correct, sir, yes.

18 Q. The last topic I want to ask you about is this: as
19 I understand it, Colonel, you were at the relevant time
20 effectively the Chief Constable of the Royal Military
21 Police. Is that a fair way of putting it?

22 A. If I may I ask, sir, first what you are referring to as
23 being the relevant time.

24 Q. I am talking about in 2003.

25 A. During the war-fighting phase, yes, sir?

1 Q. Yes.

2 A. But I was not the Chief Constable. I was the senior
3 Royal Military Policeman within the 1st Division.

4 Q. I see.

5 A. The force provost marshal -- senior in effect policeman
6 in theatre -- was the commanding officer 5 Regiment
7 Royal Military Police.

8 Q. I see. But nevertheless a very senior and, if I may say
9 so, experienced RMP officer; would that be a fair way of
10 describing you?

11 A. It would be, sir, yes.

12 Q. What I want to ask you about, Colonel, given that
13 experience that you have, is in relation to those RMP
14 officers who were, as it has sometimes been put,
15 "embedded" with a battlegroup, for example. You are
16 aware of that concept?

17 A. Yes, sir.

18 Q. Suppose an RMP officer in that sort of situation at
19 a battlegroup saw something illegitimate and illegal
20 being done -- like stress positions being forced on
21 prisoners -- what if anything would you expect that RMP
22 officer to do about it?

23 A. I would expect, him, sir, to report it in the first
24 instance to the battlegroup commander of the battlegroup
25 he was supporting, because they are operating in support

1 of that commanding officer not me directly, and that
2 commanding officer would then take the appropriate
3 action to prevent the situation reoccurring.

4 Q. And if there were any reason why the commanding officer
5 didn't take such steps, would you expect the RMP officer
6 then to take it up with anyone senior in the RMP or
7 something of that sort?

8 A. Yes, sir. If they observed that the battlegroup
9 commanding officer was not responding to the advice and
10 the recommendations, the RMP officer would pass it up
11 through their company commander, through the company
12 commander then to the brigade headquarters and if the
13 brigade headquarters still had concerns and weren't able
14 to change the behaviour, they would then in turn pass it
15 on to the divisional headquarters.

16 MR SINGH: Colonel, thank you.

17 Sir, those are my questions.

18 THE CHAIRMAN: Thank you very much.

19 We will have a break now for lunch until 2 o'clock.

20 Please do not talk to anybody about your evidence during
21 the course of the break.

22 (1.01 pm)

23 (The short adjournment)

24 (2.00 pm)

25 THE CHAIRMAN: Now, you are still on your oath.

1 Miss Dobbin, do you want to ask any questions?

2 MS DOBBIN: No, sir, I don't.

3 THE CHAIRMAN: Miss Edington?

4 MS EDINGTON: No, thank you, Sir.

5 THE CHAIRMAN: Very well. Mr Evans?

6 Questions by MR EVANS

7 MR EVANS: Mr Baillie, you dealt with your location and your
8 role and your duties once you entered Basra when Mr Moss
9 asked you questions and when Mr Singh did. I want to
10 ask you, please, about what you were actually doing to
11 avoid what General Brims called "the mother of all
12 traffic jams" in his witness statement on your entry
13 into Iraq. Can you just paint a brief picture of what
14 your role actually involved in that early period before
15 the division entered Basra?

16 A. Yes, sir. The problem we faced was some tens of
17 thousands of vehicle movements, American, British and
18 other coalition forces, using just three entry points
19 into Iraq, from Um Qasr in the east through to Safan in
20 the west, and at the same time we had to move traffic
21 across onto the Al Faw Peninsula. We are talking about
22 tens of thousands of vehicles which all had to move
23 within a very tight operational timescale to ensure that
24 the Americans could get to Baghdad and the British to
25 Basra in a synchronised manner.

1 Controlling those three very narrow choke points
2 meant that I was spending my time going from company to
3 company, on the ground, trouble-shooting with the Royal
4 Military Police NCOs on the ground. I was living out of
5 a Land Rover and sleeping perhaps three or four hours
6 every 24-hour period and, to all intents and purposes,
7 I was not in touch with anybody other than the troops
8 I was physically with at the time.

9 Q. So your location, as it were, was physically removed
10 from divisional headquarters over this period; is that
11 right?

12 A. It is, sir.

13 Q. What were communications like with division from you in
14 your Land Rover at your various traffic control points?

15 A. On some occasions we could get radio communications, but
16 for much of the time we couldn't, sir, and so I had to
17 rely on my staff at the divisional headquarters
18 continuing to act in the way in which I would want them
19 to act.

20 Q. Finally this: is it right when you entered Basra -- you
21 touched on this in your evidence just before the short
22 adjournment -- your headquarters was also physically
23 separate from division?

24 A. It was, sir. The regimental headquarters was based in
25 the middle of Basra City, well away from the divisional

1 headquarters at the airport.

2 Q. Did communications in that early period, after entry
3 into Basra and before you left theatre in about
4 mid-April, improve very much?

5 A. No, sir, we were very reliant on dispatch riders and
6 vehicle patrols carrying messages.

7 MR EVANS: Thank you, Sir.

8 Further questions by MR MOSS

9 MR MOSS: Just one matter. Colonel Baillie, you were asked
10 about RMP being embedded into battlegroups. Do you
11 remember being asked some questions about that?

