

Thursday, 10 June 2010

1

2 (9.30 am)

3 THE CHAIRMAN: Good morning, ladies and gentlemen.

4 Mr Elias.

5 MR ELIAS: Good morning, Sir. May I call Robin Brims,

6 General Brims, please?

7 THE CHAIRMAN: Yes. General, if you could remain standing

8 for the moment and I will ask that you be sworn.

9 ROBIN VAUGHAN BRIMS (sworn)

10 THE CHAIRMAN: Thank you, General. Do sit down. As with

11 other senior officers, I don't really need to ask them

12 to speak up because you all seem to be able to make

13 yourselves heard, but if you would speak into the

14 microphone, that would help.

15 Yes.

16 Questions by MR ELIAS

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

18 please?

19 A. Robin Vaughan Brims.

20 Q. General Brims, I think you joined the army in 1970.

21 A. Yes, sir.

22 Q. You retired in October 2007?

23 A. Yes.

24 Q. Would you have a look, please, at a folder which should

25 be to your right hand and to a statement within it

1 which, at the last page -- that is our BMI07407 --
2 should have your signature above the date of 5 March
3 2010.

4 A. Yes.

5 Q. Would you confirm to the Inquiry that, when you signed
6 that statement, you did so attesting that the contents
7 of it were true to the best of your knowledge and
8 belief?

9 A. Yes.

10 Q. Thank you very much. You can put that aside.

11 Everyone has had an opportunity, General, of reading
12 that statement. As I think you know, the statement
13 itself forms part of the evidence to this Inquiry, and
14 I propose to ask you questions that may expand upon
15 parts of it, but by no means go to every aspect.

16 May I begin, please, by asking you a little about
17 your career history. You set it out in your statement.
18 As you have told us, you joined the army in 1970 and
19 were then commissioned into the light infantry. After
20 Staff College you were appointed chief of staff
21 8 Infantry Brigade. That was in the mid to late 1980s.

22 You served in Germany and in Northern Ireland before
23 promotion to lieutenant colonel. Then you commanded the
24 3rd Battalion The Light Infantry between 1989 and 1991
25 in Germany and in Ireland.

1 You had a staff posting as a colonel in the Ministry
2 of Defence; chief of staff, Headquarters Northern
3 Ireland 1997/1998; promoted to major general in January
4 of 2000; commanded the Multinational Division
5 (South-West) in Bosnia, before assuming command of
6 1 (UK) Armoured Division in November 2000.

7 Of course, it is in the role of general officer
8 commanding 1 Div which this Inquiry is particularly
9 concerned to ask you about. You deployed to Iraq on
10 Op Telic 1 in early 2003 until mid-May of 2003, when you
11 relinquished that post, to become deputy chief of joint
12 operations -- ops -- at PJHQ in Northwood, a post you
13 held, I think, until 2005 and, as you told us, you
14 retired from that post in 2007.

15 So you had two roles effectively with which this
16 Inquiry is particularly concerned: GOC 1 Div in the
17 early part of 2003. I think you tell us in your
18 statement that you think you left Iraq on either
19 14 or 15 May.

20 A. Yes, sir.

21 Q. And you handed over to Peter Wall?

22 A. Yes sir.

23 Q. I want to ask you just a little, please, about, firstly,
24 your responsibility for training of soldiers under your
25 command as GOC. You tell us in your statement that, as

1 far as you were aware, prior to Op Telic 1, 1 Div
2 soldiers were not told specifically that they could not
3 and should not subject prisoners to one or more of the
4 five techniques. That is correct, is it?

5 A. That's correct.

6 Q. But you go on to tell the Inquiry in your statement that
7 the view you took was that this was a matter of common
8 sense because their training would have taught them
9 about the Geneva Conventions, about the law of armed
10 conflict, and you would have expected them to understand
11 the difference, as you put it, between right and wrong.

12 A. Yes, sir.

13 Q. It follows from that, does it, General, that your view
14 about the five techniques was that they were plainly
15 wrong?

16 A. Correct.

17 Q. And unlawful?

18 A. Correct.

19 Q. The five techniques did not, did they -- in the terms in
20 which we have been using it -- include hooding?

21 A. I'm not sure I understand that question.

22 Q. Were you including hooding as a technique which was
23 unlawful and should not be used?

24 A. If you are using hooding in an inhumane way, it is
25 clearly unlawful. I have always thought that. If it is

1 being used as a temporary and, in the circumstances,
2 only readily available method of depriving somebody of
3 sight for security purposes, then it wouldn't -- that in
4 itself would not be inhumane. But the -- because
5 earlier on you said to me that the five techniques, that
6 they are inhumane because they are inhumane treatment,
7 as I understood it -- they were -- that was the basis of
8 them not being allowed.

9 Q. So just to examine that, if we can stay with the
10 question of hooding for a moment and deal with it now,
11 since you raise it in this way, you didn't regard
12 hooding per se as inhumane?

13 A. When I first saw it, it looked wrong to me as a matter
14 of operational policy.

15 Q. That is at Umm Qasr?

16 A. Yes.

17 Q. We will come back to that, if I may, in just a little
18 more detail. But just taking matters generally, did you
19 regard hooding as inhumane?

20 A. It depends on the circumstances of hooding. I think
21 hooding becomes a -- it can conjure up more than -- in
22 different people's minds. If it is purely to blindfold
23 somebody, I don't think it is inhumane. If it is being
24 used in any way stressfully, then it is inhumane, and
25 I would draw that distinction.

1 Q. I understand. I suppose one of the difficulties is that
2 it may be, in any individual case, difficult to
3 ascertain whether the fact that a bag is over the head
4 of a man for minutes or perhaps hours is in fact
5 stressful for that individual.

6 A. Well, I think if it is for hours, then it is not -- it
7 has gone beyond the security point, I think.

8 Q. So is this how you would put it -- you will not accept
9 it simply because I put it this way -- that, if you
10 like, operational security reasons would trump any
11 question of humane treatment for a period of time,
12 albeit a short period of time?

13 A. No. Inhumanity would always trump -- inhumanity is
14 wrong.

15 Q. But you do not say, do you, that hooding in itself is
16 inhuman?

17 A. In the circumstances of which I have described, if it is
18 not inhumane, it is not inhumane.

19 Q. That is perhaps what is troubling me in asking you the
20 questions because does not that imply that, whilst
21 hooding may always be inhumane, there may be reason for
22 doing it?

23 A. I don't agree with the first bit, that hooding is always
24 inhumane, so I can't go on to the next bit of your
25 question.

1 Q. All right. Maybe we will come back to that in another
2 way in due course.

3 You go on to tell the Inquiry in your statement that
4 the possibility that soldiers might assault or abuse
5 prisoners in custody simply did not seem an issue. Does
6 that mean, General, that, as GOC, that wasn't a matter
7 that, as it were, entered your mind?

8 A. I believe that soldiers know the difference between
9 right and wrong and I trust soldiers and I know that
10 they have had the training given to them that reinforces
11 that. And further and in my directive at the start of
12 this campaign, in the planning for and then the
13 invasion, I had set out in that that we needed to do
14 this as decently and as elegantly as possible. Our
15 argument was not with the Iraqi armed forces. In that
16 context I believe that the soldiers knew what they were
17 trying to do and I believe they knew the context of what
18 was right and wrong in these circumstances.

19 Q. That neatly leads me to your directive, which I was
20 going to take you to at this point. But we could agree,
21 could we, the expectation that soldiers will -- to
22 paraphrase it -- do the decent thing and the lawful
23 thing, the expectation may be one thing, the directive
24 and guidance that is required to ensure that may be
25 another?

1 A. You need to give directions to ensure that people
2 understand what they are trying to do, and in a large
3 organisation you expect subordinates at the various
4 levels to provide the necessary supervision in the
5 execution of the various activities that go on.

6 Q. So your mission statement -- may I call it that -- we
7 find at MOD054392. GOC directive 1, issued on
8 3 February 2003. This is in essence, isn't it, your
9 mission statement and your message as to how matters are
10 to be dealt with?

11 A. Yes.

12 Q. I am not going to take you through it all, General, but
13 may we go perhaps to the parts that are relevant to this
14 Inquiry anyway? Over two pages to page 3 of the
15 document, under the heading "Conduct of operations" and
16 down to paragraph 19 and to letter (b):

17 "We only win on successful implementation of
18 phase IV. See paragraph 21."

19 Phase IV being what is sometimes called the
20 peace-keeping or stabilisation phases?

21 A. Yes.

22 Q. And at paragraph 21:

23 "As we enter Iraq ... everything behind us is
24 automatically in phase IV."

25 Can I just take you to (a) and (b)?

1 "(a) There must be no triumphalisms on achieving
2 phases II/III. Indeed we must restore, foster, Iraqi
3 dignity in our area of operation and work together as
4 far as possible to a achieve phase IV for their benefit.

5 "(b) We shall probably be the first coalition
6 forces to implement phase IV. We can set the pace. The
7 world media will be reporting our activities."

8 I think that is all perfectly clear and I don't need
9 to ask you further about its meaning. It is
10 straightforward, isn't it? But you did have a clear
11 understanding, General, did you, that the way in which
12 the Iraqi people were treated in phase IV, in the
13 stabilisation and peace-keeping phase, was going to be
14 a matter of interest, amongst others, to the media?

15 A. It was going to be of interest to everybody, including
16 the media.

17 Q. Over the page, please, at 22:

18 "We shall increasingly be in the public eye. We
19 represent our country in the coalition and once battle
20 is joined will be the focus of our country's media."

21 So going to the last sentence in that paragraph:

22 "The media's impression of us must be that
23 identified at paragraph 11, 'professional, disciplined,
24 determined, quietly confident in our abilities and at
25 all times acting decently'."

1 Really that is to underline the evidence you have
2 been giving to the chairman today as to your intent --

3 A. Yes.

4 Q. -- and the way the operation was to be carried through.

5 Can I take you, please, to the very last paragraph
6 on the next page, page 5, under (c) of your directive or
7 mission statement, as I have been calling it:

8 "Let us insist on the highest standard of (self)
9 discipline from the moment of arrival in theatre. It
10 will be a significant force protection measure before we
11 are ordered to employ force, it will significantly
12 improve our sustainability (people and equipment) on
13 employment, and it is the primary antidote to fear.
14 Good discipline leads to trust, confidence and
15 camaraderie -- a virtuous circle. This is the state
16 from where we shall prevail."

17 So that, General, you would no doubt tell the
18 Inquiry was the tone, as it were, that you wished to
19 set --

20 A. Yes.

21 Q. -- and the standards that you wished your soldiers to
22 maintain.

23 A. Yes.

24 Q. At paragraph 20 of your statement to the Inquiry, please
25 at BMI07387, just to underline, I think, as you do in

1 this statement, what that mission statement was about,
2 as it were, the last four lines of this paragraph:

3 "I wanted to make clear that we did not have
4 an argument with the Iraqi people, or with the
5 Iraqi Army ... we were seeking to change the regime, and
6 to win the peace."

7 As you say over the page:

8 "... we would try to minimise damage, and in
9 conducting ourselves, it was important that we should
10 treat people properly. The primary audience of
11 directive 1 was my immediate subordinates, including the
12 chief of staff, brigade commanders, and the commander of
13 the Queen's Dragoon Guards ... but its message was to
14 filter down throughout 1 Div. It was designed to set
15 the tone for the invasion and subsequent occupation ..."

16 You would have expected that message, would you, to
17 be sent down to the troops on the ground?

18 A. Yes.

19 Q. Could I ask you then in that regard -- but also rather
20 more generally, because it is an issue that the Inquiry
21 needed to touch upon -- about the dissemination,
22 communication, cascading of orders.

23 Can we look, please, at paragraphs 28 and on of your
24 statement to the Inquiry where, under the heading
25 "Communication of orders", you say that:

1 "There were a number of ways in which orders ...
2 might be communicated down the chain of command."

3 They could be written orders or oral orders. If
4 there were, General, an order given by you or on your
5 behalf which changed, for example, a standard operating
6 procedure of the soldier on the ground, it would be
7 desirable that such an order was given in writing,
8 wouldn't it?

9 A. Not necessarily.

10 Q. No, not necessarily. But it would be desirable that
11 such an order was given in writing, wouldn't it?

12 A. I'm not sure that I can -- I am not sure I actually
13 understand. If it was changing a standard operating
14 procedure --

15 Q. Yes.

16 A. -- I wouldn't -- I mean the standard operating procedure
17 would be -- somebody would write that change to the
18 doctrine of the standard procedure, but the order
19 changing it I don't think would be written.

20 Q. Well, perhaps it is my fault. Let me just examine that.
21 I am not suggesting for one moment that if you, for
22 example, were to change the standard operating procedure
23 on the ground, that your order need necessarily itself
24 be in writing. But if the message was to be certain to
25 get through to those who had to operate it at the ground

1 level, if you like, it would, in those circumstances, be
2 desirable, wouldn't it, that such an instruction was
3 cascaded at some point below you in writing?

4 A. At some point it might be, but during combat operations
5 most orders are disseminated orally and perhaps there
6 might be a catch-up later on because things are moving
7 pretty fast and changing pretty fast in combat
8 operations.

9 Q. I was to ask you about that because I think the Inquiry
10 has heard not dissimilar evidence, if I may say so, from
11 other witnesses. There may be a difference in this
12 regard between the war-fighting phase and the
13 stabilisation or peace-keeping phase. The pace of
14 events, as it were, may dictate the geography. The fact
15 that the battle is moving, as it were --

16 A. Yes.

17 Q. -- may dictate that oral orders take the place where, in
18 other circumstances, written orders may be given. Would
19 that be right?

20 A. Yes.

21 Q. So if we look, please, at what you say here:

22 "There were many situations [at paragraph 29] in
23 which I might give orders, but two important ones were
24 as follows:

25 (a) At the routine 1 Div group meetings, which took

1 place twice a day, morning and evening, with my staff,
2 brigade commanders and their staff, orders would be
3 given orally by me, then disseminated over the radio or
4 written up later and sent down the chain of command."

5 Should we understand that it wouldn't be, as it
6 were, your decision whether a particular order was in
7 fact cascaded in writing or orally?

8 A. Yes.

9 Q. It would not be your decision. Whose decision would it
10 be?

11 A. The decision of how to cascade the orders would be the
12 chief of staff -- my chief of staff -- at divisional
13 headquarters. There would be -- there might be an
14 occasion -- if it was appropriate, I might say --
15 I might have said, "I want this order to be given in
16 a particular way". I don't recall ever doing that
17 during Operation Telic, but in other operations I do
18 recall doing that.

19 Q. You can envisage circumstances where you may think it
20 desirable so to do?

21 A. Yes. I have actually said how the order is to be given,
22 to make sure it has got there.

23 Q. I follow. The second way in which you might give orders
24 you say are when you visited brigades or units, in which
25 case you might give an instruction directly then and

1 there.

2 In your case would we understand the orders would
3 almost invariably, from you directly, as it were, be
4 given orally rather than in writing?

5 A. Yes.

6 Q. As you go on to tell us in paragraph 30 -- what I think
7 you have already said in this regard anyway -- you would
8 rely on your chief of staff for all administrative
9 tasks, including to disseminate your orders.

10 "I would not usually write anything myself ..."

11 But your directives, as you say, are an exception.

12 "1 Div FRAGOs would be among the things that the
13 chief of staff would manage on my behalf, though ..."

14 You would know of them and, what, frequently clear
15 them?

16 A. Yes.

17 Q. In your time -- if I move on from that, then, please --
18 as GOC, were you ever aware of issues being raised,
19 questions being raised, about the way in which prisoners
20 were being handled?

21 A. Yes.

22 Q. In what context, General?

23 A. When I visited the Prisoner of War Handling
24 Organisation, I saw a prisoner of war hooded --

25 Q. I am going to come to that, if I may, in just a moment,

1 the Umm Qasr visit. Can I just leave that to one side?

2 A. Yes.

3 Q. Apart from that, were any prisoner handling issues ever
4 brought to your attention?

5 A. No, not the actual handling of prisoners. The only
6 other prisoner issue was the provision of the force that
7 we needed prior to the operation.