12 A. Yes, sir.

13 Q. When RMP are embedded into battlegroups in that way, is
14 their role to police the battalion or are they there to
15 help the battalion with policing matters in their area
16 of operations?

17 A. They are not there to police the battalion. They are
18 there to provide support to the battalion.

19 MR MOSS: Thank you, Sir. Those are my questions.

20 Questions by THE CHAIRMAN

21 THE CHAIRMAN: On that last issue, I may be wrong but
22 I thought certainly in Op Telic 2 there were no
23 regimental military police personnel embedded with,
24 certainly, 1 QLR. You would not perhaps know about that
25 by then.

1 A. I would not know for sure, Sir, but it would not be
2 unlikely for the military police to have been withdrawn
3 and held centrally instead of being embedded.

4 THE CHAIRMAN: What about in Op Telic 1? Were they embedded
5 then or were they doing different jobs?

6 A. No, sir, they were embedded then, firstly because that
7 was what the operational role required of them and,
8 secondly, because it was only by being embedded that
9 those royal military policemen would have the protection
10 and mobility that they required in the war-fighting
11 scenario which we faced.

12 THE CHAIRMAN: How many in each battalion, do you think?

13 A. It would probably between eight and fifteen, sir.

14 THE CHAIRMAN: In each battalion?

15 A. Yes.

16 THE CHAIRMAN: Once the war fighting ends, would they go or
17 would they stay?

18 A. That would depend on what the tasks were that they were
19 being given and the commanding officer of the day would
20 advise as to what the best form of command and control
21 was, whether it was to decentralise or to centralise.

22 THE CHAIRMAN: Thank you very much.

23 Yes, Mr Singh, do you want --

24 MR SINGH: I just wanted to say, but I will be corrected if
25 I am wrong, but our understanding arising from your

1 questions, Sir, is that there were some RMP with 1 QLR
2 during Op Telic 2 and our understanding was that they
3 could be described as having been embedded.

4 THE CHAIRMAN: Well, I --

5 MR MOSS: Sir, yes, we heard, I think, from --

6 THE CHAIRMAN: Is that right?

7 MR MOSS: It is right. We heard that there were one or two
8 with each of the companies. You heard, I think, on
9 Day 45, for example, from Mr Colley -- forgive me for
10 not having his rank immediately to hand -- who I think
11 was one of the RMP embedded and there were certainly one
12 or two with each company, from memory, is the evidence
13 on Op Telic 2.

14 THE CHAIRMAN: Then I am obviously wrong about that and I am
15 grateful to have been corrected.

16 That's all the questions that the Inquiry have for
17 you. Thank you very much for coming to the Inquiry and
18 giving your evidence. You are now free to go.

19 MR MOSS: Sir, Mr Halliday will ask questions of the next
20 witness.

21 MR HALLIDAY: Yes, Sir, I call Andrew Mason.

22 THE CHAIRMAN: If you would be kind enough to remain
23 standing, I will ask that you take the oath.

24 ANDREW DUTTON MASON (sworn)

25 THE CHAIRMAN: Yes, thank you. Please sit down. If you

1 would be kind enough to sit as close as you can to that
2 microphone and speak into it, we will all be able to
3 hear you.

4 Thank you very much. Yes, Mr Halliday.

5 MR HALLIDAY: Can you state your full name, please?

6 A. Colonel Andrew Dutton Mason.

7 Q. Do you see a red folder on the shelf in front of you?

8 It may be to your right.

9 A. No.

10 THE CHAIRMAN: No red file?

11 MR HALLIDAY: Could the usher please help him?

12 Perhaps you could pause there, Colonel Mason.

13 A. Sir, I am very sorry, I have forgotten my glasses,
14 without which I am pretty useless.

15 THE CHAIRMAN: Would you recognise your signature without
16 your spectacles?

17 A. Can I? Yes.

18 THE CHAIRMAN: I suspect that will be sufficient for these
19 purposes, but it may not be if you are asked to look at
20 a long document.

21 MR HALLIDAY: I will try to bear that in mind,

22 Colonel Mason. Are you able to identify your statement
23 to the Inquiry in the red folder you have?

24 A. Yes, I am.

25 Q. Does your signature appear on the final page of that

1 statement?

2 A. Yes, it does.

3 Q. When you signed the statement, were you attesting that

4 it was true to the best of your knowledge and belief?

5 A. Yes, I was.

6 Q. Thank you very much. You joined the army in 1976, is

7 that correct?

8 A. That's right.

9 Q. You are still in the army now?

10 A. I am.

11 Q. At the rank of colonel?

12 A. Correct.

13 Q. You were originally commissioned into the parachute

14 regiment?

15 A. I was.

16 Q. Is it fair to say that you spent a number of years

17 during your career in training roles, training other

18 soldiers?

19 A. Yes, it is.

20 Q. If we can run quickly through some of those roles. In

21 the late 1970s/early 1980s you spent two years with

22 Depot Para, the regimental training base for the paras;

23 is that correct?

24 A. That's correct.

25 Q. Then, in the mid-1980s, you became adjutant for the 4th

1 Volunteer Battalion of the Parachute Regiment, and in
2 that role you had some responsibility for the training
3 of the TA recruits, is that correct?

4 A. That is also correct.

5 Q. Around about 1994 to 1996, you were the officer
6 commanding the Parachute Regiment recruit training
7 organisation, based at Catterick; is that correct?