8 Q. I was just going to ask you a little about that. I will
9 take it very briefly, if I may. Could we have a look,
10 please, at MOD011434, from command legal to the GOC,
11 6 March 2003. This is a document from Colonel Mercer.
12 At paragraph 3:

13 "... manning and resources estimate for prisoners is
14 difficult to evaluate but, as your legal adviser, I am
15 professionally obliged to point out any legal risks that
16 you or the division may run in any area of military
17 operations and, in my opinion, the failure to find
18 additional manning and resources with regard to
19 prisoners of war now brings a real risk of potentially
20 violating international law ...", and so on.

21 At 5:

22 "The reduction in MP brigades now puts a greatly
23 increased burden on the UK with regard to the evacuation
24 of prisoners of war and, given the limited resources
25 available, it is highly unlikely that the UK ... has

1 taken 'all suitable precautions' with regard to the
2 safety of prisoners during evacuation and may also
3 'unnecessarily expose prisoners ... to danger while
4 awaiting evacuation ...'"

5 I am going to pause there because that is obviously
6 a reference to evacuation from the battlefield, and we
7 see that in paragraph 6. I could take you, but I will
8 not -- I will simply refer to them -- to documents that
9 we find in -- if you will forgive me, I will just give
10 the reference to them.

11 If we just look at the first page of a document at
12 MOD042896. It is dated 5 March, "assess rep", as it is
13 described. At paragraph 2, in the middle of the
14 paragraph, four lines in, there is the reference to the
15 possibility of significantly increased numbers of
16 prisoners of war.

17 At MOD042899, 9 March, now, of 2003, another assess
18 rep, "Key GOC issues". You see that highlighted now on
19 the screen at the foot left. Then, over the page, under
20 paragraph 3, "PWHO", there is reference in the three
21 lines from the bottom to:

22 "Transport for the [prisoner handling organisation]
23 ... remains critical and the policy of ... pooling
24 vehicles is unsatisfactory if evacuation from the
25 battlefield is to be in accordance with international

1 legal obligations. The issue of [prisoner of war
2 handling organisation] manning remains 'legal red' and
3 requires resolution."

4 I just raise those with you in a sense to dismiss
5 them because these were all what I might call
6 war-fighting phase concerns, weren't they?

7 A. Yes.

8 Q. The concerns of particularly having enough troops
9 available and prisoners handlers, if you like, available
10 to deal with what was then expected to be large numbers
11 of enemy prisoners of war taken in the battle phase.

12 A. Yes.

13 Q. I am not suggesting that that was not important, but
14 perhaps not directly pertinent to matters that this
15 Inquiry is considering. Leaving that aside, that
16 question of resources and the question of the Umm Qasr
17 visit, which I am going to come to in a moment, were you
18 aware of any other prisoner handling issues?

19 A. No.

20 Q. Were you ever made aware of any complaint made by the
21 ICRC?

22 A. I knew that the ICRC had visited and I was briefed that
23 they had some comments on how things were being done and
24 these were being addressed by the relevant staff.

25 Q. Was that, do you recall, in relation to your visit to

1 Umm Qasr or at about the same time or was this something
2 that was quite separate from that?

3 A. As I recall, it was quite separate and after my visit.

4 Q. So, then, let's deal with that now, then. You were told
5 that they had concerns, about what?

6 A. About the general way things were being done. There
7 were no particular points that I recall being raised.
8 There was nothing that alarmed me in their reports.
9 There seemed to be some procedural things that we needed
10 to put right and I got an oral brief and I was assured
11 that action was in hand to address the issues that had
12 been raised from the ICRC visit.

13 Q. Do you recall -- and you will bear in mind the
14 strictures there are on naming some names, General --
15 who gave you the oral briefing on this?

16 A. No.

17 Q. Do you recall whether the briefing of the ICRC concerns
18 involved any elements including hooding of prisoners?

19 A. No, I don't.

20 Q. Or the use of stress positions?

21 A. No.

22 Q. Do you mean the briefing did not include those matters
23 or you just don't remember?

24 A. I don't remember a briefing that I received about ICRC
25 and -- connecting them to stress positions, no, I don't.

1 Q. Or hooding?

2 A. Nor hooding.

3 Q. But you can't remember what the concerns were, can you?

4 A. No. They appeared to be not about stressful issues.

5 They seemed to be more about points of detail -- food,

6 that sort of -- type of food.

7 Q. Moving on then, please, to your Umm Qasr visit. You

8 tell us in your statement that you think it was around

9 the end of March that you made your visit.

10 A. Yes.

11 Q. The purpose of the visit?

12 A. I needed to go and visit many parts -- indeed all

13 parts -- of the division to see how they were getting

14 on, to satisfy myself that the operations were being

15 conducted properly and see for myself that our own

16 soldiers were managing in the circumstances that they

17 were finding themselves.

18 Q. Do you recall who went with you on that visit?

19 A. All the visits I went on I had a fairly large number of

20 people accompanying me. I always had my military

21 assistants and I always had my close protection team.

22 I can't remember who visited with me on that day and

23 I saw a number of people whilst I was at the facility

24 including the commander of the Queen's Dragoon Guards --

25 but he was based there anyway and I would expect to see

1 him -- but I can't remember precisely who came with me.

2 Q. Were you making this visit to Umm Qasr because of any
3 concerns about it or simply, as it were, as a routine
4 visit to see how things were going there?

5 A. I needed to go and see for myself how things were going.
6 I knew that we had not been able to set up the prisoner
7 of war facility until after we got into Iraq and,
8 therefore, the timescale of building the facility and
9 receiving prisoners in was going to be challenging, to
10 say the least, and I wanted to make sure really the
11 logistics of it were in place.

12 Q. So was this your first visit?

13 A. Yes.

14 Q. Did you, in fact, make any other visits before you left
15 Iraq?

16 A. Not that I recall.

17 Q. So this was your only visit?

18 A. Yes.

19 Q. You tell us in your statement that on this visit you saw
20 something that concerned you.

21 A. Yes.

22 Q. What was that?

23 A. I saw an Iraqi prisoner of war being led across from one
24 tent to another and he had a sandbag over his head.
25 I was uncomfortable with this sight. I discussed it

1 briefly with the commanders of the prisoner of war
2 handling organisation and said that I would review the
3 matter when I got back to my headquarters.

4 Q. One prisoner?

5 A. As I recall, one prisoner.

6 Q. When you discussed it with the commanders there and
7 then, as I understand it, were you given any explanation
8 as to why the prisoner was hooded?

9 A. I can't remember being given one because I don't think
10 I asked for much of an explanation. It was fairly
11 obvious to me that it was to effectively blindfold the
12 prisoner as they were moving from (a) to (b) because
13 there were documents on evidence and it was quite clear
14 to me that the prisoner was not in any way stressed.

15 Q. Why do you say that?

16 A. Because I could see. He was being led very properly in
17 his blindfold state -- in a perfectly humane way from A
18 to B.

19 Q. But you couldn't see his head or face or eyes?

20 A. No.

21 Q. So you assumed that the purpose was to blindfold him to
22 deprive him of sight --

23 A. I assumed that.

24 Q. -- for the purpose that you have given?

25 A. Yes.

1 Q. If he had been blindfolded or, as we understand later
2 may have happened, blacked-out goggles had been used,
3 that would not have concerned you at all, would it?

4 A. Probably not.

5 Q. So it was the use of the hood that troubled you?

6 A. Yes. It was the use of the sandbag, actually, that
7 troubled me.

8 Q. And why?

9 A. Because it didn't look very nice.

10 Q. You tell us -- perhaps we should look at it -- at
11 paragraph 48 of your statement to this Inquiry:

12 "My immediate concern was that the hooding did not
13 fit the type of operation we were doing. As my
14 directive ... had indicated, treating Iraqis decently
15 and humanely (and being seen to do so) was of crucial
16 importance."

17 Should we understand then, General, that seeing this
18 Iraqi prisoner with a sandbag you believed not to be
19 treating an Iraqi decently and humanely?

20 A. I don't believe that that particular prisoner of war at
21 that point was being treated inhumanely. If I had
22 thought that, I would have intervened, I think, on the
23 spot. I didn't think he was being treated inhumanely,
24 but I didn't think that it was the right thing to be
25 doing in this context.

1 Q. So putting it bluntly, your concern was more the
2 presentational one than anything else?

3 A. It was a matter of interpretation. Presentation to
4 anybody was an important part of what we were doing;
5 presentation to Iraqi soldiers, our soldiers and anybody
6 else.

7 Q. So did you raise that with the commanders on the ground
8 at the time?

9 A. No. What I did was I heard -- we had a brief discussion
10 about it and I said I would go back to my headquarters
11 and take advice. That would be quite normal for me
12 because sometimes, in the immediacy of a situation, you
13 can give out an instruction which perhaps hasn't taken
14 everything into account. So I wanted to get back to my
15 headquarters and consult a wider forum of people and
16 reflect on things myself.

17 Q. And that's what you did?

18 A. Yes.

19 Q. Just before leaving Umm Qasr, then, did you see any
20 other prisoners hooded apart from the one?

21 A. I don't recall that.

22 Q. Did you see any prisoners in stress positions of any
23 kind?

24 A. No.

25 Q. Or prisoners sitting on the ground, for example, with

1 hands on heads out in the open?

2 A. No. I probably saw Iraqis in the squatting position --
3 that is with their posterior on their heels -- but
4 I don't even know if they were prisoners of war. That
5 is a normal posture for people in that part of the world
6 and it is not a stress position. I understand that.

7 Q. So that day you went back to divisional HQ, did you?

8 A. Yes.

9 Q. Did you take advice on what you had seen?

10 A. Yes, I did.

11 Q. From whom?

12 A. Principally commander legal at divisional level, but
13 also as I recall --

14 Q. That would have been Colonel Mercer?

15 A. Yes. But as I also recall, there were other present --
16 people present. I think the chief of staff was there,
17 I think the divisional POLAD was there, possibly my
18 Foreign Office policy adviser, possibly the commander of
19 the military police and possibly the commander of the
20 divisional artillery, who was, in effect, my deputy.

21 As I recall this meeting, like so many meetings,
22 they weren't necessarily a single meeting. Sometimes we
23 would have a discussion, people would go away, have
24 a further consultation and think about it and then
25 re-form. I can't remember precisely how this happened,

1 but that would be the sort of meeting it was.

2 Q. So all those persons you have named may not all have
3 been present at the same time; is that what you are
4 saying?

5 A. Yes.

6 Q. This might have been an ongoing discussion --

7 A. Yes, it was a bit of an ongoing discussion when I got
8 back.

9 Q. If you could tell us briefly, what was the nature of the
10 advice that you were seeking?

11 A. I wanted to know whether it was lawful to use a sandbag
12 in this way.

13 Q. You wanted to know if it was lawful?

14 A. I wanted to know whether it was lawful. That was the
15 first question. Secondly, when I got the answer to
16 that, which was inconclusive, I then had a discussion
17 about whether this was operationally the right thing to
18 do and we concluded that it wasn't, hence why I issued
19 the instruction that I did.

20 Q. Which I will come to in a moment. Just taking those two
21 points then, you asked the question, "Is hooding
22 lawful?", effectively.

23 A. Yes.

24 Q. Was that because you had some doubt in your mind as to
25 whether it was?

1 A. Yes.

2 Q. Would that doubt have been brought about because, on
3 consideration, hooding under any circumstances may be
4 thought to be inhumane?

5 A. Yes.

6 Q. So what was the advice that you received on that first
7 question? You say it was inconclusive.

8 A. I received advice from commander legal that -- as I
9 recall it, he gave his own view that the use of sandbag
10 hooding was not legal, but that blindfolding was in
11 another way: goggles, for example. But I was also
12 briefed, again by commander legal, that there were
13 contrary legal opinions about this and there were
14 contrary opinions about which laws applied in the
15 circumstances we were in.

16 As I recall it, those were the legal opinions coming
17 from the legal adviser at the Prisoner of War Handling
18 Organisation and from the National Contingent
19 Headquarters.

20 Q. So that's why you say that the advice was inconclusive?

21 A. Yes.

22 Q. Just to be clear about it, Colonel Mercer, you say, was
23 saying that it would be all right, legally, if you like,
24 to deprive a prisoner of sight for security purposes --

25 A. I think he said that, but I -- he certainly said hooding

1 wasn't legal in the way that it was, but I think, as I
2 recall, he said depriving of sight in a properly
3 controlled manner for the reasons stated would be okay.

4 Q. But, to be fair to him, you can't be certain about that,
5 can you?

6 A. I can't be certain because I have taken so many
7 different legal advices on that issue since.

8 Q. I understand. Can we just have a look, please --
9 because we may need to correct an impression that you
10 give in your statement in the light of your evidence --
11 at paragraph 49 please and over the page at BMI07395,
12 where, four lines in, General, you say this:

13 "As I recall, Lieutenant Colonel Mercer said that it
14 was legal to deprive a prisoner of vision for security
15 purposes, and that on the assumption that the hooding at
16 the facility had been to stop the prisoners seeing the
17 papers on the table while they were being moved, it
18 [hooding] was legal."

19 He didn't actually ever say that hooding was legal,
20 did he?

21 A. No, he didn't, and I agree that, as written there,
22 actually that -- I think I have conflated two things.

23 Q. I understand. I think we understand.

24 A. I accept that, because I think I have -- Colonel Mercer
25 was reporting to me both his own opinion and he was

1 reporting to me what other lawyers were reporting from
2 other places and I have rather conflated that. I agree
3 that, as stated like that, it doesn't record correctly
4 what Colonel Mercer, I think, said to me.

5 Q. So there was this difference of view and debate --

6 A. There was.

7 Q. -- about the legal question?

8 A. Yes.

9 Q. On the second question, the presentational issue, if
10 I can put it that way in shorthand anyway, you had
11 a strong view about that anyway, did you?

12 A. Yes, because I didn't think it fitted the type of
13 operation that we were trying to do, that we needed to
14 be acting decently at all times to Iraqi soldiers -- all
15 Iraqis. Our argument wasn't with them, it was with the
16 regime, and I -- we had taken a lot of time and
17 trouble -- we, the coalition, had taken a lot of time
18 and trouble -- to make that distinction and we broadcast
19 and leafleted throughout February and March, before the
20 invasion, on that point.

21 Q. Media photographs, for example, of hooded prisoners was
22 going to be adverse publicity to the hearts and minds
23 war which you wanted to win?

24 A. Correct. If Iraqis in Basra that I had not yet gone
25 into had seen pictures like that, they would be more

1 likely to be hostile to us arriving.

2 Q. And yet again -- I don't want to labour the point,
3 General -- we come back, don't we, then, to hoary
4 chestnut, if you like: if it was bad media publicity,
5 wasn't it because it was plainly inhumane?

6 A. It could be interpreted like that, but I go back to the
7 original point and, as I said in my statement, at the
8 time I don't think that the prisoner of war I saw was
9 being treated inhumanely. I thought he was being taken
10 from A to B and he had been deprived of his sight in the
11 manner with a sandbag over his head. I don't think he
12 was being stressed. I don't think -- in that incident,
13 that's what I judged close up -- that he was being
14 treated inhumanely. As seen through a camera and then
15 as viewed in the middle of Basra, people might take
16 a different view.

17 Q. Yes. I am going to come back to that point just
18 a little later on too. Can I move on then, please, to
19 what then happened? As a result of the
20 discussion/debate that you had with your staff and the
21 lawyers, you decided to issue an order.

22 Could we understand, please, what was the order that
23 you gave?

24 A. That we would stop using hooding in that manner.

25 Q. When you say "stop using hooding in that manner", what

1 does that mean?

2 A. Stop using hooding.

3 Q. Altogether?

4 A. Yes. Yes.

5 Q. For all purposes?

6 A. Yes.

7 Q. That was the intention of the order that you gave, was

8 it?

9 A. Yes.

10 Q. Could your order, in the way that you gave it and in the

11 circumstances that you gave it, have been interpreted as

12 an order that was applicable only to what had happened

13 at the JFIT at Umm Qasr?