8 A. Yes, it is.

9 Q. Finally, between about 1997 and 2001, you were part of
10 the planning, implementation and command of the reserve
11 training and mobilisation centre at Chilwell; is that
12 right?

13 A. It is.

14 Q. Immediately prior to Op Telic 2, were you working with
15 the joint forces headquarters, the deployable part of
16 the permanent joint headquarters?

17 A. I was.

18 Q. Were you deployed on Op Telic 1 from January 2003 with
19 the national contingent command headquarters?

20 A. I did.

21 Q. When did that deployment come to an end?

22 A. For me, in about the third week of April. My father
23 died prematurely and I was evacuated from theatre in
24 order to attend his funeral.

25 Q. There is no need to turn it up unless you would like to

1 turn it up -- and it may not help in the
2 circumstances -- but in your statement you mention that
3 that deployment may have come to an end at the end of
4 March or the beginning of April 2003. Your recollection
5 now is different, is it, that it came to an end in the
6 third week of April 2003?

7 A. What I am saying is that my participation in it came to
8 an end in about, I think, the second week of April.

9 Q. What was your role during that deployment?

10 A. I worked in the joint operations and planning cell
11 within the national contingent command headquarters.

12 Q. You were a staff officer grade 1?

13 A. I was.

14 Q. And the role you described was part of the J3 branch, is
15 that correct?

16 A. That's right. I was the land commander in a cell which
17 had both maritime and air advisers to the national
18 contingent commander.

19 Q. Did you have some responsibility for policy regarding
20 the handling of prisoners of war during that deployment?

21 A. Not specifically. There would have been issues at the
22 operational level that we may have had to consider.

23 Q. Do you recall being asked to set up a prisoner of war
24 operational planning team?

25 A. Not specifically, although I have seen some evidence

1 that that was indeed the case.

2 Q. It may help, in that case, if we turn up the evidence.

3 MOD050870.

4 THE CHAIRMAN: We can have documents produced and by the

5 wonders of modern technology they can be enlarged so

6 that I hope you may be able to read some of it.

7 A. That's very kind, Sir. Thank you.

8 THE CHAIRMAN: Are you able to read that now?

9 A. I can.

10 MR HALLIDAY: This appears to be an email from you,

11 Colonel Mason, doesn't it?

12 A. Well, I am not sure whether it's an email or not. It's

13 got no date on it. But it looks like a communication of

14 some sort.

15 Q. It is addressed to a ciphered name -- in fact it is

16 a name which can be stated during the hearing --

17 addressed to S009. In the first line, assuming it is

18 your memo, you say this:

19 "For your information [the chief of staff of the

20 national contingent command] ... has tasked me with

21 setting up an ops planning team ... to derive NCC

22 prisoner of war policy. Its aim must be to provide UK

23 contingents with the direction and support they need to

24 conduct prisoner of war/detainee activity as effectively

25 as possible ..."

1 Do you now remember being asked to set up that team?

2 A. I think there are three words that may put in context
3 better our role, which is the following three words "in
4 the context of the coalition". So really, at the
5 operational level, it was not our role to get involved
6 in tactical activity, but to ensure that the broader
7 elements of what the British forces were doing were set
8 in the proper context of the coalition. Bearing in mind
9 that the majority of prisoners would be taken and
10 probably controlled by the Americans, it was important
11 that the interface between the two commands, the
12 national contingent commands, was effective. It was
13 really in that context that we would have become
14 involved.

15 Q. Would it be fair to describe it this way: that team, the
16 operational planning team, was designed to set policy
17 for prisoner of war handling and not to run operations
18 in that respect?

19 A. I can't recall now exactly what it was for, but I think
20 it was to ensure that the big handfuls, if you like, of
21 considerations had been properly considered, things like
22 logistics, the handing over of British detainees to
23 Americans and whether or not their handling of them
24 would be the same as ours and whether we were
25 comfortable with those arrangements. That's the kind of

1 thing. That's the kind of area we were in. Whether or
2 not that can be described as "policy" or not, I am not
3 sure.

4 Q. We do, in fact, have a record of a meeting of that
5 prisoner of war operational planning team at MOD050897.
6 Could that be enlarged, please? Thank you.

7 Are you able to read that, Colonel?

8 A. I can see from the title that it was the back-brief from
9 the planning team. An operational planning team at that
10 level of command would draw in the various experts, be
11 it logistic, media, engineering, if they had a part to
12 play, whoever was necessary to really provide a very
13 quick and dirty staff check to ensure the large handfuls
14 of considerations had been addressed.

15 The back-brief really was to -- I'm not sure who
16 it's addressed to, but it was probably addressed to the
17 hierarchy within the NCC as a back-brief. This is not
18 policy; this is not direction or orders. It is
19 a back-brief to those that had asked us to look at the
20 issue. So it doesn't have direction on it, it doesn't
21 have orders on it or instruction; it is a back-brief,
22 literally, that we have looked at these issues.

23 Q. I think we can see, can't we, from the first paragraph,
24 the purpose of this document, which is to record what
25 happened at a meeting of the operational planning team

1 on 17 March 2003. Would that be correct?

2 A. That's right.

3 Q. If we turn to the final page -- it's at MOD050902 -- we
4 can see that this was in fact your document, wasn't it?

5 A. It looks like it.

6 Q. There is just one sentence in the document I would like
7 to ask you about. It's at MOD050901 and it's the final
8 sentence of paragraph 15 at the top of the page, where
9 you wrote this:

10 "It was noted that prisoner of war processing by
11 JFIT may be a sensitive media issue."