14 A. It could have been. Equally, the JFIT could have said

15 that as a joint asset they are not under my command and

16 therefore it doesn't apply to them.

17 Q. Well, that is another issue and I don't want to --

18 A. Yes, so there are two ways it could have been.

19 Q. I am really asking you about the circumstances in which

20 you gave the order, the terms in which you gave it, to

21 whom you gave it and whether it is possible, in those

22 circumstances, that your order may have been, as it

23 were, misinterpreted, arising as it did, as we

24 understand, from the detail of what you had seen at

25 Umm Qasr.

1 A. It certainly arose from that. My intention was to stop
2 hooding and I gave out the order for it to stop and
3 I expected it to stop.

4 Q. Did you give that order to your chief of staff?

5 A. Chief of staff, yes.

6 Q. And you would have expected him to cascade it in the
7 usual way?

8 A. Yes.

9 Q. And your intention, anyway, was that it should apply
10 throughout your area of operation?

11 A. Yes.

12 Q. You tell us in your statement at the end of
13 paragraph 49 -- may we have that please at BMI07395 --
14 about halfway down that section of the paragraph,
15 General:

16 "For me, as a matter of operational policy, we
17 simply did not want to be hooding our prisoners in any
18 circumstances. Therefore I decided that from then on,
19 hooding was not to be used. However, I also said that
20 if anyone thought that they did need to hood for
21 security or operational reasons, then they could apply
22 to division for permission to do so, and make the case,
23 but the general position was to be no hooding under any
24 circumstances."

25 Was that the order that you gave to the chief of

1 staff or did you give him what I may call the plain
2 unvarnished "no hooding" order?

3 A. No, he would know that the -- there was this opportunity
4 for an exception. The reason for that was that those
5 people who argued for the use of hoods as a means of
6 depriving sight wanted to leave that opportunity
7 present. Therefore, having been given contradictory
8 legal advice, although I took a line which clearly
9 nobody would say was -- my order was clearly legal to
10 anybody, nobody could have said it was illegal -- but in
11 order to enable somebody, for whatever -- an operational
12 reason -- could come back to me or my headquarters, and
13 if they could present a case for our consideration, then
14 we might make an exception. But no such case was
15 presented.

16 Q. No such case was ever presented in your time?

17 A. In my time.

18 Q. No. Again, bearing in mind the use of ciphers rather
19 than names where it may be appropriate, who at these
20 meetings, before your order, was advancing the case that
21 there were operational reasons why hooding may be
22 necessary even as a last resort?

23 A. It was coming on the legal chain, but it was being
24 reported to me by Colonel Mercer because these -- we
25 were in separate geographical places, so he was fairly

1 reporting his view and other legal views. And within
2 the intelligence community there was also a difference
3 of opinion as to doctrine, training and practice.

4 Q. So was there, coming from the intelligence community, as
5 you put it, the suggestion that this --

6 A. Elements of it.

7 Q. Elements of it that this might be a procedure which
8 would be needed in the future?

9 A. Yes, to be quite honest, I can't remember who it was
10 because that person, as I recall, wasn't addressing
11 themselves directly to me, but through intermediaries.

12 Q. Now, as far as you were concerned, then, your chief of
13 staff would have cascaded that order down?

14 A. Yes.

15 Q. Did you know, at the time of issuing that order, that
16 there were troops on the ground who, at least so far as
17 they told this Inquiry, believed that it was a standard
18 operating procedure to hood prisoners at the point of
19 capture?

20 A. I didn't know at the time.

21 Q. But you know that now?

22 A. I now know it, yes.

23 Q. If that were the case -- and it is really why I asked
24 you the question some little time ago now -- it would
25 have been desirable, wouldn't it, if that standard

1 operating procedure were being changed from "You may
2 hood at the point of capture" to "You may not hood at
3 all" -- it would have been desirable that that should
4 have been cascaded down in a form which was unmistakable
5 and therefore perhaps desirably in writing?

6 A. I haven't actually seen a standard operating procedure
7 telling people to use hoods at the point of capture.

8 Q. Well, that is another issue.

9 A. Therefore, as I haven't seen one and I haven't seen
10 one -- there wasn't a standard operating procedure to
11 change.

12 Q. Well, if the soldiers on the ground believed that they
13 were operating a standard operating procedure, whether
14 they had seen it or not -- perhaps they wouldn't expect
15 to -- if such were the case, it would have been
16 desirable, wouldn't it, that your order should have been
17 cascaded down clearly and therefore desirably in
18 writing?

19 A. At the time I didn't know that was the practice,
20 therefore, at the time, it didn't seem -- I didn't seem
21 to make -- it didn't seem to me that I needed to make an
22 emphasis on this order. I earlier described that
23 sometimes, if I felt there was a need, I would have made
24 an emphasis and directed in some way how this must reach
25 every soldier in the division, but at the time

1 I didn't -- I didn't know that this was happening and
2 I didn't feel that it was necessary to put the emphasis
3 on the order.

4 Q. Forgetting standard operating procedure, General, if it
5 were the practice extensively for prisoners to be hooded
6 at the point of capture by soldiers on the ground and
7 had you known that, you would have wished your order to
8 have gone out in writing. Would that be right?

9 A. Yes, if I had known that.

10 Q. It may be thought surprising --

11 A. Well, could I correct that? I would have wished my
12 order have been cascaded thoroughly. It needn't have
13 been in writing.

14 Q. But that might be one sensible way of doing it?

15 A. It might have been.

16 Q. It might be thought surprising, if soldiers under your
17 command, as GOC, were hooding at the point of capture
18 routinely, as the Inquiry has been told by many they
19 were, that you didn't know about it; would you agree?

20 A. What was the question again?

21 Q. It might be said to be surprising that you didn't know
22 about that practice.

23 A. It would be surprising, I think, for the GOC to be
24 present at the point of capture.

25 Q. Well, that is another matter too, I understand. But do

1 you not find it surprising, if it were going on as
2 a regular operating procedure, that you didn't know
3 about it?

4 A. I didn't see it and I -- I didn't see prisoners being
5 handled, other than in the prisoner of war handling
6 organisation.

7 Q. If members of your staff had seen it, would you have
8 expected them to bring hooding to your attention?

9 A. Oh, yes, if anybody -- if people -- certainly after
10 I had given the order, I would expect people to have
11 made sure that the order was being complied with and to
12 have taken action appropriately if the order was not
13 being complied with.

14 Q. Just dealing with that latter point, if you can help us
15 or comment at all: it would appear to the Inquiry from
16 all the evidence that has now been heard that your order
17 is likely to have been given on or about 3 April. If it
18 is the case that subsequently -- and again the Inquiry
19 has heard quite a lot of evidence -- that order appears
20 not to have been carried through by soldiers on the
21 ground at least in a number of instances, that is to say
22 the order was not being complied with, and there is the
23 suggestion that the order had not been received, indeed,
24 by some units, how could that have come about and whose
25 responsibility would it be?

1 A. Well, the communication within the division -- my orders
2 and the procedures within division are my
3 responsibility. I agree with you, I have seen evidence
4 that has been shown to me that in some cases my order
5 has not got through. Equally I have seen evidence where
6 my order has got through. So I would suggest that the
7 order has gone through patchily. That is regrettable.
8 I accept full responsibility for that.

9 Q. Where does --

10 A. But I had given out my order, I had given it out as is
11 perfectly normal within the way we operate and it had
12 subsequently gone out.

13 Q. I am not looking necessarily for you, as it were, to pin
14 the blame on individuals, but within the system, can you
15 assist as to how your order may have gone out patchily,
16 where the defects may have occurred?

17 A. In my experience, communication is a two-way process and
18 quite a lot of things go out and get into a bit of
19 a muddle sometimes. If this had been something that
20 I felt was absolutely vital to the prosecution of the
21 mission, I'd have given out something very precise and
22 perhaps would have got on to the radio myself at the
23 evening update and given out the instruction, which
24 I often did. But it wasn't something that struck me --
25 this was an issue that wasn't, at the time, something

1 which was causing me enormous concern.

2 Q. So it wasn't an issue which was, if you like, at the top
3 of your priority list?

4 A. Correct, at the time.

5 Q. At the time. We understand you would have had a million
6 other issues to deal with in the --

7 A. Yes.

8 Q. -- situation that the Inquiry has now heard much about.
9 Accepting that, General, would you now accept that,
10 perhaps, not just that issue, but prisoner handling did
11 not have the priority that perhaps it ought to have had?

12 A. Well, with the benefit of hindsight, we wouldn't be here
13 today if there wasn't a problem. But, at the time there
14 had been no lessons that I was aware of from recent
15 operations where the prisoner of war handling had been
16 an issue -- and I am thinking of Kosovos, Bosnias,
17 East Timor -- I could go on -- and indeed it would be
18 Operation Granby, the previous operation in Iraq.

19 Q. Yes.

20 A. We had looked at the lessons learnt in that operation
21 and the key point was to make sure that the Prisoner of
22 War Handling Organisation was factored in early and that
23 you had sufficient forces to be able to deal with the
24 numbers of prisoners that you were likely to receive.
25 That was actually probably my biggest concern about the

1 Prisoner of War Handling Organisation.

2 Q. As we looked at those documents earlier on.

3 A. Indeed.

4 Q. Yes. That was the war-fighting phase and the concerns
5 that you had.

6 A. Yes.

7 Q. At paragraphs 51 and 52 of your statement -- may I just
8 take you to that please -- you say in the middle of
9 paragraph 51:

10 "... in retrospect it now seems very significant,
11 but at the time it was a matter of detail that I did not
12 need to bring to the attention of higher command."

13 That is this question of hooding. So you say in
14 that paragraph that you didn't have any discussion with
15 the NCC or others in the chain of command above about
16 your order to stop hooding.

17 A. No, because at the time it wasn't an issue that I felt
18 warranted that level of discussion.

19 Q. You do go on to say in the paragraph:

20 "I was aware that following my decision ..."

21 Just pausing there, you were aware before you made
22 your decision also, weren't you, from the evidence you
23 have given us?

24 A. Yes.

25 Q. "... discussion took place among the lawyers at division

1 and NCC about hooding, but nothing was brought to my
2 attention about the decision I had made."

3 You go on in paragraph 52 to refer to
4 Colonel Mercer's letter and witnessing hooded and
5 stressed prisoners. You don't recall that, do you?

6 A. No.

7 Q. But what you do recall -- and you have told us now
8 a number of times -- is that this was obviously an issue
9 which raised divisions, both legally and amongst, if you
10 like, the soldiers, as to whether hooding was or wasn't
11 legal and as to whether hooding should or shouldn't be
12 retained as part of the armoury, if you like, for
13 whatever tactical operation reasons. These were real
14 issues, weren't they, that were being --

15 A. They were. There was a legal issue and amongst a very
16 small community of soldiers in the tactical questioning
17 area, ie the intelligence corps community, not amongst
18 soldiers generally.

19 Q. Did it not occur to you, General, given that there was
20 this debate, legal and the tactical, if you like, that
21 this was a matter that ought to be staffed up, as
22 I think the term is, perhaps for further advice, perhaps
23 up to Government level or to Attorney level, to get
24 a definitive view as to what the law was?

25 A. It was being discussed. I didn't need to raise it

1 because I knew it was being discussed by the legal
2 because I was told what the legal advisers at various
3 levels were saying and I was aware that the legal debate
4 was going on at the higher level.

5 Q. So was it your understanding or belief that this was
6 a decision that was likely to be taken at the highest
7 level, to go up to the Attorney or to ministers?

8 A. If necessary. That would be for the lawyers to --
9 because --

10 Q. Forgive me, was that your understanding at the time,
11 General?

12 A. Yes, because one of the lawyers -- it was reported to me
13 that one of the lawyers was going to take the matter
14 up -- me having given my order -- but I was comfortable
15 because my order was comprehensively legal. Nobody
16 thought that the order I had given was in any way
17 illegal. If I had given the order -- against
18 contradictory advice I had given the order that it could
19 continue, then I most certainly would have gone up the
20 chain because I had given an order that some people had
21 regarded as illegal. But nobody regarded my order as
22 illegal and therefore I didn't need to refer to anybody.

23 Q. I understand that. I am certainly not going to suggest
24 that your order was in any way illegal. But your
25 understanding was that the debate was ongoing, both on

1 the practical side, if you like, and on the legal side,
2 and your expectation was that, if necessary, that would
3 go up to ministers and/or the AG?

4 A. Sitting here, yes. I don't think I thought that in
5 2003. At the end of March 2003, I repeat, this was not
6 at the time itself a hugely important -- a hugely -- not
7 "important", but a hugely urgent and adroit question.

8 Q. May I move on then, please, just to take you to a FRAGO,
9 FRAGO 152. We find that, please, at MOD019145 please.
10 I know you have seen this document, General, because you
11 refer to it in your statement to the Inquiry. It is
12 dated 20 May 2003. Would you have seen FRAGOs of this
13 kind at the time?

14 A. The answer is almost certainly not. What is the date of
15 this FRAGO?

16 Q. You can see it in the top left hand, 20 May 2003.

17 A. I had left theatre.

18 Q. So you would never have seen this, would you, and you
19 would not have had any part in its preparation or the
20 policy that led to it?

21 A. Well, I had left theatre so I can't comment on that.

22 Q. Could I just take you then, please -- there is just the
23 one part I wanted to take you to -- to the third page of
24 it and to the second line from the top:

25 "Under no circumstances should their faces be

1 covered ..."

2 This is in reference to prisoners who were taken.

3 "... as this might impair breathing."

4 Do you see that?

5 A. Yes.

6 Q. Of course you were gone on 14 or 15 May. This was now
7 20 May, when this was issued. But my question is to ask
8 whether you were involved in any policy decision, prior
9 to the issuing of that FRAGO, arising from any concerns
10 about hoods having an effect on breathing.

11 A. No, after I had given my order, the matter was not on my
12 radar.

13 Q. And it never came back onto the agenda, did it?

14 A. Until I heard about Baha Mousa in September.

15 Q. Do you recall ever being aware of deaths in custody
16 whilst you were GOC?

17 A. I don't, but in the process of being shown various
18 pieces for this Inquiry, I have been reminded and, to be
19 quite honest, I don't -- I can't recall. I am hazy.

20 Q. If a death in custody had been brought to your
21 attention, would you have regarded that as being an
22 important and significant matter for you to deal with?

23 A. If there was any death caused by us -- and certainly in
24 custody -- I would have ensured that it was
25 investigated. Indeed, in the preparation for this,

1 I have seen various bits of evidence and investigations
2 have been directed and that is right and proper.

3 Q. So it follows, does it, that no concern as to the
4 process of handling was brought to your attention, even
5 arising out of any deaths in custody?

6 A. Not within the division, no.

7 Q. Thank you. Now your own handover in the middle of May
8 was to Peter Wall, is that right, Major General Wall?

9 A. Yes.

10 Q. You tell us in your statement that the handover was very
11 quick. It follows from all the evidence that you have
12 given, does it, that you didn't hand over, as it were,
13 any concerns that you had about prisoner handling
14 because you had none?

15 A. No, not about prisoner handling. There had been -- the
16 only issue that -- and I can't remember if I talked to
17 him about it because it might have been settled by then.
18 There was one issue, but it wasn't about handling, it
19 was about whether, in fact, we should have some
20 independent legal authority reviewing whether somebody
21 was to be kept in detention, effectively in internment,
22 and whether you should have an independent person doing
23 that, which I thought was a good idea. But that --
24 I can't remember the timing, but in the end that idea
25 did not prevail and it was left, in fact, in the GOC's

1 authority.

2 Q. Now you have moved over, as we have seen, in May, to the
3 DCJO role. You became aware in that role, did you, of
4 the death of Baha Mousa in custody?

5 A. Yes.

6 Q. Do you recall whether you were given the details of what
7 had happened to him?

8 A. No, I wasn't given the detail.

9 Q. You obviously knew of his death.

10 A. Yes.

11 Q. Did you know that he had been hooded for perhaps
12 something approaching 24 hours of the 36 hours or so
13 that he was in custody?