12 Can you recall why that was?

13 A. No, I don't.

14 Q. You have no idea now at all why that may have been
15 a sensitive issue?

16 A. I don't, but I can only assume that, because the action
17 was for media ops, it was to alert them to ensure that
18 any particular sensitivities were properly addressed.
19 As I say, they would have been one of the members of the
20 OPT.

21 Q. You can't help us with what those sensitivities were,
22 can you?

23 A. I can't recall, no.

24 Q. Moving to a different topic, could you please describe
25 in a nutshell the training you have received throughout

1 your army career as to how prisoners should be handled?

2 A. I think, in a nutshell, it is as you would wish to be
3 handled were you a prisoner of war.

4 Q. Would the word "humanely" be a fair way of describing
5 the gist of that training?

6 A. It would.

7 Q. Is your understanding that it may, in certain
8 circumstances, be legitimate to deprive a prisoner of
9 his sight?

10 A. Yes.

11 Q. What would the purpose or what would the purposes of
12 that be?

13 A. Almost certainly in circumstances where the security
14 situation warranted it.

15 Q. Would there be any other purpose or secondary purpose?

16 A. There may be a secondary purpose of enhancing the shock
17 of capture, but that's not the reason for depriving them
18 of their sight.

19 Q. You say that it's a secondary purpose, but not the
20 reason. Would it be a purpose that those hooding
21 prisoners had in mind when they applied the hood?

22 A. I'm sorry?

23 Q. You say it was a secondary purpose but not the reason.
24 In your experience in the army --

25 A. Yes.

1 Q. -- would an aim of hooding prisoners ever be to maintain
2 the shock of capture, albeit not the only aim?

3 A. No.

4 Q. Can we turn up paragraph 15 of Colonel Mason's statement
5 please? At the start of paragraph 15 you told the
6 Inquiry this:

7 "I understand that deprivation of sight may have the
8 secondary effect of maintaining the shock of capture,
9 which is important within the context of ... PHTQ.
10 My understanding is that shock of capture
11 needs to be maintained if possible in order for
12 professional interrogators to gain maximum
13 operational advantage from any information they can
14 glean from prisoners of war ..."

15 Is that still your understanding as you give
16 evidence today?

17 A. It is.

18 Q. Are you not saying there that a secondary aim of
19 depriving prisoners of their sight is to maintain the
20 shock of capture?

21 A. It could be.

22 Q. When did you learn that sight deprivation might have
23 that secondary benefit?

24 A. I am not sure that I have learned that sight deprivation
25 necessarily had that benefit, but any activity that

1 could maintain the shock of capture may be useful
2 subsequently. It is not the most effective way, in my
3 opinion, of maintaining it. The activities of the guard
4 force, I would suggest, are the most effective way of
5 maintaining the shock of capture.

6 Q. Never mind the other techniques for the time being, but
7 according to your understanding in 2003, was sight
8 deprivation a legitimate way of maintaining the shock of
9 capture?

10 A. Sight deprivation would have been a legitimate way of
11 maintaining security.

12 Q. That doesn't answer my question. Was it a legitimate
13 way of maintaining the shock of capture?

14 A. A legitimate way of maintaining the shock of capture,
15 no. It might have been a secondary effect to
16 maintaining security.

17 Q. I will come to the incident presently, but concerns were
18 raised at the prisoner of war handling organisation
19 during that tour about hooding, were they not?

20 A. I understand from the evidence that I have seen that
21 that was the case, although I can't recall the detail.

22 Q. You told us in your statement in that context -- at
23 paragraph 54, if we have that on screen, please, you
24 told us the following. The first part of the paragraph
25 deals with Colonel Vernon telling you that he had

1 concerns about prisoners being hooded with sandbags. We
2 will come back to that. Picking it up at the very
3 bottom of the page, you say this:

4 "I remember stating my view, which was that
5 depriving prisoners of war of their sight was legitimate
6 in certain circumstances for reasons of operational
7 security (with the secondary benefit of maintaining the
8 shock of capture prior to tactical questioning ...)"

9 I understand, of course, you are saying that the
10 principal aim of sight deprivation is to maintain
11 security. Are you not also saying that you stated in
12 2003 that a secondary and legitimate benefit of sight
13 deprivation was to maintain the shock of capture?

14 A. To be fair, I can't remember what I said in this context
15 in 2003.

16 Q. When you signed the statement, were you not indicating
17 that you had said to Colonel Vernon that a secondary and
18 legitimate benefit of sight deprivation was maintaining
19 the shock of capture? Is that what you meant by this
20 statement?

21 A. I am not sure that I can recall that discussion with --
22 of the secondary benefit with Colonel Vernon.

23 Q. We can take that down. Thank you.

24 By what means, in your view, could a soldier
25 legitimately deprive a prisoner of his sight?

1 A. When the security circumstances warrant it.

2 Q. And what could a soldier legitimately use in order to
3 achieve sight deprivation?

4 A. Whatever was reasonable and at hand at the time.

5 Q. If there was nothing else at hand which could achieve
6 sight deprivation, would it be legitimate for a prisoner
7 to place a sandbag over a prisoner's head?

8 A. For a short period of time and if the circumstances
9 warrant it, yes.

10 Q. Is that still your understanding today or was that your
11 understanding in 2003 and no longer your understanding
12 today?

13 A. In conditions of war, which were certainly the
14 conditions that were -- that appertained in 2003 and in
15 these circumstances, I would consider under certain
16 circumstances it would be legitimate, particularly if it
17 meant moving the prisoner quickly away from danger.

18 Q. Would it still today be legitimate in conditions of war?

19 A. If the circumstances -- the security circumstances on
20 the ground at the time -- and if that was the only means
21 by which you could achieve that, then that would --
22 I would still consider that legitimate.

23 Q. You are not aware, are you, of any policy ban on the use
24 of sandbags which has arisen since 2003?

25 A. No, I'm not, although I am aware that there was a ban on

1 hooding subsequent -- and as I have seen in the
2 evidence -- to the discussion I presume you are going to
3 follow on in a minute.

4 Q. I hope I summarise fairly. You said that a secondary
5 benefit of sight deprivation might be maintenance of the
6 shock of capture. Do you regard that as inhumane?

7 A. What, the shock of capture --

8 Q. Maintaining the shock of capture through sight
9 deprivation.

10 A. I think we need to be careful about the context within
11 which one is trying to maintain the shock of capture.

12 Q. If it is being done as an aid to interrogation or
13 tactical questioning.

14 A. If it is being done as -- if it can result in more
15 effective tactical questioning at the time that results
16 in information that is life-saving, both for -- for both
17 sides in war, then the shock of capture -- the
18 exploitation of shock of capture I think is perfectly
19 reasonable in the context of war.

20 Q. My question was not whether it was reasonable. It was
21 whether it was inhumane.

22 A. War is inhumane.

23 Q. War is inhumane. Does that mean that it's inhumane but
24 justified to deprive someone of their sight to maintain
25 the shock of capture?

1 A. In my view the overriding circumstances to deprive
2 prisoners of war of their sight would be on the grounds
3 of security. Any secondary effect that would have
4 benefit in terms of tactical questioning is a secondary
5 effect.

6 Q. Did you ever attend the Army Staff and Command College
7 at Shrivenham and Camberley?

8 A. No.

9 Q. There's one particular sentence in your witness
10 statement which I would like to ask about. It appears
11 at paragraph 14. It is over the page. About halfway
12 down the page there's a sentence which begins with the
13 words "It was ..." Do you see that?

14 A. Yes.

15 Q. "It was, and remains my view that the status of civilian
16 detainees was entirely different to the status of
17 prisoners of war, which necessitated different methods
18 of handling ..."

19 Could you explain, please, what you meant there?

20 A. The status of a prisoner of war is completely different
21 to that of a detainee, in my view. One has surrendered
22 and therefore is complicit and the other will have
23 needed to have been arrested, which places a completely
24 different set of circumstances and subsequent handling
25 on each of them. It doesn't mean either should be dealt

1 with, from a humane perspective, any differently, but
2 the circumstances around -- surrounding both their
3 capture and/or detention are completely different.

4 Q. What difference would there be between the methods of
5 handling necessitated by the two categories of prisoner?

6 A. Well, because one is compliant on the very nature that
7 he has surrendered and the other isn't because he has
8 been arrested. That immediately would place pretty
9 different ways on how you handle people.

10 Q. Again -- I paraphrase and I hope I do so fairly --
11 I think you said that "humanely" should be the guide for
12 both categories of prisoner.

13 A. Absolutely.

14 Q. I would like to come back, if I may, to the conversation
15 with Colonel Vernon at the prisoner of war handling
16 organisation. Do you remember visiting the PWHO at
17 Um Qasr?

18 A. I do.

19 Q. Do you recall the occasion when you spoke with
20 Colonel Vernon?

21 A. Only vaguely, but I do remember it.

22 Q. Do you recall approximately the date of that
23 conversation?

24 A. I understand now that there were two visits. I only
25 really remember the first one, which I believe to be at

1 the back end of March, somewhere between the 25th and
2 the 27th.

3 Q. It was during the first visit that you spoke with
4 Colonel Vernon, was it?

5 A. Although I do believe he was present at the second visit
6 also.

7 Q. The Inquiry is interested in the occasion when you spoke
8 to him about the issue of hooding. Did you speak to him
9 about that on both occasions or only on one of them?

10 A. As I say, I could only really remember the first
11 occasion.

12 Q. And you can remember the conversation about hooding with
13 him, can you?

14 A. I remember there was an issue with hooding, although
15 I can't remember the details of the conversation
16 exactly, no.

17 Q. It follows, does it, that that conversation took place
18 during your first visit between 25 and 27 March; is that
19 correct?

20 A. As far as I can recall.

21 Q. What did Colonel Vernon say to you about hooding?

22 A. I can't really remember the details, although I remember
23 there was a discussion between himself, myself and the
24 officer commanding the prisoner handling organisation,
25 who I believe also to have been CO QDG.

1 Q. S009?

2 A. That's right.

3 Q. Can you remember the gist of what Colonel Vernon said to
4 you?

5 A. I believe he thought there was a media issue about the
6 hooding of prisoners of war.

7 Q. Did he say he had seen prisoners of war hooded?

8 A. I can't remember that, but I have seen it on his
9 statement.

10 Q. Let's restrict ourselves, please, to what you can
11 remember, rather than what you read. Did he indicate
12 where exactly within the prisoner of war handling
13 organisation camp prisoners were being hooded?