14 A. No, but I knew hooding had been an issue surrounding the
15 circumstances -- not necessarily the cause -- but there
16 was an investigation underway. But in the process of
17 the preliminary hearing, the preliminary reports of his
18 death, the use of hooding had been raised, yes.

19 Q. What was your reaction, General, when you heard that?

20 A. My reaction was to report to the staff and to the chief
21 of joint operations that I recalled that I had banned
22 the issue -- I had banned the use of hooding way back
23 during the so-called campaign phase in March, end of
24 March 2003.

25 Q. What was your reaction to learning that Baha Mousa had

1 died in the custody of British soldiers?

2 A. I was appalled that anybody could die whilst in custody
3 of soldiers and the matter should be properly looked at.

4 Q. Just one or two other miscellaneous matters to deal
5 with, please. Were you ever aware, during your time in
6 Iraq, that stress positions were being used by any units
7 detaining prisoners?

8 A. No.

9 Q. Had you known about that, what would your attitude have
10 been?

11 A. I would have taken action to stop it because it is
12 inhumane and it is contrary to law.

13 Q. A matter that you raise in your statement to the
14 Inquiry -- and I want to deal with it, if I may, and try
15 to deal with it quite briefly -- what you say is your
16 belief that the evidence which you gave to the Joint
17 Committee on Human Rights in March 2006 was subsequently
18 misinterpreted by the committee in their 28th report,
19 where they suggest, putting it shortly, that you misled
20 the committee. This is right, isn't it?

21 You refer in some detail -- and I record it because
22 your statement will be an exhibit, as you know,
23 exhibited on the Inquiry's website -- to this matter at
24 paragraphs 78 to 84 of your statement, where you set out
25 your analysis -- I am not going to take you through it

1 in line-by-line detail, General, but you there set out
2 your analysis of the questions that you were asked by
3 the committee and indeed the answers that you gave.

4 In summary, is it right to say this? The context of
5 the relevant questions posed to you by the JCHR related
6 to an awareness of the five techniques held by
7 United Kingdom troops in 2006, as you understood it,
8 after lessons were learnt from the Iraq campaign, and
9 you were not, in fact, speaking to what had or had not
10 occurred on the ground in Iraq in 2003?

11 A. Correct.

12 Q. But in any event, you say, the answers that you gave
13 were not, as a matter of language, capable of amounting
14 to an assurance that conditioning techniques were not
15 used in 2003.

16 A. Correct.

17 Q. So your position is -- and you set it out in the
18 statement and I don't take it further now because, as
19 you will appreciate, it is not for the chairman to
20 determine -- your position is that the JCHR are
21 therefore mistaken in having construed your answers to
22 have been any such assurances.

23 A. Correct.

24 Q. Thank you.

25 Finally just these points, then, please: looking

1 back, do you think that, in making your order on or
2 about 3 April, you should have made it without any
3 caveat whatsoever, "Hooding was banned for all
4 purposes"?

5 A. Hooding was banned.

6 Q. Well, you did give the caveat, didn't you?

7 A. Yes. I said -- the only caveat I gave -- hooding was
8 banned. The caveat was, "If somebody wants to come back
9 and make a case for its use, they can make it", but no
10 such case was made.

11 Q. And it may be said that leaving the door open, as it
12 were, in that way was something that you should not have
13 done because hooding is plainly inhumane and unlawful.

14 A. No, because I had received legal advice, indirectly,
15 that some people thought it was lawful. Therefore, as
16 a matter of command responsibility, if I didn't give
17 that caveat, I could in some way be depriving our troops
18 of something which they were entitled to do. I didn't
19 know what it was. So given the conflict, I gave out my
20 order, but I did leave room, if somebody could present
21 a case which was agreed legally and was operationally
22 sound because I was mistaken in my first judgment, then
23 I must listen to it. So I thought it was a reasonable
24 situation because I would not wish to deprive soldiers
25 of legitimate tools in their kit bag.

1 MR ELIAS: Thank you, Sir.

2 THE CHAIRMAN: Thank you. I expect there will be questions
3 from other counsel now, General.

4 Yes, Mr Singh.

5 Questions by MR SINGH

6 MR SINGH: Sir, thank you.

7 General, I would like to start with looking at your
8 training in particular and it may be helpful if we look
9 at a couple of paragraphs in your witness statement
10 together, please, at paragraphs 9 and 10, at BMI07384,
11 at the bottom of that page. You have paragraph 9 --

12 A. Yes.

13 Q. -- where you say, "The term 'conditioning' is familiar
14 to me" and then you refer to the so-called five
15 techniques. You refer to them being techniques which
16 can be used prior to questioning and you say that:

17 "I am aware that we were accused of using these
18 techniques in Northern Ireland in the early 1970s and
19 the subsequent prohibition of their use."

20 You also say that you know that they contravene the
21 European Convention of Human Rights.

22 Just one question arising from that sentence first,
23 please. When you say you know that, are you there
24 giving your knowledge when you wrote this statement or
25 was that something that you were aware of in 2003?

1 A. It was certainly my knowledge when I wrote the
2 statement. I think, at the time, I knew that they were
3 illegal. I am not necessarily sure I could tell you
4 under which law they were illegal, but I knew they were
5 illegal because, as a young officer, I had served in
6 Northern Ireland -- I didn't get involved in any of
7 these issues that were going on -- but I knew that UK
8 had been found wanting in this area and a ruling had
9 come out, so I knew that.

10 Q. Thank you. At the end of paragraph 10, General, you
11 tell the Inquiry that the source of your knowledge on
12 conditioning and your belief that these techniques
13 should not be used is your education, training and
14 professional development since the late 1970s onwards.
15 Are you there referring to any specific training or
16 course that you recall or just general training that, as
17 it were, all officers --

18 A. It would be general training in terms of the individual
19 training directives that you have to comply with at one
20 end, which would be every single soldier, to whilst
21 I was at Staff College, for example.

22 Q. I see. Can I ask, please -- turning to a different
23 topic -- if we can have a document on the screen,
24 MOD011447. This appears, on the face of it, to be
25 a document from commander legal, as we see at the

1 bottom -- that was Colonel Mercer -- dated
2 29 March 2003, and it appears, on the face of it, to be
3 addressed to you as GOC. Do you see that?
4 A. Yes.
5 Q. Is it your evidence to the Inquiry that you did not see
6 this at the time?
7 A. I don't recall seeing it.
8 Q. Can we just look at paragraph 6 for a moment, where
9 Colonel Mercer says that he visited the JFIT and
10 witnessed a number of prisoners of war who were hooded
11 and in various stress positions and that he was informed
12 that this was in accordance with British Army doctrine
13 on tactical questioning. That doesn't jog any memory of
14 yours?
15 A. No.
16 Q. If you had seen that at the time, General, what would
17 your reaction have been?
18 A. Seen this document?
19 Q. Yes.
20 A. Well, I would have entered a discussion again.
21 Q. And if you had been told that there were stress
22 positions that Colonel Mercer had seen at JFIT, what
23 would you have done about it?
24 A. If I had been told there were stress positions being
25 used, I would have got a clarification from the

1 organisation concerned and then I would have gone up to
2 the National Contingent Headquarters, because the
3 JFIT -- joint -- is a force that operates under their
4 authority.

5 Q. You have told the Inquiry in your witness statement that
6 you didn't have, as I understand it, discussions with
7 the NCC about, for example, the ICRC visit to the JFIT.
8 Is that right?

9 A. I don't recall having the conversation with the National
10 Contingent Headquarters about any of the handling issues
11 of prisoners of war. Before combat operations started
12 I did talk to them about the forces needed for the
13 Prisoner of War Handling Organisation, which we have
14 mentioned earlier, but I don't recall at any stage
15 talking to the NCC about those issues myself.

16 Q. The Inquiry has heard from several of the witnesses,
17 including people who were at that time working at the
18 NCC, that the ICRC had expressed concern at about this
19 time -- late March/early April 2003 -- about hooding,
20 but also about what has been described as "harsh
21 treatment", including people being out in the sun and
22 the adoption of stress positions. Do I take it from
23 your evidence, General, that none of this ever came to
24 your attention at that time?

25 A. That's correct.

1 Q. Can you help the Inquiry, please, with what your
2 relationship on a day-to-day basis was with NCC? Would
3 there have been regular contact?

4 A. Yes. I spoke to the chief of staff at the NCC every
5 evening at about 10 o'clock -- that is
6 General Peter Wall -- and he and I held a conversation
7 probably for about 45 minutes. This was after the more
8 formal briefings had taken place, when I told him what
9 my real concerns were, what I was thinking about, how
10 the campaign was unfolding and what the really big
11 issues were.

12 That was probably 45 minutes each night. That was
13 after a routine update that we had, at which I would
14 interject, if it was necessary, the staff routine if
15 I wanted to make a point of emphasis or raise an issue
16 that I sought clarification. So there was a double
17 dose, daily communication, and probably every other day
18 I would speak to Air Marshal Burridge as well.

19 Q. General, can I ask, please, to look at a document with
20 you on the screen at MOD052867? That appears to bear
21 the date at the top of 13 May 2004 and has the heading
22 "Parliamentary statement on the hooding of prisoners".

23 It is not entirely clear, at least on the face of
24 the document, who is the author of this document. We
25 don't have a signature at the end on the next page. But

1 what we do see in the second paragraph on the first page
2 is it says:

3 "In the meantime, from personal recollection as GOC
4 (1 Div) and given the information that PJHQ has
5 available today, please see below the answer [to] your
6 request."

7 Have you seen this document before, sir?

8 A. In preparation for being at the Inquiry. I don't recall
9 seeing it at the time.

10 Q. You are not the author of this document?

11 A. I don't know.

12 Q. It is just that you see it appears to be by someone
13 describing themselves as "GOC 1 Div" and also, in the
14 next couple of paragraphs, to get a context of it, it
15 refers to hooding and says that:

16 "During Op Telic phase III, the 'hooding' of PWs ...
17 [et cetera] attracted the attention of the
18 international media and the ICRC. At the end of April
19 2003, ICRC advice was that this practice should stop
20 and, other than for particular individual cases,
21 'hooding' ceased."

22 Does that jog your memory at all, sir?

23 A. No. My memory as to whether I wrote this?

24 Q. Yes.

25 A. No, I have no memory of writing it. It might well have

1 been written for me and I might well have -- I'm not
2 saying I didn't write it, but I don't recall it.

3 THE CHAIRMAN: It looks a bit as if it has your
4 authorisation, if it says "from personal recollection as
5 GOC (1 Div)". On the other hand it also includes
6 information that PJHQ has available to them.

7 A. Yes. I mean, that is -- well, I can't -- I have seen
8 this document in the last couple of days --

9 MR SINGH: I understand.

10 A. -- and it didn't make -- the second sentence --

11 Q. Were you at PJHQ by this time?

12 A. Yes.

13 Q. So it might be that that is the explanation, is it -- if
14 it were you ...

15 I understand, of course, General, that somebody else
16 will often draft documents for you and you will not
17 necessarily be the author in that personal sense.

18 A. Yes, but if I signed it, I would make sure that I signed
19 something with which I agreed.

20 Q. Of course.

21 A. If it is me saying "This is a recollection of GOC", if
22 I was putting my signature, I would have certainly
23 checked that. But I think -- it is my recollection, but
24 whether it was my document or not, I don't know.

25 Q. I see. Can I move to a different topic, please, which

1 is later on, when you heard of the death of Baha Mousa.
2 By that time, as I think you have just told us, you were
3 at PJHQ.

4 A. Yes.

5 Q. The Inquiry has heard evidence from a person called
6 Colonel Clapham, Nick Clapham. Do you remember him?

7 A. Yes.

8 Q. Can I just ask, please, for a couple of passages in his
9 witness statement to be put on the screen? It starts at
10 BMI06511, just to put it in context. In paragraph 76,
11 General, he refers to you by name in the fourth line of
12 that paragraph. If you could please just look at that
13 so that you have this in mind.

14 A. Yes.

15 Q. Then he refers to you again over the page at
16 paragraph 79 and also at paragraph 80 his evidence is:

17 "My advice was discussed at the meeting which Major
18 General Brims attended ... and he was content with it."

19 The Inquiry has heard -- I don't need to go to it
20 unless you would like me to -- from Colonel Clapham
21 giving oral evidence, that in the discussions about
22 hooding after the death of Baha Mousa, there were three
23 significant players. He said that they were himself,
24 Colonel Duncan and you. Would you describe yourself as
25 a significant player in those discussions?

1 A. Yes.

2 Q. Can we please look at the email which he is there
3 referring to, which we can see at MOD022183? As is
4 often the case, General, the emails are, of course, in
5 reverse chronological order, so to get the first one, we
6 actually look at the bottom of that page and then have
7 to go over the page to see it. Can we just, first of
8 all, see in the -- forgive me, if we can go back a page
9 of the screen -- to see who it was copied to, this
10 bottom email. It is dated 17 September and do you see
11 in the third line of the "cc" section that there is
12 a reference to "PJHQ", "DCJO", "Ops MAS"? Was that your
13 military assistant?

14 A. Yes.

15 Q. Thank you. Have you read this email?

16 A. Yes, in preparation for appearing today.

17 Q. By all means take time to remind yourself of its content
18 if you wish, sir. Perhaps we can just look at it over
19 the page, as well, to help the witness.

20 A. Yes. Yes.

21 Q. General, you see there that Colonel Clapham at least
22 appears to be saying that his understanding was that
23 sight deprivation could have two purposes: one, if I can
24 summarise, is a security purpose; the other one is on
25 grounds of disorientation. Does that ring any bells

1 with you?

2 A. Yes. I recall -- and I continue to recall -- there
3 still remains a legal debate going on. When this issue
4 came up, I received a number of emails, some of which
5 had been brought to my attention in preparation for
6 coming today. My view remained unchanged. I reflected
7 with CJO General Reith and he issued his instruction
8 thereafter.

9 Q. General, were you aware, in 2003, that one of the
10 purposes of sight deprivation of detainees was to
11 disorientate them?

12 A. I was -- no. Sorry, do you mean was I aware in 2003
13 that we were using those techniques to disorientate
14 people?

15 Q. Yes.

16 A. No, I wasn't. Am I aware afterwards that somebody
17 suggested to me that it might be for that? That's the
18 first time I come to it. But I personally think it is
19 wrong and hence where we go.

20 Q. I understand. The final topic I would like to ask you
21 about, General, is to do with paragraph 74 of your
22 witness statement. That is at BMI07403. It is
23 particularly the first half of paragraph 74, if you want
24 to remind yourself, sir, of what you said.

25 Can you help me, General, with how I should

1 understand what the chain of command concerning the
2 intelligence community was? You say there that it had
3 its own specialist chain of command as well as the 1 Div
4 chain of command. I am a lay person, sir, so forgive
5 me, but was it that there were two vertical lines of
6 command and never the twain shall meet or did they --

7 A. No, they meet.

8 Q. Where do they meet, sir?

9 A. You can have pure command, which I exercised over all
10 1 Div troops, but 1 Div troops also had functional
11 commanders. So the functional commander, save for the
12 communications, comes down the Royal Signals
13 communication line or the artillery functional command
14 is exercised down the artillery chain of command as well
15 as down the pure command of the operation command. That
16 applies within the intelligence community, with, in
17 addition, in this case, the full intelligence piece,
18 including the JFIT, coming together under the NCC
19 commander because, during combat operations, the joint
20 forces belong to the national contingent commander.

21 Q. Forgive me if I have not followed that correctly, I just
22 want to understand that I have. Does it follow that the
23 two lines of command, as it were, would not have met at
24 all below your level, but above your level?

25 A. Some of them met at my level --

1 Q. Some of them did?

2 A. Some of them met at my level for intelligence. Some of
3 them met at my level, some of them met at NCC.

4 Q. I understand. Finally this, General, if I may: earlier
5 this morning you gave evidence to the Inquiry in the
6 context of questions about hooding that Mr Elias put to
7 you and your deciding, having heard a variety of views,
8 to ban hooding. I think you said that within the
9 intelligence community there was also a difference of
10 opinion as to what you called "doctrine, training and
11 practice". Can you help us a little more by explaining
12 what you meant by "doctrine, training and practice"?