14 A. I can't recall exactly where, no.

15 Q. Can you recall whether he said this was taking place in
16 the JFIT part of the camp?

17 A. He may have said that. As I say, I can't recall the
18 detail of this discussion.

19 THE CHAIRMAN: Give me the gist of the discussion, would
20 you, Colonel?

21 A. Sir, I think there was an issue that he may have
22 witnessed hooding and as the -- or he may have been
23 aware of hooding. I can't remember whether he had
24 actually seen it as I sit here now or whether he had
25 been told about it, but there was obviously an issue

1 that he felt was media negative, and he was a media
2 operative, from what I can recall of his role at the
3 time.

4 THE CHAIRMAN: Translate for me, please, a little "media
5 negative".

6 A. I think he felt that if the media were able to exploit
7 any images of hooded prisoners, that would be negative
8 in terms of the overall campaign from a British
9 perspective.

10 Q. I follow.

11 MR HALLIDAY: Do you remember that the JFIT had a separate
12 part of that camp?

13 A. No.

14 Q. So you don't know whether you were in the JFIT part of
15 the camp or a different part of the camp when this
16 conversation took place?

17 A. I wasn't in the camp at all. The camp was separated
18 from where the prisoners of war handling organisation's
19 headquarters was, which was, if you will, outside the
20 wire. That's where I was.

21 Q. You were in the HQ?

22 A. That's where the conversation took place.

23 Q. Did Colonel Vernon mention anything about the body
24 positions that prisoners were being kept in?

25 A. Not that I can recall.

1 Q. You can't recall him mentioning kneeling or anything of
2 that nature, can you?

3 A. No, I can't.

4 Q. Do you recall whether he said anything about how long
5 prisoners were hooded for?

6 A. No, I can't.

7 Q. Do you recall any contribution to this discussion made
8 by S009?

9 A. I think, from what I can recall, that S009 was agreeing
10 with Colonel Vernon's position.

11 Q. He was also concerned about the practice of hooding, was
12 he?

13 A. That is my recollection.

14 Q. Did you express a view about whether this practice of
15 hooding was legitimate or illegitimate?

16 A. I expressed the view that it wasn't for us to opine on
17 that and we would need others to make the appropriate
18 authoritative -- or give the appropriate authoritative
19 view on this.

20 Q. Even if it was not for you to opine, did you nonetheless
21 venture an opinion about whether it was legitimate or
22 not?

23 A. I was concerned that operational security at that point,
24 when we were still fighting, remained paramount, and
25 that was my position.

1 Q. Does that mean that you said that it was legitimate for
2 security reasons for prisoners to be hooded?

3 A. I didn't say that. I said that my major concern at that
4 time was that we shouldn't be affecting operational
5 security with decisions at our level and that the
6 appropriate authority should be informed and deliver the
7 appropriate direction.

8 Q. You say you didn't say that. Can we have paragraph 54
9 back on screen, please? Again it's the sentence which
10 straddles the two pages. You said this:

11 "I remember stating my view, which was that
12 depriving prisoners of war of their sight was legitimate
13 in certain circumstances for reasons of operational
14 security (with the secondary benefit of maintaining the
15 shock of capture prior to tactical questioning ...)"

16 Did you say that?

17 A. I may well have said that. I can't recall saying it,
18 no, but that was certainly my position and it remains --
19 it still remains my position.

20 Q. If you can't recall saying it, why did you say in your
21 Inquiry statement that you remembered stating that view?

22 A. I think what I'm saying is that -- and I think I have
23 just said -- that that remains my view. It was my view
24 then and it remains my view now.

25 Q. You said in your witness statement that you remembered

1 stating that view.

2 A. Sitting here now, as opposed to when I wrote my
3 statement, I'm not sure I can remember saying it now,
4 but I have confirmed to you that that would have been my
5 view and it remains my view.

6 Q. Did you see any prisoners with sandbags on their heads?

7 A. No.

8 Q. Did you speak to any members of the JFIT about how they
9 were treating prisoners after this conversation?

10 A. No.

11 Q. Did you enter the JFIT in order to look for yourself at
12 what was happening to prisoners?

13 A. No, I didn't.

14 Q. Did you not feel any need to do so in your role as part
15 of the operational planning team for prisoners of war?

16 A. The JFIT was not part of the area of prisoners of war
17 dealings that I had been involved with. I was involved
18 in the broader aspects of this and therefore it wasn't
19 really my authority to enter into the JFIT for any
20 reason.

21 Q. The JFIT was handling prisoners of war, wasn't it?

22 A. As far as I understand, yes, it would have been.

23 Q. So why did the JFIT not come within the remit of the
24 operational planning team, prisoners of war?

25 A. The JFIT was not my specific reason for being at Um Qasr

1 on that particular day. In fact, I can't really recall
2 why I was there on that particular day, but I do recall
3 the discussion between Colonels Vernon, myself and S009.

4 Q. Can we return to tab D8, please? This is your record of
5 the meeting of 17 March held by the operational planning
6 team. If we turn to MOD050900, paragraph 14, we see an
7 outline of the prisoner of war handling organisation
8 construct. At number 9 there's the JFIT, isn't there?

9 A. There is, yes.

10 Q. Did the JFIT not come within the remit of the
11 operational planning team at all?

12 A. No, it didn't. The authority for that was within the
13 J2X area of the headquarters.

14 Q. So you didn't feel the need to investigate exactly what
15 was happening with prisoners being hooded at the JFIT
16 then?