13 A. By "doctrine" I mean in what is written in manuals; by
14 "training", I mean what people were taught in their
15 training generally and specifically; and "practice",
16 I mean what they were actually doing on the day, day by
17 day.

18 Q. Presumably, General, the phenomenon of soldiers putting
19 hoods over a prisoner's head immediately after capture
20 would not be of direct interest to the intelligence
21 community, would it, because that is a security matter?
22 You have explained that for certain security reasons, at
23 the point of capture, your view is that it can be
24 legitimate to put a hood on somebody's head. Have
25 I understood that correctly?

1 A. Well, it isn't now.

2 Q. No, no, but at the time --

3 A. At the time --

4 Q. -- before your ban.

5 A. At the time -- to be quite honest I hadn't thought of

6 that issue --

7 Q. I see.

8 A. -- at the time, at the point of capture. I hadn't

9 thought of that issue at the point of capture.

10 Q. I understand. But what I am really trying to

11 understand, General, if you wouldn't mind helping me, is

12 why the intelligence community would have doctrine,

13 training and practice to do with hooding.

14 A. Because they handle prisoners of war and they get

15 involved in the questioning of them.

16 MR SINGH: I see. Thank you, General. Those are my

17 questions.

18 THE CHAIRMAN: I want to break at about quarter past. It

19 would be nice to think that we could complete this

20 witness' evidence by then, but we will see.

21 Ms Edington?

22 MS EDINGTON: Sir, I have no questions. My topics have been

23 covered by others adequately, thank you.

24 THE CHAIRMAN: Thank you. Sorry, Ms Dobbin, I should have

25 asked you first.

1 Questions by MS DOBBIN

2 MS DOBBIN: May I just ask you this? In terms of the
3 caveat, if I can call it that for convenience, to the
4 ban on hooding, in terms of what you were leaving the
5 door open for, were you leaving the door open for
6 someone to come and make a case for hooding or were you
7 leaving the door open for applications to be made on
8 a sort of ongoing basis or on a case-by-case basis?

9 A. Either of them. What drove me, as I said earlier on,
10 was if I had given this -- I gave this order out, which
11 some people said was -- could have said was
12 over-restrictive, and I didn't want to give out an order
13 that potentially deprives our troops of something that
14 they could legitimately do. And I might have been wrong
15 in making that decision and therefore I left the door
16 open to somebody to put a case to me and say, "Actually,
17 you are being overly restrictive in this order", and
18 they could put a case to me because, as I said earlier
19 on, I did it as a matter of policy, not of law.

20 THE CHAIRMAN: I think I have understood that point, I am
21 bound to say.

22 MS DOBBIN: Sir, it was really the case-by-case basis that
23 I was interested in.

24 THE CHAIRMAN: Thank you. Mr Evans?

25 Questions by MR EVANS

1 MR EVANS: Thank you, Sir.

2 General, you said in answer to questions from
3 Mr Elias that you expected the message that your
4 soldiers should treat people properly to be sent down to
5 troops on the ground.

6 A. Yes.

7 Q. You gave an example in your witness statement, if I can
8 just turn that up with you, at BMI07388, paragraph 21.
9 You say there that you sought opportunities to check to
10 see whether the message had got through and you
11 remember, for example, visiting the Black Watch in about
12 March 2003. You say that it is not a particularly
13 sophisticated example. Perhaps you could explain to us
14 why that gave you reassurance that your message was
15 getting through.

16 A. When I visited the Black Watch -- and this was before
17 combat operations started -- they gave me a briefing and
18 they drew a cartoon figure of a man and they said --
19 inside the head they put all the various organisations
20 which represented Saddam Hussein's regime and they said,
21 "That's what we are -- we've got to remove the head
22 whilst controlling the arms", which represented the
23 armed forces, the police and the other security
24 apparatus, "so that we can then come back and apply
25 first aid to the heart, lungs and so forth, and get this

1 man back on his feet, even though we have taken off his
2 head". And I thought that was a brilliant way of
3 telling me that they understood what we were trying to
4 do conceptually.

5 Q. Did you derive from examples such as that that your
6 divisional intent had been satisfactorily communicated
7 down to grass roots level?

8 A. Yes.

9 Q. Turning to another topic, you told us of the Iraqi
10 prisoner you saw hooded at the prisoner of war facility
11 and you said that there were documents in evidence which
12 he was being led past. Can you just explain what you
13 did see in that respect?

14 A. As I recall it, he was being led past, and on a table
15 there were bits of paper, maps.

16 Q. Can you remember this? Did you see this incident at the
17 prisoner of war handling facility or at the JFIT?

18 A. I can't remember.

19 Q. Do you have any recollection of visiting the JFIT
20 specifically on that day or not?

21 A. I have no recollection and I would have thought I would
22 have recalled it if I had been there.

23 Q. When you gave your verbal order to ban hooding at the
24 beginning of April 2003, did you have any reason to
25 doubt that it would be disseminated in the normal way

1 via your chief of staff?

2 A. No, it was normal, routine.

3 Q. Would you have regarded dissemination over the radio net
4 as an adequate and appropriate way of disseminating the
5 order?

6 A. Yes.

7 Q. May we have paragraph 54 of your witness statement on
8 screen, please? You were taken to a document produced
9 by Colonel Mercer which you said you didn't see. Do you
10 remember the document that demonstrates stress
11 positions?

12 A. Yes.

13 Q. Was it your practice, as you say here, to initial
14 documents that you had seen?

15 A. Yes.

16 Q. Was there an initial on the document that was produced
17 to you?

18 A. No.

19 THE CHAIRMAN: Well, that doesn't mean to say that he didn't
20 see a document with an initial on it. I don't think
21 that carries us very much further. I dare say you will
22 make that comment at some other stage.

23 MR EVANS: Indeed. May I put it this way? Did

24 Colonel Mercer ever tell you that stress positions had
25 been used at the JFIT?

1 A. I don't recall it.

2 Q. In paragraph 55 of your witness statement -- can I put
3 this to you -- you say that:

4 "... I am certain that if the use of stress
5 positions had been raised in these terms with me [that
6 is the terms in the documents that I have just referred
7 to] I would have said that stress positions were
8 absolutely not to be used. I knew that stress positions
9 were unlawful, and that they were also contrary to the
10 purpose and approach of our mission as I set it out in
11 directive 1. So I am certain that if stress positions
12 had been raised with me, I would have made an order
13 banning their use, just as I ordered that hooding was
14 not to be used."

15 Does that remain your evidence to the Inquiry today?

16 A. Yes.

17 THE CHAIRMAN: It would be very surprising if it didn't.

18 MR EVANS: The final matter, please, if I may.

19 You were asked why it was you thought that your
20 verbal order, your oral order, banning hooding had gone
21 out patchily. Can I ask you this? What was occupying
22 your attention when you decided to ban hooding on about
23 3 April 2003?

24 A. I think the order -- my decision was at the end of
25 March. At the end of March, my whole focus was on

1 achieving the mission, which was securing the flank as
2 the American armed forces moved north towards Baghdad.
3 We had to hold some vital ground to achieve that. We
4 had to hold the oil infrastructure, which we and the
5 Americans had captured, and I was being asked down the
6 American chain of command, "Are you holding the oil
7 infrastructure?" -- we got almost that daily question,
8 and we did, of course.

9 I had to deal with the possibility of a humanitarian
10 disaster and, above all, my greatest concern was the use
11 of a chemical weapon. If a chemical weapon had been
12 fired into Basra, even if it was just one -- and you
13 potentially would have a city of a million and a quarter
14 people in panic -- how were we going to achieve that and
15 the logistics to be able to deal with those people.
16 I was going to have to get into the urban areas,
17 Al Zubayr, which I think I got into around about that
18 time -- I can't remember -- but certainly I was going to
19 have to get into Basra at some stage.

20 These were the things that were on my mind, and
21 finally getting into the urban areas, I was desperately
22 trying to do it without trashing the place, without
23 spilling too much blood, British or Iraqi.

24 Q. Finally this: where physically was the division at the
25 end of March/early April 2003?

1 A. The headquarters?

2 Q. Yes.

3 A. It was in the desert.

4 Q. And you were living effectively out of vehicles at that
5 stage?

6 A. Yes.

7 MR EVANS: Yes, thank you very much, Sir.

8 THE CHAIRMAN: Mr Elias?

9 MR ELIAS: No further questions. Thank you, Sir.

10 Questions by THE CHAIRMAN

11 THE CHAIRMAN: Just the one thing I want to ask you,

12 General, is this: around about the time that you were
13 going into Iraq, if anybody had said to you, "Is there
14 a danger of soldiers beating up people whom they have
15 captured?", what would you have said?

16 A. I'd have said "No, because they know it's wrong". There
17 will always be some people who break the law, but the
18 vast majority of soldiers know the law and they also
19 know what the right thing to do is, and that we have
20 a system of a rank structure and supervision,
21 particularly with the NCOs, and where things go wrong
22 and people start operating improperly, that should be
23 corrected on the spot.

24 THE CHAIRMAN: Yes. I see.

25 Thank you very much for coming to the Inquiry.

1 Those are all the questions that we have for you. I am
2 grateful to you for coming and I am grateful to you for
3 providing all the evidence that you have and taking the
4 time to read into it before coming here.

5 You are now free to go. Thank you very much. We
6 will have a quarter-of-an-hour break.

7 MR ELIAS: Thank you, Sir.

8 (11.14 am)

9 (A short break)

10 (11.28 pm)

11 THE CHAIRMAN: Yes, Mr Moss.

12 MR MOSS: Thank you, Sir. I call Lieutenant General Sir
13 Graeme Lamb, please.

14 THE CHAIRMAN: General. Could you be kind enough to stand
15 up, please, and I will ask that you take the oath?

16 A. Sir.

17 GRAEME CAMERON MAXWELL LAMB (affirmed)

18 THE CHAIRMAN: General, please sit down. May I ask you to
19 make yourself as comfortable as you can in that
20 witness-box and I would be extremely grateful if you
21 would speak into the microphone so that we can all hear
22 what you have to say. Thank you.

23 A. Thank you, Sir.

24 Questions by MR MOSS

25 MR MOSS: General, can you start by giving the Inquiry your

1 full name, please?

2 A. Graeme Cameron Maxwell Lamb.

3 Q. Can you take up the hard copy of your witness statement
4 which should be in that folder in front of you? If you
5 look at the last page -- we have it at our BMI04923 --
6 do we see that that is a statement that you were
7 providing to this Inquiry on 2 October of last year?

8 A. That's correct.

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

12 A. That's correct.

13 Q. Thank you. General, everybody in this room -- the
14 chairman and all the lawyers -- have had the opportunity
15 to read your statement and all the documents to which
16 you refer. My task, as I am sure you understand, is
17 just to take you to some topics arising out of your
18 statement.

19 Could I start, please, albeit briefly, with your
20 career background? I will not, General, ask you to
21 detail all of your career background, save to note that,
22 unsurprisingly, you have extremely wide experience of
23 command at different levels in different theatres and in
24 different roles; that is right, isn't it?

25 A. Sir, that is correct.

1 Q. I think for the purposes of this Inquiry, it may be more
2 relevant if I just ask you this: it is right, isn't it,
3 that you yourself have direct experience of serving as
4 the commanding officer of a battalion --

5 A. Yes.

6 Q. -- having commanded, as I understand it, the
7 1st Battalion of the Queen's Own Highlanders -- was it
8 from 1991?

9 A. I need to check the date, but it was certainly the
10 Queen's Own Highlanders and it was around the period
11 1991/1992 through to 1994.

12 Q. I think you also served in the mid-1990s as the brigade
13 commander for 5th Airborne Brigade; is that right?

14 A. That's correct. That was from 1996 to 1998.

15 Q. Thank you. Prior to July 2003, I think it is right that
16 you had been in a different post within the Ministry of
17 Defence. If I have understood the chronology correctly,
18 you then took over the post of general officer
19 commanding 3 (UK) Division, joining the division in Iraq
20 on about 10 or 11 July 2003. Is that right?

21 A. That's correct, sir.

22 Q. Thank you. As the Inquiry has heard already, you had
23 a dual role, did you not, because as well as being the
24 general officer commanding 3 (UK) Division, you were
25 also commanding the Multinational Division (South-East),

1 of which 3 UK was the largest contingent?

2 A. That is correct, of the four provinces and around as,
3 I recall, 11 different nations.

4 Q. I will come back to some of the complexities, albeit
5 briefly, that that involved, if I may. I think it is
6 right, finally on your career, General, that since
7 signing your statement you have left the army.

8 A. That is correct. I am retired.

9 Q. Having left with the rank of lieutenant general?

10 A. That's correct.

11 Q. Thank you. May I turn then, please, to your training?

12 You tell us that, in terms of the general training you
13 received in the law of armed conflict and the
14 Geneva Conventions, the clear underlying message that
15 you received was that prisoners should be treated
16 humanely; is that right?

17 A. That is absolutely correct.

18 Q. In terms of annual training in the law of armed
19 conflict, do you recall it ever descending to the level
20 of detail whereby sight deprivation would be discussed
21 in annual LOAC training?

22 A. I probably finished my last periods of general Geneva
23 Convention LOAC training in the 1970s. During that
24 time, then, one would have covered quite specifically
25 what the rules and regulations were, but of course, in

1 1970, I was also deployed in -- in the 1970s deployed in
2 Northern Ireland, and so the issues that you raised why
3 were known.

4 Q. You tell us in your statement that you were aware of the
5 Heath ruling, for example; is that right?

6 A. Of ...?

7 Q. The Heath ruling.

8 A. Yes, I did.

9 Q. Thank you. If we could look at paragraph 13 of your
10 statement, please, at BMI04911. You tell us there that
11 the only times that you have come across hooding and
12 stress positions and white noise and sleep deprivation
13 was in the course of resistance to interrogation
14 training which you were, yourself, involved in; is that
15 right?

16 A. This is not the only time I have come across these.
17 This is the only time I experienced it.

18 Q. Yes. You say that you were reminded of those matters in
19 resistance to interrogation training that you had before
20 going to various wars and operations, a bit further on
21 in paragraph 13; is that right?

22 A. Correct. This training was about resisting what I would
23 consider to be the inhumane treatment. Before I went on
24 operations and/or to the various campaigns and wars that
25 I have been involved in, then one was reminded of the

1 resistance to interrogation, of which some of the
2 techniques had changed over time.

3 Q. May I ask you then about the practical exercise of
4 resistance to interrogation which you say you
5 experienced the once. Towards the bottom of your
6 paragraph 13, General, you say that it was emphasised
7 that such resistance to interrogation training was not
8 a lesson in how to interrogate. I appreciate it was
9 a long time ago, but can you remember how and in what
10 way that was actually made clear?

11 A. I think in the title and the course, which was about
12 three weeks long, as I recall, was about resisting
13 interrogation. It was never suggested in any way that
14 this would be the way that we would act and it was
15 contrary to LOAC and Geneva Convention training that
16 I had received.

17 Q. Of course correct me if I am wrong, but you clearly
18 understood it that this was teaching how to resist what
19 a non-Geneva Convention compliant enemy might do to you
20 and not teaching you in what British forces may do to
21 their own prisoners; would that be right?

22 A. Absolutely, sir.

23 Q. Can you remember -- please don't guess -- one way or the
24 other whether there was a specific warning to that
25 effect?

1 A. No, I can't recall that.

2 Q. Can I turn then, please, away from resistance to
3 interrogation training to look at your own understanding
4 of the extent to which, if any, the conditioning
5 techniques -- the five techniques -- might be used by
6 British forces against prisoners that they had taken.
7 If we just look at paragraphs 20 and 21 of your
8 statement, please, at BMI04914, you set out there the
9 techniques in question: deprivation of sight, subjection
10 to stress positions, discomfoting levels of noise,
11 deprivation of food and drink, deprivation of sleep
12 pending tactical questioning or interrogation. Those
13 were the techniques that we are looking at, of course.

14 Can I ask you first of all, other than the
15 deprivation of sight, did you understand whether there
16 were any circumstances in which stress positions, noise,
17 deprivation of food and drink or sleep deprivation were
18 permitted?

19 A. No, I could see no circumstances where they would be
20 acceptable.

21 Q. I think you suggest in your statement that it was more
22 nuanced to sight deprivation and whether that may be
23 permitted. Were there some circumstances in which, as
24 you understood it, sight deprivation would be
25 legitimate?

1 A. Yes, I believe it is the case when it is safeguarding
2 the individuals who are at the point of arrest or in
3 a processing of the individual. It is safeguarding of
4 our secure surroundings inside camps and finally, and of
5 equal importance, is intimidation from those the
6 individual would have been arrested with, who may well,
7 by either comment or by just a visual sign, make it
8 clear that they would intimidate the individual.

9 Q. So the dual purposes, as the Inquiry has heard from
10 quite a number of other witnesses now, are: various
11 matters relating to operational security -- would that
12 be right, in the first instance?

13 A. Yes it would encompass that. It is people with
14 surroundings and then it is about the individual himself
15 not being intimidated.

16 Q. And a degree of protection for those who have been
17 arrested?

18 A. Correct, because they will go back out in the street,
19 and if the individual was released, then they could be
20 seen and/or known.

21 Q. Where sight deprivation could be used, did you
22 understand that it was restricted to those two purposes
23 and for no other purpose?

24 A. Correct.

25 Q. Had you come across any suggestion that sight

1 deprivation could legitimately be used as an aid to
2 interrogation?

3 A. No, I think that would be inappropriate.

4 Q. On a slightly different point, had you come across any
5 suggestion at all in your training that where sight
6 deprivation could legitimately be used for the purposes
7 of security, it would have a side benefit of prolonging
8 the shock of capture?

9 A. I think that is a sequence of the event. It should not
10 be the predominant and pre-reason for the hooding.

11 Q. When you say that, General, do you say that, as it were,
12 as a matter of deduction that you now appreciate or was
13 that something that was talked about and was current in
14 the years prior to Op Telic?

15 A. No, to me it was self-evident and it always has been
16 that that isolation would also prolong the shock of
17 capture.

18 Q. Again, just dealing still with your general
19 understanding, can I ask about precautions and
20 limitations? Should any precautions or limitations be
21 set if prisoners were to be deprived of their sight?

22 A. I think the guidance was -- it is fairly clear in both
23 LOAC and the Geneva Convention -- and the guidance that
24 was given is that it was about acting humanely. It is
25 about not abusing either physically or the mental -- to

1 cause physical or mental harm. They are the drivers in
2 how one then conducts and looks towards these
3 conditions.

4 Q. If we look at paragraph 22 of your statement, you say
5 there, in the second sentence, that:

6 "Sight deprivation for the purposes of conditioning
7 ... prior to questioning or interrogation -- in effect,
8 by distressing them -- is impermissible. But depriving
9 an individual of sight (and sound) for a short period of
10 time where necessary for operational security, or for
11 the safety of the detainee himself or others ... would
12 be acceptable."

13 Your use there of "a short period of time", was that
14 your understanding prior to Op Telic, that such sight
15 deprivation should only be for a short period of time?

16 A. My view is that it is conditions based. So if the
17 individual is in an open area inside one of your camped
18 areas and is held there prior to going into some sort of
19 detention facility, then I would expect that individual
20 to be to remain deprived of his sight so he could not
21 then leave the compound and inform others, in fact,
22 where the dispositions where, where various things were
23 occurring and the like. So it would be conditions
24 based. But the driving factor is this one about acting
25 with respect and dignity and humanity, that as soon as

1 is possible the individual should be restored with his
2 sight, obviously.

3 Q. Perhaps it is impossible to, as it were, draw the line
4 in the sand, but, for example, if a prisoner was left
5 out in the open for hours at an end, with either a
6 blindfold or a hood on, presumably there comes a time
7 when that treatment would be unacceptable within an army
8 base; would that be right?

9 A. I would consider that the chain of command and the
10 individuals would make a judgment that it was now
11 breaking a boundary that in fact was inhumane, yes.

12 Q. You were not aware of any definitive guidance setting
13 out any periods of time -- a matter for judgment; would
14 that be right?

15 A. As I recall, the time limitations on tactical
16 questioning were -- I think it was 12 or 14 hours -- and
17 so there would -- they were the issues of time, rather
18 than about how long someone should or should not be
19 deprived of sight.

20 Q. Thank you. If we just go on, please, General, to your
21 paragraph 23. You turn to deal with the means by which
22 prisoners might be deprived of their sight. I think you
23 are talking here again about your general understanding,
24 aren't you, prior to Telic? You say:

25 "... ideally, hoods would not be used, but if there

1 were no blacked-out goggles or blindfolds, then
2 providing that care was taken that a person was able to
3 breathe, a hood could, in my view, be used for a short
4 period of time where necessary for security purposes."

5 A. Correct, because I have a duty of care to my soldiers as
6 well as I do to the prisoner in question. And in this
7 case, if he or she would have been able to either
8 identify individual soldiers or the surroundings in
9 which they were secured by or had allowed the individual
10 to be able to get this transit of sight between two
11 people who had been lifted up, then that would have been
12 detrimental to that respective duty of care to my own
13 soldiers. At the same time I am very clear about the
14 understanding and the principles of humanity, dignity
15 and respect that underpins our approach to hooding or
16 blindfolding.

17 THE CHAIRMAN: General, may I ask you to slow down a little
18 bit in your answers?

19 A. Sorry, Sir.

20 THE CHAIRMAN: Those ladies are giving us a simultaneous
21 transcript of what you say and it is quite difficult the
22 faster you go.

23 A. My apologies.

24 THE CHAIRMAN: It is a common fault or a common
25 characteristic, if I may say.

1 MR MOSS: You have given the reasons why the sight
2 deprivation may be necessary. Forgive me if it is an
3 obvious question, but why is it that you say that
4 ideally hoods would not be used as the means to deprive
5 prisoners of their sight?

6 A. I mean, they are a fairly inefficient way. They also
7 bring with them the possibility of covering your nose
8 and mouth and therefore could obstruct your breathing
9 ways. That's why blacked-out goggles would be and is
10 the preferred use of providing that sort of blindfold.

11 Q. The Inquiry knows that following Baha Mousa's death and
12 SOI 390 -- which I know you are familiar with -- that
13 blacked-out goggles were clearly stated to be the
14 preferred method and used. But earlier on, prior to
15 Op Telic 2, blacked-out goggles and blindfolds would not
16 be, would they, standard bits of kit that an infantry
17 soldier would carry?

18 A. No.

19 Q. So if the use of hoods as a means of sight deprivation
20 was to be avoided ideally, forethought would need to be
21 applied, wouldn't it, and a degree of logistics applied
22 as well to ensure that there was a supply of alternative
23 means by which soldiers on the ground could deprive
24 prisoners of their sight?

25 A. That would have been a fair and good judgment. It

1 wasn't, as I am aware, before the Baha Mousa and the
2 2003 invasion, something which was discussed and you had
3 ready available blacked-out goggles for this particular
4 need.

5 Q. Because absent the soldier on the ground having that
6 kit, whenever the situation of sight deprivation arose
7 on the ground -- those legitimate security concerns
8 about which you have spoken -- it would become pretty
9 much an SOP, wouldn't it, to hood if the soldiers had
10 nothing else available to use to deprive prisoners of
11 their sight?

12 A. Yes. That is a fair assumption, and the expedient use
13 of a blindfold in the case of a sandbag or a hood would
14 be what they would have deported(?) to.

15 Q. Can I just ask you this in general terms? If that is
16 your understanding of sight deprivation across army
17 operations, did you give consideration to whether it
18 would be different in Iraq, particularly with the
19 temperatures in the summertime in Iraq, as to whether
20 hoods could properly be used?

21 A. Sir, it did not occur to me, and that is because the
22 issue had not been raised.

23 Q. Thank you. May I turn then, please, to your role and to
24 the chain of command and matters related to it? You
25 explain in your statement that, as the general officer

1 commanding, your role was one of leading the campaign,
2 but you describe it as being an obligation for you to
3 set the direction, to set the policy, for the division.
4 Is that right?

5 A. That's correct.

6 Q. With, as you describe it, the detail being taken care of
7 by the relevant staff officers, headed by your chief of
8 staff?

9 A. That is correct, sir.

10 Q. Now, your chief of staff, now General Barrons, when he
11 came to the Inquiry, explained that in terms of his
12 work, particularly at handover and when he first took up
13 post, was made more difficult by the added complexities
14 of the multinational aspects of the division.
15 Presumably those issues significantly affected you as
16 well as the GOC.

17 A. Yes.

18 Q. Perhaps just in a brief synopsis, can you help us to
19 understand what additional complexities and work for you
20 the multinational element brought to your role?

21 A. It meant that I had, as I recall, 11 different nations
22 which required, therefore, for me to both meet their
23 presidents, prime ministers and chiefs of staff, for me
24 to go and visit the troops in question to ensure that
25 they understood what the mission, our role, was. It

1 required an understanding of their own peculiar national
2 capabilities and weaknesses, so that I could ensure the
3 force was postured in a way that made best sense to the
4 unfolding and uncertain circumstances that we found
5 ourselves in.

6 They were spread across the four provinces of
7 Dhi Qar, Muthana, Maysan and Basra. And then I had
8 a responsibility obviously to General Sanchez and the
9 CPA, in the form of Paul Bremer, up at Baghdad.

10 Q. The Inquiry has heard in relation to other formations
11 that, whereas the chief of staff would be largely
12 headquarters basis, the commander would get out on the
13 ground as often as possible. Was that the same for the
14 you, General?

15 A. Yes, it was. The reality is that the unenviable task of
16 being chief of staff means that you spend virtually all
17 your time in the headquarters, managing both the rear
18 communications, in this case to PJHQ, and all the
19 forward communications to the 11 nations, the four
20 provinces and to Baghdad and the direction we were
21 getting from our higher command, in this form
22 General Sanchez.

23 I would get out in order to try and see -- and seize
24 opportunities, understand where problems and/or concerns
25 were arising and to be able to discuss the evolving and

1 unfolding campaign as we found ourselves down in the
2 south, sir.

3 Q. When, General, you were visiting the troops, so that we
4 have the flavour of it, did it afford you the
5 opportunity to see forward operations as they were
6 happening, to see lifts and searches as they were
7 conducted and patrols, or was it more getting the tone
8 of what was going on from visiting headquarters and
9 speaking to troops and headquarters?

10 A. It was obviously always visiting the headquarters and
11 speaking to the chain of command, their leadership and
12 their own key staff, so they would lay on a various
13 updating brief. At the same time I would go out on
14 patrol with all the various units that I had under
15 command. Now what I tended not to do was put myself at
16 the point or alongside an unfolding operation.

17 It is difficult enough as it is if you have got, as
18 a battalion commander, your brigade commander there. If
19 you have your brigade commander and your general officer
20 commanding there, in effect, in many ways, their
21 attention is drawn to those people, rather than what
22 they are trying to achieve in safeguarding (a) their own
23 people and ensuring a good outcome.

24 Q. Thank you. The chain of command you have already
25 touched upon. For you, I think, essentially two chains

1 of command -- is that right -- the coalition chain of
2 command to General Sanchez, but your UK chain of command
3 would have been to General Reith as the CJO.

4 A. That's correct.

5 Q. Now within your subordinates in the divisional
6 headquarters, General, you were asked -- and can we
7 look, please, at paragraph 11 of your statement -- about
8 who had responsibility in relation to prisoner handling
9 matters and prisoner treatment. You say there:

10 "I do not myself know who had particular
11 responsibility for prisoner handling and treatment
12 issues. I expect the chief of staff [General] ...
13 Barrons would know as he was in charge of managing the
14 staff."

15 Can I just understand, is it the position that you
16 don't know now who had those particular responsibilities
17 or would you not have known that sort of detail at the
18 time?

19 A. I mean, there is a generic responsibility across all the
20 branches of command that the directive is as applicable
21 to them in any one branch, so, for instance, the
22 personnel branch J1 -- G1, whatever you want to call
23 it -- in the intelligence branch at G2 and J2 and G3
24 would all have understood and read that directive and
25 the implications as it affected them. Who was

1 particularly -- who had the point responsibility on
2 detainee and intervention, then that is what my
3 statement refers to.

4 Q. To take it briefly and without going through a whole
5 series of orders, the Inquiry has seen evidence that in
6 terms of the lead branch on internment matters, that the
7 early order, FRAGO 29, from the end of the 1 (UK) Div
8 tour, referred to G2 having the overall responsibility
9 for internment and reference to a G2-led G3 ops
10 responsibility, and then that changing at divisional
11 level later on in FRAGO 005, with, it seems, at
12 divisional level, G3 branch or J3 branch taking over
13 again in the lead. Would you have been familiar with
14 all of that at the time or would that be something
15 which, in effect, Colonel Barrons was taking the lead
16 on?

17 A. Colonel Barrons would have been taking the lead on that.
18 I would have been entirely comfortable. J3 tends to be
19 the predominant branch but, as I said previously, the
20 danger of having one point of particularly -- say J2 is
21 responsible for this, then it allows the other branches
22 to maybe abdicate their own responsibilities. What is
23 important is the directive is relevant and the orders
24 are relevant to all.

25 Q. Did you have any sense yourself, General, at the time,

1 that matters relating to apparently prisoner handling
2 and internment might be confused as between the
3 responsibilities of different staff branches?

4 A. No.

5 Q. Just finally on this sub-topic, the Inquiry has also
6 heard evidence of a significant drawdown in the number
7 of RMP as between Op Telic 1 and Op Telic 2 from,
8 I think, a battalion or thereabouts to a single company
9 and some evidence suggesting that that was in part an
10 explanation for why the RMP in Op Telic 2 somewhat
11 dropped out of the picture in relation to prisoner
12 handling matters. Is that an issue that you were aware
13 of at the time, a shortage of numbers in RMP?

14 A. It was not, as I recall. The decision for that would
15 have been taken before my arrival. I merely worked with
16 what I had.

17 Q. That was something of a fait accompli by the time that
18 you were in theatre?

19 A. Correct, sir, and that is not abnormal in any one of
20 these wars or operations. You never have what you want.

21 Q. Thank you. Can I turn next and briefly, please, to the
22 handover that you received from General Wall? As you
23 describe it in your statement, you say that it would
24 have been relatively short, 24 hours or so. Is there
25 anything unusual for that in terms of handover at GOC

1 level?

2 A. No, it was not abnormal, but it could have easily been
3 a week. It depends on the personalities and what was
4 occurring. In this case, 3rd Division had arrived,
5 General Barrons had done the preparation work and
6 brought the division into place. They had understudied
7 and, as the Americans would refer -- this left
8 seat/right seat -- the individual staff officers would
9 have sat besides their opposite numbers for a period of
10 time, some number of days, if not weeks, to understand
11 the roles and specifics. The GOCs turning over in
12 fairly quick order is not uncommon, sir.

13 Q. Thank you.

14 THE CHAIRMAN: I understood from the other generals who have
15 come here that generals are normally the last to take
16 over; is that right?

17 A. That is often the case, Sir, and in my particular case,
18 because I was coming back having been fairly busy
19 beforehand, the idea of us not having two generals in
20 the one space -- we only had one bed. I mean there are
21 some simple logistics and associates. There is only one
22 close protection team; there is only one set of
23 telephones and computers. So the idea of sitting and
24 spending days on each other's lap would be unreasonable.
25 But the fact is that you rely upon your staff, you have

1 confidence in them, you have built and spent time with
2 them, you know them and they, therefore, in fact have
3 the running system in place and one merely goes to pick
4 out what are the key events as they are occurring and
5 some issues on personality, sir.

6 THE CHAIRMAN: Yes.

7 MR MOSS: I think it is right that you don't recall prisoner
8 handling and detainees being an issue that arose during
9 that fairly brief handover.

10 A. It was not in my recollection.

11 Q. Indeed that you would not really have expected it to
12 have done so unless there was some particular problem.
13 Would that be fair?