17 A. At that time, on 27 or -- 25 and 27 March, no, I didn't,
18 although I noted the concern and raised it to the chain
19 of command on my return to Qatar, to the NCC.

20 Q. Who, within the chain of command, did you raise it with?

21 A. The appropriate authority.

22 Q. And who was that?

23 A. It was both the legal adviser -- the senior legal
24 adviser -- Commander Brown, and the commander of the J2X
25 organisation, Colonel Duncan.

1 Q. And what did you tell them?

2 A. I said there was a concern over the presentational issue
3 of hooding in the Um Qasr prisoner of war handling
4 organisation.

5 Q. Can you recall their response?

6 A. No.

7 Q. Can you recall whether they supported or were opposed to
8 the practice of hooding?

9 A. No, I can't.

10 Q. Can you recall whether you had any discussion with them
11 about the purposes of hooding?

12 A. No, I can't.

13 Q. You can't recall, can you, whether Lieutenant Colonel
14 Duncan at any point expressed a view about whether
15 ending hooding could have an impact on interrogation?

16 A. That was his business, it wasn't mine and that was the
17 reason that I reported to both him and the LEGAD, who
18 I felt it was appropriate should know about this
19 situation. I can't remember whether I brought it to my
20 immediate boss, Colonel Capewell, who was acting as
21 chief J3. I may well have done and he may well have
22 been part of this decision.

23 Q. You say it was Lieutenant Colonel Duncan's business.
24 Did he nonetheless express a view to you about whether
25 ending hooding could have any impact on interrogation?

1 A. He may have done, but I can't recall.

2 Q. Do you recall any further discussion after that, with
3 anyone at division or NCC, about the issue of hooding?

4 A. I know there was a subsequent discussion, but I can't
5 remember the detail.

6 Q. How do you know that?

7 A. Because I have seen from evidence that subsequently the
8 use of hoods was banned by GOC 1 Div, the appropriate
9 commander.

10 Q. But that's something you have read in evidence and not
11 something you remember, is that right?

12 A. No, it's not something I remember.

13 Q. Do you recall whether Air Marshal Burr ridge expressed any
14 view on the issue of hooding at this time?

15 A. No, I can't.

16 Q. Do you recall whether the NCC issued a hooding ban
17 around this time?

18 A. No, I can't recall whether it did or not.

19 Q. It's a hypothetical question so bear with me: if
20 Air Marshal Burr ridge had briefed his legal adviser,
21 political adviser and chief of staff to issue an order
22 that hooding was to cease, would you have known about
23 that in your role as S01 J3?

24 A. Not necessarily. It could have gone down any number of
25 routes that I would not necessarily have been involved

1 with. The day-to-day communications -- we were, if you
2 like, a slightly separate entity to the operations side.
3 As I said, I was on the planning staff. So the
4 operational messages would have gone to the G3 ops staff
5 and could well have gone down the J2X chain. So it's
6 not necessarily something I would have been involved in.

7 MR HALLIDAY: Thank you.

8 THE CHAIRMAN: Yes. There will be probably one or two
9 questions from other counsel, Colonel.

10 Mr Singh?

11 Questions by MR SINGH

12 MR SINGH: Colonel, can I ask you about paragraph 20 of your
13 Inquiry statement which is at BMI7028? Here you are
14 dealing with the question of stress positions; do you
15 recall? You say:

16 "It is my view that stress positions are not
17 appropriate in any circumstances because they create
18 conditions of unacceptable duress and are not an
19 appropriate way to treat prisoners."

20 Is that correct?

21 A. That is correct.

22 Q. You also state that:

23 "Neither is their use consistent with the law of
24 armed conflict."

25 Does that remain your position?

1 A. It does.

2 Q. As I understand it, you have come to that understanding
3 not from official training, is that right?

4 A. I think it's -- I think that would be a correct
5 statement. I think it is -- just as a human being
6 I would see that as unacceptable treatment and behaviour
7 of another human being.

8 Q. Just to be clear, you would maintain that view, would
9 you, even if one is dealing with a situation of war?

10 A. War is an extraordinary circumstance and the taking of
11 prisoners of war in particular is very difficult under
12 heated tactical circumstances. But even under the
13 conditions of war and having surrendered and as
14 a prisoner of war, would I expect to be treated in that
15 way? No, and I have stated that I would treat prisoners
16 of war as I would wish to be treated myself.

17 Q. So I think the answer to my question is that your view
18 remains the same even in time of war?

19 A. Absolutely.

20 Q. Thank you.

21 So it is right, isn't it, that you are of the view
22 that there are certain things which are beyond what is
23 permissible even in time of war?

24 A. Yes.

25 Q. But in relation to hooding you said a number of times to

1 Mr Halliday that you could see some circumstances in
2 which -- because we were dealing with a war -- that
3 might be legitimate. Have I understood you correctly?
4 A. That's correct. If the security situation demands it,
5 it is safer both for the prisoner and for those handling
6 him -- if that was the circumstance, it may be
7 legitimate is what I would say.
8 Q. Were you expressing those sorts of views to people at
9 the time that we are talking about, 2003?
10 A. As I have said, I can't exactly recall what was
11 discussed in detail. My concern was that issues of
12 security remained paramount whilst we remained in the
13 fighting phase of the operation.
14 Q. Once this country had moved beyond the war-fighting
15 phase in Iraq, would that remain your view in relation
16 to, say, civilian detainees during the occupation of
17 Iraq?
18 A. I think I have stated my view clearly that the detention
19 of civilians is entirely different to the taking, moving
20 and securing of prisoners of war. At the time, when we
21 are still fighting the enemy, it's a completely
22 different issue.
23 Q. I see. Does it follow from that answer that hooding
24 would not be, in your view, a legitimate technique in
25 relation to civilians once we were in the occupation

1 stage, not the war-fighting stage?