14 A. That is correct, sir.

15 Q. The impression that one gets from your statement is that
16 the handover that you received was what you expected,
17 namely a handover at quite a high general and strategic
18 level. Would that be fair?

19 A. Again, that is correct, sir.

20 Q. The Inquiry has been told that Colonel Barrons, as he
21 was -- General Barrons -- was made aware during the
22 handover that he received that there had been
23 a prohibition on hooding during Op Telic 1. I think it
24 is right, isn't it, that that's not something of which
25 you were aware -- a specific prohibition on hooding --

1 at any time prior to Baha Mousa's death?

2 A. I can't recall that ever having been raised, sir.

3 Q. If it is right that General Barrons was made aware of
4 that during the handover, is that the sort of
5 information that you would have expected your chief of
6 staff to make you aware of?

7 A. No, no. He would have made a judgment on the importance
8 of the information he had been told, the seriousness of
9 the weakness, and if he felt that it was within his
10 authorities and delegated to deal with it, change it, he
11 would have done so. If he felt it was so important, he
12 would have raised it to my level. You know, having
13 worked with a number of chiefs of staff in my time,
14 Richard Barrons was a very effective chief of staff.

15 Q. Yes. Just this: it might be said -- as against the
16 explanation that you have just given, General -- that
17 since it was your understanding that hoods could be used
18 in some circumstances, albeit that they were not the
19 ideal means to deprive prisoners of their sight, that
20 a specific prohibition on prisoners being hooded was
21 a change of approach in terms of how prisoners should be
22 handled and in that sense it might be said that it is
23 something of which you ought to have been made aware.
24 What would you say about that?

25 A. That would assume that people knew what my views were

1 and the issue was not raised to me.

2 Q. Having dealt with your handover, could we look just
3 briefly at the context of operations on Op Telic 2?
4 I will do so briefly because, if I may say so, it is set
5 out in your statement and indeed in the earlier
6 statements that you have made and also, to a large
7 extent, in your evidence to the Iraqi Inquiry with which
8 this Inquiry is familiar.

9 Just so that we have the thrust of it, may we look
10 at paragraph 7, please, of your statement, BMI04909?
11 You say there, General, that at the time of the
12 handover, taking over from 1st Division, that there was
13 a general optimism, tinged, as you put it, with concern
14 about how things might turn out. You go on to explain,
15 don't you -- without taking you to every line of this
16 statement -- that the reality was that things started to
17 unravel quite quickly once you had taken over.

18 A. That is correct.

19 Q. The problems being -- I am sure this is an
20 oversimplification -- the difficulties of restoring,
21 first of all, the basic infrastructure, civilian unrest,
22 I think which you explain was growing at the time --

23 A. Yes.

24 Q. -- and no doubt interlinked with difficulties in the
25 infrastructure. And you describe the problems of

1 civilian unrest as having both the criminal aspects
2 to it, but also an increase in attacks against security
3 force personnel. Would that be right?

4 A. That is correct. There was a real danger that we could
5 have lost very quickly control of Basra in its entirety.

6 Q. All of that aggravated and complicated in a number of
7 ways by the increasing temperatures in July and August
8 of that year?

9 A. Correct. I mean I lost a soldier through heat
10 exhaustion up in Maysan.

11 Q. Yes. Quite apart from the ferocious conditions for
12 soldiers, the increase in temperatures brought
13 pressures, did they not, in terms of a lack of
14 refrigeration and air-conditioning for the civilian
15 population and leading back in again to more issues
16 about unrest and so, in some senses, circular problems?

17 A. Correct. I remember having a conversation with an Iraqi
18 in the Shia Flats, which was a difficult area in Basra,
19 whose young daughter had died. He had a fan; there was
20 no power.

21 Q. Perhaps we should just look at your paragraph 9,
22 General, if you will forgive me not going through every
23 line of the previous paragraph. You say in paragraph 9
24 that:

25 "Our troops increasingly found themselves having to

1 operate in an extremely dangerous security environment,
2 in adverse physical conditions and at full stretch. It
3 was absolutely uncompromising. We were facing
4 a deteriorating situation of enormous complexity and we
5 were so far short of being able to solve the problems
6 that we were all operating at full capacity in difficult
7 and crude conditions."

8 You go on to describe how, from your point of view,
9 at your operational tempo, it was such that you rarely
10 had more than two or three hours' uninterrupted sleep
11 a day.

12 I think also, without turning it up, you gave some
13 statistics on that in a statement that you gave in 2006,
14 in relation to the increase in the lethal attacks,
15 I think describing, is this right, 26 lethal attacks in
16 June, going up to 40 in July and 116 in August. Those
17 are figures you gave and have given on an earlier
18 occasion. Does that too demonstrate rather graphically
19 the increasing security problems through the early
20 months of your period as GOC?

21 A. That is correct. I can't recall the figures, but if
22 they are the ones I gave, I would have drawn them on the
23 basis of fact. So the security situation was
24 exponentially lifting and becoming increasingly
25 dangerous. At the same time what I wasn't going to do

1 was pull more British young men and women in until we
2 began to try and understand why the situation was
3 collapsing and, therefore, to try and understand what
4 solution was needed, rather than just calling for more
5 troops.

6 So one was caught between the conundrum of not
7 bringing more troops in until we understood what was
8 occurring and at the same time actually trying to hold
9 this somewhat unfolding chaotic situation that we had in
10 Basra and around the provinces, sir.

11 Q. Having at least touched upon the context of the
12 operations, can I turn, then, to orders and instructions
13 from Op Telic 2 in relation to prisoner handling please?
14 If we look at paragraph 15 of your statement, please,
15 General, we see there that you are telling the
16 Inquiry -- is this right -- that you were not yourself
17 involved prior to Baha Mousa's death in giving any
18 orders in respect of prisoner handling, but that there
19 was guidance issued by your headquarters for which you
20 were ultimately responsible; is that right?

21 A. That is correct, sir.

22 Q. You go on to say -- we needn't look it up -- but you see
23 the process by which the detail, once the general policy
24 had been set -- leaving the detail of such orders and
25 instruction as being part of the mission command

1 approach; would that be right?

2 A. Yes, and, of course, in the military, an order is just
3 that. It is not a suggestion, it is not for comment, it
4 is an order. It is to be complied with. Fact.

5 Q. May we just look briefly at MOD019751? General, you
6 give this order, which is the legal annex, annex M, for
7 the main concept of operations order, 30 August 2003, as
8 an example of the high level generic orders that would
9 be coming from division.

10 Since you rely on these and refer to these in your
11 statement, could we just look at them? It is
12 paragraph 10(c) I think, "Apprehension". Do we see
13 there that that was setting out at the bottom of 10(c)
14 that:

15 "All persons apprehended by coalition forces shall
16 be treated as a minimum in accordance with the standards
17 laid down under LOAC for prisoners of war regardless of
18 their classification."

19 So even if prisoners weren't strictly speaking
20 prisoners of war, the same protection should apply to
21 them; would that be right?

22 A. That is what was written and that therefore was the
23 intent, yes.

24 Q. Again, under "Prisoners of war", in (d), the guidance
25 which you asked the Inquiry to look at as an example of

1 this I think one can see on the right-hand side of the
2 page:

3 "The detention and onwards movement of PWs is
4 a national responsibility ... UK guidance ... JWP 1-10."

5 Then:

6 "General guidance on the processing of treatment ...
7 is as follows.

8 "(1) Treat humanely at all times."

9 Then provision of food, medical care, clothing, safe
10 facilities and so on.

11 You say, do you, that that is typical of the sort of
12 divisional level guidance that you would have expected
13 to set the tone, as it were, in the orders at a high
14 level?

15 A. Correct, and of course that guidance was presented to
16 all, as I recall, the 11 or so contributing nations that
17 made up MND(SE).

18 Q. Now in terms of orders going into further detail and
19 whether that was necessary or appropriate, can we turn
20 to that? We should look, please, at your paragraph 16
21 at BMI04913. You say there, towards the end of the
22 paragraph, that to you it is obvious that "...
23 subjecting prisoners to the conditioning techniques in
24 which the Inquiry is interested (excluding hooding for
25 security purposes) would be in breach of general

1 guidance in J5050 set out above ..."

2 That is the order we have just looked at.

3 "... in particular the injunction to 'protect
4 [prisoners] from physical and mental harm'."

5 Should the Inquiry understand correctly that what
6 you were seeking to say there was that it was not
7 necessary specifically to prohibit, for example, stress
8 positions because you take the view that it is very
9 obvious that that is inhumane treatment?

10 A. Correct, and the five findings that I remember the Heath
11 Inquiry looked at included those. Of course I am
12 talking to Italians, Dutch, Danish and other Lithuanians
13 here, to make sure that in fact the clear understanding
14 is one of humanity, that people should not be physically
15 and/or mentally harmed. So that guidance was very
16 important in this guidance, sir.

17 Q. If we may look at paragraph 19, again, just looking at
18 the assertions that you were making in your statement to
19 the Inquiry, General, what you say is an acceptance of
20 a personal responsibility for ensuring that adequate
21 orders, guidance or instructions in matters of prisoner
22 handling and treatment were provided to those under your
23 command.

24 You make the point that that was a duty that
25 everyone in the chain of command under you had as well.

1 You go on to say that, from your position as GOC, you
2 believe there were sufficiently clear orders and
3 guidance given to commanders below you in terms of the
4 approach to take to prisoner handling and treatment; is
5 that right?

6 A. That is my view. The orders also, as I recall, included
7 the clarity that, if there was suspicious circumstances,
8 they would be investigated and disciplinary action would
9 be taken. So there was the underlying threat that I not
10 only expected them to act properly, but more importantly
11 that if they and/or anyone within their chain of command
12 acted inappropriately, then they would expect and would
13 assume disciplinary action, sir.

14 Q. May we then explore, in relation to your evidence that
15 the orders were sufficient and clear, just three points
16 of detail if I may? The first is this: as I am sure you
17 are now aware, General, you will know that hooding did
18 arise as an issue in Op Telic 1. You are aware of that
19 now, aren't you, I presume?

20 A. I am, sir.

21 Q. You may know that that led to a verbal order, as
22 General Brims was telling the Inquiry this morning, and
23 later FRAGO 152 and a brigade level order with a wider
24 prohibition on covering prisoners' faces. Again I think
25 you will be aware of those matters now, although you

1 were not at the time; would that be right?

2 A. That is correct, sir.

3 Q. If it had proved necessary in Op Telic 1 to give that
4 clarification and guidance to Op Telic 1 soldiers, would
5 you not have expected, one way or the other, for that
6 level of guidance -- getting down, if you like, to the
7 tactical level of what is done on the ground with hoods
8 or blindfolding -- but would you not have expected that
9 detailed guidance one way or the other to have featured
10 in instructions given in Op Telic 2?

11 A. First of all you had a transition of one division to
12 another. The 1st Division were tired. The second is
13 that they had predominantly dealt with the situation
14 that had been a war and, therefore, prisoners of war in
15 a normal -- as we remember from Granby and elsewhere
16 under that category -- we were in a situation moving
17 from phase III to phase IV operations, then this case
18 allowed us and moved us in position where it was more
19 about internee and detainees. It was about extremists
20 and Fedayeen. It was the various extremist groups that
21 were now attacking us, rather than a more classic
22 prisoner of war.

23 So that is possibly where the information would
24 have -- it would not necessarily have flowed from the
25 1st Division's conduct of operations to the -- where we

1 found ourselves in 3rd Division in the middle of the
2 year, sir.

3 Q. It may be said, with respect to you, General, that the
4 difficulty with that is this: there might, in taking
5 civilian prisoners or detainees in the Op Telic 2 or
6 phase IV scenario -- there might be an even greater
7 potential need to deprive prisoners of their sight
8 because, rather than having prisoners of war, as it
9 were, on the battlefield and in cages at various stages
10 as they are sent back along the lines, there is
11 a greater likelihood of having prisoners being kept at
12 battalion level detention facilities, where there would
13 be maps around and so on and where sight deprivation
14 would be an issue.

15 A. Absolutely, and those individuals that we would have
16 lifted would have been the basis of an intelligence-led
17 operation or an act of violence against us.

18 Q. So one comes back, General, to my question as to
19 whether, looking at it in all fairness, you would have
20 expected, one way or the other, that order from
21 Op Telic 1 that hoods were not to be used to feature
22 somewhere in instructions that were given from the
23 formation headquarters in Op Telic 2. Would you accept
24 that?

25 A. I have no idea what the passage of information from the

1 1st Division to the 3rd Division was. I would expect,
2 upon the conditions that I found myself in, which was
3 a developing insurgency in the south, that the
4 deprivation of sight was a necessary act.

5 Q. If necessary -- and I don't seek to challenge that there
6 might be circumstances in which it would be necessary --
7 does that not underline all the more the need for the
8 Op Telic 1 guidance to feature in instructions, so, when
9 you are going to deprive them of sight, use goggles, use
10 blindfolds, don't use hoods?

11 A. I can't speak for what was passed across from 1st
12 Division to 3rd Division.

13 Q. General Barrons, who says that he was aware of the
14 prohibition from Op Telic 1, mentioned in the course of
15 his evidence that an order going out from MND to the
16 effect of "Don't hood" might be problematic because of
17 the multinational element and there might be issues
18 about whether or not other troop-contributing nations
19 would actually agree with that stance. Can I just ask
20 you about that? First of all, was that an issue that
21 was ever raised with you?

22 A. It was not raised with me, no, sir.

23 Q. Would you agree that that might have been an issue about
24 giving an MND-wide order, "No hoods"?

25 A. It would have required a dialogue between the chief of

1 staff and the various troop-contributing nations to see
2 where there would be a difficulty, if there was one,
3 with that order then being given. That is why the
4 importance of the humanity, "protect from physical and
5 mental harm", was such an important message in the
6 orders that were given because they were unambiguous and
7 presented absolute clarity in how I expected the
8 individual nations to handle detainees and internees,
9 sir.

10 Q. I follow. May I just check and clarify? If there had
11 been any difficulty in terms of a "no hoods" order with
12 the other troop-contributing nations, would that have
13 prevented an order coming down the divisional command
14 for UK troops to 3 (UK) Div to say that British troops
15 should not hood?

16 A. If there had been a difficulty with the multinational,
17 it would not have stopped the national responsibility of
18 giving an order that was appropriate.

19 Q. Thank you. The second point of detail is this: I think
20 you are familiar with the major order that did come from
21 divisional level that dealt with internment matters,
22 FRAGO 5 of 3 September. Can we just look at it at
23 MOD022623?

24 General, just to get your bearings, obviously we see
25 at the top that it is an HQ MND(SE) order.

1 A. Correct.

2 Q. It is a FRAGO dated 3 September, "Policy for
3 apprehending, handling and processing of detainees and
4 internees". Do you see under the introduction, please,
5 General, at paragraph 2, that what this order was
6 purporting to do was to set out, as a policy, the
7 procedure for the handling of internees and detainees
8 from the point of apprehension to the authorisation of
9 continued detention, internment or release. The aim of
10 this policy was to ensure a common approach to internee
11 and detainee handling across the area of operations of
12 the multinational division.

13 I think we know from the document trail that this
14 order came up to you before it was actually issued. Do
15 you remember that?

16 A. I can't recall that, but if that is what the judgment of
17 the staff was, then I would have seen it, yes.

18 Q. If we look, please, at paragraph 31(g) of your
19 statement, General, where you address this in your
20 statement at BMI04919. You rightly point out there that
21 this order does not make any mention of the specifics of
22 handling. You go on to say:

23 "Although I was not personally involved in the
24 drafting of ... [this], this suggests that the detail of
25 handling was not considered to be a problem at the time,

1 which is consistent with my recollection."

2 Can we just be clear about that? Do you have any
3 recollection at all about the process of FRAGO 005 being
4 drafted or the thinking that went into it?

5 A. No, but it would not be uncommon to ensure clarity as
6 the operation develops -- the campaign develops -- to
7 issue further guidance and direction in the form of
8 a FRAGO. In this case, I had no recollection at that
9 time of prisoner handling being an issue, and that is
10 why I said what I said, sir.