2 A. That is entirely my view.

3 Q. You have referred -- and Mr Halliday asked you about
4 this -- to the secondary effect or benefit of hooding
5 which could be to maintain shock of capture. Did you
6 hear other people expressing that kind of view, that it
7 was a valuable tool for maintaining shock of capture?

8 A. Not that I can recall.

9 Q. Not Colonel Duncan?

10 A. Not that I can recall.

11 MR SINGH: Thank you very much, Sir. Those are my
12 questions.

13 THE CHAIRMAN: Thank you.
14 Ms Edington?

15 Questions by MS EDINGTON

16 MS EDINGTON: Thank you, Sir.
17 Colonel, if the security situation is such that the
18 prisoner is unhooded in the prisoner of war camp, would
19 you then say that to hood a prisoner in the JFIT was
20 because it was not necessarily the security situation of
21 where the prisoner is, but the security situation of the
22 prisoner?

23 A. I think that is conceivable.

24 Q. And would you consider that that is a valid reason for
25 hooding at that stage of the battle, as it were?

1 A. It may well be.

2 MS EDINGTON: Thank you very much. I have no further
3 questions.

4 THE CHAIRMAN: Mr Evans?

5 Questions by MR EVANS

6 MR EVANS: Just two short matters, please, Sir.

7 I wonder if we could have MOD050870 on screen,
8 please, the planning document. Just looking at that --
9 you were taken to it a little earlier -- in the second
10 sentence:

11 "Its aim must be to provide UK contingents with the
12 direction and support they need to conduct ... detainee
13 activity as effectively as possible within the context
14 of the coalition -- it is not designed to tell them how
15 to do their business."

16 Can you just explain what that last phrase means to
17 you as you interpret it?

18 A. The operational level of command is not one I felt
19 particularly comfortable in because it was really trying
20 to devoid yourself of tactical considerations and look
21 at those issues where -- at the strategic level
22 considerations are largely political, at the operational
23 level things are partly political and partly tactical.
24 But one must try and keep to those big issues that
25 support the tactical element or the land component

1 contingent, in my case, but allow them to get on with
2 their tactical business. It is not for us, at the
3 operational level, to get in their way on that issue.

4 Q. Finally this: would you have been privy to any
5 discussions with Air Marshal Burridge or his POLAD at
6 NCC headquarters?

7 A. It would depend on the subject.

8 MR EVANS: Thank you very much.

9 MR HALLIDAY: No more questions, Sir.

10 Questions by THE CHAIRMAN

11 THE CHAIRMAN: Colonel, just one thing I want to ask you.

12 You were asked a number of questions about hooding,
13 which is obviously a vexed topic, if I may put it that
14 way, from the evidence that I have heard.

15 A. Sir.

16 THE CHAIRMAN: Your position seems to be quite clear, so far
17 as the war-fighting period is concerned, that prisoners
18 of war in certain circumstances may be hooded for purely
19 security reasons after being captured; is that right?

20 A. Yes, sir.

21 THE CHAIRMAN: You told Mr Singh that in peace-time
22 conditions or occupation times, then it is not
23 permissible at all; is that right?

24 A. I can't think of any circumstances that it would be so,
25 no.

1 THE CHAIRMAN: Well, suppose the position is, as it was in
2 Basra, that there's quite a lot of -- how shall we put
3 it -- danger in and around Basra from different elements
4 of the population. Do you follow?

5 A. I do and it's a very difficult point. I think the point
6 that I am being asked to make comment on: is it war or
7 is it stabilisation at that stage? It's a very
8 difficult and transient part of the operation. It's not
9 yet stabilisation, but it's not war.

10 THE CHAIRMAN: Sorry, you were going on. Don't let me cut
11 you off from what you want to say.

12 A. Are you asking me whether the use of hoods under those
13 circumstances I might consider permissible?

14 THE CHAIRMAN: That's what I was going to ask you, yes.

15 A. I have not been in that situation, Sir, so I am not sure
16 I could make comment. I was not in the NCC at the time
17 of transition. I really ended my time just after the
18 war-fighting phase, so I am not really in a position ...

19 THE CHAIRMAN: Had you had no experience of occupation
20 soldiering?

21 A. No, not really. I think my previous experience had been
22 largely in Northern Ireland, where quite clearly the
23 primacy of arrest and detention very much sat with the
24 police.

25 THE CHAIRMAN: Yes, I follow. Thank you very much. Thank

1 you for coming to the Inquiry and answering questions.

2 You are now free to go and I am grateful to you for
3 coming.

4 A. Thank you very much, Sir.

5 MR MOSS: That concludes our evidence for the week. Our
6 programme for the early part of next week remains at the
7 moment as published, with Gavin Davies and Neil Brown on
8 Monday, with the intention to take evidence from
9 Brigadier Duncan and Mr Patterson on Tuesday, together
10 with some read evidence.

11 THE CHAIRMAN: Yes. Very well. Monday 10 o'clock then
12 please. Thank you all very much.

13 (2.57 pm)

14 (The Inquiry adjourned until 10.00 am, Monday,

15 29 March 2010)

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