11 Q. Thank you. Again without criticism of you, can I put it
12 this way: when you say that you think that the level of
13 detail to which this order descended into reflects the
14 fact that prisoner handling was not a problem, is that,
15 as it were, your understanding at the time, looking back
16 on it and rationalising it, rather than any
17 understanding that you had at the time of what was going
18 into FRAGO 5 and why?

19 A. That would be correct, on the basis that I had no
20 recollection of prisoner handling having been presented
21 as an issue to me, sir.

22 Q. The reason, General, why I raise that with you and why
23 it is of interest and relevance to the Inquiry is that
24 Colonel Barnett -- the divisional legal adviser who, of
25 course, you will remember -- has given evidence to the

1 Inquiry to the effect that he originally intended to put
2 into FRAGO 5 detail both on the prisoner handling
3 procedures and on tactical questioning procedures, but
4 that he received advice from the other staff branches to
5 the effect of: it would either make the document too
6 long or, if the procedures were condensed, there was
7 a risk of inaccuracy feeding in in terms of what those
8 procedures were. For that reason he decided not to give
9 the more tactical level detail of those procedures.

10 Now can I just ask: were you aware of that flow of
11 advice at the time?

12 A. No.

13 Q. Appreciating, then, that it may be something of
14 a theoretical question, if you had been consulted about
15 that matter, as to whether that line of reasoning was
16 appropriate in terms of not putting so much detail in
17 the order, would you have been content that that was
18 a reason, for example, for not putting in the hooding
19 prohibition in this sort of FRAGO?

20 A. I think I would have taken a judgment as to the reason
21 why it needed to be included. The observation that
22 Colonel Barnett made or the staff branches, that this
23 would be too long -- and don't forget everybody was
24 working at a fairly -- at a very high tempo. You know
25 we were working about a 20-hour day as a sort of -- not

1 abnormal -- so if you include another four or five
2 pages, then it doesn't sound like much here in this
3 room, but actually, to busy staff trying to get
4 information down on communication systems that weren't
5 necessarily the best that were available and then for
6 those to understand it and cascade it down their own
7 chain of command, with everything else that was going
8 on, a judgment would have been taken. If it was
9 a serious issue, then it would have been included.

10 Q. Thank you. May we just look briefly at MOD049629? This
11 is 28 August 2003, General. If we just go over the
12 page, we will see it is coming from Lieutenant
13 Colonel Barnett up to you, but through Colonel Barrons.
14 Do we see that at the top of the first page? So coming
15 to you through your chief of staff.

16 It is attaching that policy in draft for
17 apprehending, handling and processing of detainees and
18 internees, as we just saw it a moment ago. When it came
19 up like that to your level, what sort of thing would you
20 have been looking to check before, as it were, in
21 civilian terms, signing it off?

22 A. I would have checked with the chief of staff that he was
23 comfortable and content with it. I would have checked
24 with Colonel Barnett that he was comfortable on the
25 legal aspect and he was content. I would have then,

1 probably quite rapidly, gone through the document just
2 to get a feel for its substance and then signed it off.

3 Q. In terms of the omission -- and I stress if it were an
4 omission -- of any reference to the hooding prohibition
5 being contained within that order, I think it is right,
6 as you have told us, that from a personal point of view
7 you weren't even aware of the hooding prohibition even
8 in late August 2003.

9 A. That is correct.

10 Q. Thank you. Then the third point of detail that I just
11 want to raise with you, please, General, in relation to
12 orders and instructions for prisoner handling, is in
13 relation to tactical questioning. For that purpose,
14 could we look at paragraph 24 of your statement, please,
15 at BMI04915, where you say, don't you, that tactical
16 questioning was an important part of your operations
17 because effective TQ'ing, quickly undertaken, could
18 deliver information that would help promote security and
19 prevent attacks upon coalition forces and civilians.
20 Just pausing there, we should take it, should we, from
21 that part of your statement, that you knew that tactical
22 questioning was going on?

23 A. Correct.

24 Q. Did you have an understanding -- forgive me, General,
25 for putting it in that way -- of how the tactical

1 questioners fitted into the chain of command to whom
2 they would have reported and what the reporting lines
3 were?

4 A. I can't recall, but my assumption would be at the time
5 that I was obviously comfortable with the fact that
6 these were not people who had been untrained, but had
7 been formally trained in tactical questioning that were
8 then responsible for that. I was aware of the timeline
9 of the 12 to 14 hours, that people had that opportunity
10 in order to gain -- and I understood the importance of
11 tactical questioning in being able to exploit that first
12 point of intelligence to help us, in fact, safeguard the
13 force and deliver the mission, sir.

14 Q. Again, to take it shortly -- and if you would take it
15 from me for the moment -- having looked at the relevant
16 orders, the evidence to the Inquiry suggests that there
17 was no detailed direction or guidance or instruction in
18 relation to tactical questioning other than the
19 relatively high generic guidance on TQ'ing which is to
20 be found in JWP 1-10.

21 Can I just ask you briefly about that? Is that
22 something which at any time came to your attention prior
23 to Baha Mousa's death?

24 A. No, sir, not that I can recall.

25 Q. If more detailed instruction was to be given on TQ'ing

1 aspects, from which branch and from which formation
2 headquarters would you expect it to have been given?

3 A. I would have expected to have gone through PJHQ, which
4 was my formal chain of command -- the staff would have
5 done that -- and I would have run a parallel inquiry up
6 into the intelligence branch, who I believe undertake
7 the training for TQ and therefore had the lead in the
8 preparation of individuals and the authorisation of
9 those who can conduct TQ.

10 Q. You say you would have expected to have gone through
11 PJHQ. Who in terms of in-theatre staff branches and
12 formations would you have expected to have been drafting
13 and giving the instruction, albeit that it might need to
14 be cleared through higher formation and higher command?

15 A. The chief of staff would arrange that. It would have
16 drawn from G2, from the G3 branch, from legal and
17 probably from the provost marshal. But again that would
18 have been something that Richard Barrons would have done
19 on my behalf, a way of pulling together the staff work
20 that we would then send back.

21 Q. Thank you. That's all I wanted to ask about orders and
22 instructions.

23 Can I turn now to a slightly different matter, which
24 is simply your awareness of prisoner handling techniques
25 in theatre. You have told us, General, about getting

1 out on the ground and seeing troops and going on patrol.
2 Did you see prisoners who had been captured or prisoners
3 actually being captured at any time when you were out on
4 the ground?

5 A. The only time I can recall formally seeing prisoners was
6 at the -- I think it was the theatre interrogation
7 facility, the TIF --

8 Q. Yes.

9 A. -- which was the larger scale -- where we had
10 representation from ICRC. So that was the area I --
11 after the initial point of capture, the first
12 12/14 hours, when the individual, if we were to retain
13 them, of which, then, they would then go to that
14 facility -- I visited that facility on a number of
15 occasions. I can't how many times.

16 Q. Other than that, for example, when you were visiting
17 battlegroups, you did not see prisoners taken or
18 prisoners being held at battlegroup detention
19 facilities?

20 A. No, sir.

21 Q. Did you visit the battlegroup detention facilities
22 themselves?

23 A. No, sir.

24 Q. When you saw prisoners at the TIF, were they blindfolded
25 or hooded?

1 A. No, they were in a controlled area, controlled
2 environment, that was what you would expect:
3 buildings -- we had to, I think, replace the first one
4 with a -- because of ICRC recommendations -- with an
5 improved structure --

6 Q. Yes.

7 A. -- as to what they expected in the way of how people had
8 space and the like, which was conducted, as I recall,
9 during my time. But in my view they were there and
10 I just merely observed the individuals that we had under
11 internment and detention because I had to recommend
12 individuals stay beyond 28 days and the like.

13 Q. The Inquiry has received some evidence of prisoners
14 still arriving hooded, even during Op Telic 2, when they
15 arrived at the TIF. Was that drawn to your attention
16 during your visit to the TIF?

17 A. No.

18 Q. You didn't by any other means become aware of any other
19 kind of prisoner mistreatment or mishandling so far as
20 you recall prior to Baha Mousa's death --

21 A. Not that I recall.

22 Q. -- or see anything to that effect yourself?

23 A. No, and if I had, with anything else, then I would have
24 pursued that course of action. It did not come to my
25 attention, therefore I did not.

1 Q. Thank you. May I turn then, just briefly, to
2 Baha Mousa's death itself and the immediate aftermath of
3 it? If we look, please, at paragraph 34 of your
4 statement, you tell us there, in paragraphs 33 and 34,
5 that your recollection is of learning of his death after
6 a morning meeting. Is that likely to have been, do you
7 think, the Tuesday morning, 16 September, immediately
8 after Baha Mousa's death?

9 A. That would have probably been the case. I am almost
10 certain that Brigadier Moore did not call me on the
11 night of his death or in the early hours, but I do
12 remember having a conversation in the -- probably before
13 the 7 o'clock meeting, but again it is -- you know, it
14 is a fairly hazy time -- where he then said this had
15 occurred and we had a discussion on a secure phone.

16 Q. And the thrust -- perhaps you would confirm it for us --
17 of what you appear to say in paragraph 34 is that it
18 became apparent really quite quickly that something
19 serious appeared to have gone wrong and that there was
20 a need for detention procedures to be reviewed; is that
21 right?

22 A. I mean, my conversation -- and I can't recall the exact
23 detail -- with General Moore was that a young man had
24 died in our custody in detention and, therefore, the
25 next comment was that an investigation would immediately

1 start and there would be no holds barred to an SIB
2 investigating it and finding out what had occurred.

3 Q. Did it become apparent to you over subsequent days, as
4 more information was being relayed, it seems to the
5 Inquiry, from the emails to brigade level, first of all,
6 and then to your chief of staff or to your acting chief
7 of staff, I think Colonel Murray-Playfair, who was
8 standing in for Colonel Barrons at that time -- did it
9 become apparent to you that it was likely that
10 Baha Mousa had been seriously assaulted?

11 A. It increasingly became clear that he had not died of
12 natural causes, and to that end, therefore, what was
13 important was that we put out clear guidance to ensure
14 that this was corrected as quickly as we could across
15 the force.

16 Q. And that he had been subjected to a process of
17 conditioning which had involved both the use of hoods
18 and stress positions?

19 A. The details were not presented to me. I was aware that
20 he had died in detention. At that point in time my
21 professional view was, in fact, what was important was
22 that the SIB and the inquiry find out what happened
23 without any interference from me or pressure in order to
24 find out, in effect, the facts of the case and if there
25 was disciplinary action and an investigation, then it

1 should do so in a fair and forthright manner.

2 Q. So the RMP investigation obviously one thing which needs
3 to be left to do its work independently. Could I ask
4 about the immediate lessons learnt? I don't mean the
5 formal process, the Op Telic 2 lessons learnt months
6 later and so on, but the immediate lessons which had to
7 be learned for those subordinate to you following
8 Baha Mousa's death. Can you remember now what immediate
9 action at the high level was necessary in the two weeks
10 or so after Baha Mousa's death where things had been
11 found to be wanting?

12 A. The first was that obviously we informed PJHQ. We
13 immediately -- Richard Barrons or Murray-Playfair then
14 ran a series of emails across the system to understand
15 what had occurred. 19 Mech Brigade issued instructions
16 across its area of responsibility and I can't recall,
17 but I would assume that we would have then expanded that
18 across the force of MND(SE) in order to make sure that,
19 if there was any misunderstanding or inappropriate
20 action, that people were reminded of their
21 responsibilities under the Geneva Convention and LOAC as
22 to how they should treat and handle prisoners.

23 Q. On the evidence that the Inquiry has seen, certainly two
24 headlines that appear to have come out from the
25 immediate lessons learned was that there was no policy

1 on tactical questioning that was visible in theatre --
2 do you remember that coming up?

3 A. I cannot recall that.

4 Q. -- and that the previous order from Op Telic 1 about the
5 prohibition on hooding appeared to have been lost and
6 that there had been some loss of corporate knowledge in
7 that regard. Do you remember that being identified?

8 A. I remember that being raised, saying were we aware that
9 it had been -- that General Brims had prohibited it
10 during his time. At that point in time I was then aware
11 of the fact that he had prohibited hooding at an earlier
12 stage in the campaign, during the war-fighting phase,
13 and therefore it arose post the Baha Mousa death.

14 Q. Thank you.

15 Just two final miscellaneous matters then, if I may,
16 please, General. The first of them is on the question
17 of the review of internment, judicial and legal review
18 of internment. Can we look for those purposes, please,
19 at MOD054918? I apologise that it may have been late,
20 but I think you have had the opportunity to see this
21 document --

22 A. I have, sir.

23 Q. -- in recent hours or days.

24 We see that it is a submission going up to the
25 Secretary of State on 10 September 2003. As you will be

1 familiar with now, this was a document that was
2 addressing options for the review of internment, whether
3 internment would be reviewed by military officers or by
4 a lay panel or indeed by a panel of independent judges
5 or lawyers.

6 Up to this stage, the review of internment at the
7 28-day position I think had been conducted by you,
8 General, had it not?

9 A. Correct.

10 Q. One sees here -- without perhaps needing to turn to the
11 detail -- that there is an endorsement on the top
12 right-hand side of this submission from, I think, the
13 private secretary to the Secretary of State, Mr Hoon,
14 which is saying that General Lamb has asked for the
15 change, and the change that is being referred to there
16 is a desire for a change towards the independent panel
17 of lawyers or judges.

18 Can I ask first of all -- is that right -- that you
19 were asking for a change so that you were no longer
20 undertaking that role and it was independent judges or
21 lawyers?

22 A. Again, I can't remember the exact detail of this, but
23 that would follow with -- my level, what I considered to
24 be, that -- that review and overview of our legal
25 procedures from where I sat as GOC, the delegated

1 authorities and direction and orders had been given.
2 I was looking across the TIF and then this issue which
3 rested on my soldiers, which was an internee staying
4 beyond 28 days and me having to justify that on the
5 basis of intelligence and evidence given to me by, in
6 this case, Colonel Barnett and then making a judgment --
7 my view was that after six months or whatever it was,
8 that this is not a thing that a soldier should be doing.
9 It should be handed across to people who really truly
10 understand the intricacies and nuances of the law,
11 rather than me making some judgment in the best cause on
12 the information and evidence that I had presented.

13 Q. Thank you. Finally this, then: I would just like to
14 turn to just some aspects briefly arising out of
15 a statement that you made on an earlier occasion. Could
16 we look, please, at the front page of it at MOD048608?
17 Do we see, General, that this is a statement that you
18 made on 1 September 2006, I expect for the purposes of
19 the court martial.

20 A. No, this was to do with -- was it not another court
21 case?

22 Q. Al Skeini, perhaps.

23 A. There was a young soldier who was being -- it had been
24 suggested he had murdered an Iraqi and I think this may
25 well have been a witness statement to that.

1 Q. All right. In some senses perhaps the precise
2 background does not matter. I wanted to go for this
3 just to look at a few aspects of it. If we turn,
4 please, to MOD048611, you had been dealing in the
5 previous paragraphs, General, with the operational
6 demands and so on, about which you have already given
7 your evidence.

8 Starting at paragraph 14, you addressed here your
9 views on both 1 QLR as a battlegroup and of its CO. You
10 set out your views that QLR as a battlegroup had done
11 extremely well, taking it shortly, in following
12 implicitly and explicitly the tone and nature of the
13 mission that you expected them to carry out. Would that
14 be right in general terms?

15 A. What they had done is, in particular, had come and asked
16 me permission whether they could set up a police support
17 unit because the police had just been re -- had taken
18 from where they had been with the old regime and
19 re-brought back in and it caused some angst and
20 difficulty with the local population. This was trying
21 to improve and give them training and some substance.
22 The initiative, in my view, was a good one and entirely
23 appropriate. That is where this came from, along with
24 the neighbourhood watch scheme which was adopted across
25 the division, sir.

1 Q. So those were initiatives from 1 QLR that, as it were,
2 had caught your eye; would that be right?

3 A. That is correct.

4 Q. Over the page we see, in testament to Colonel Mendonca,
5 you stating that it is very important to understand the
6 volume of his responsibilities and you go on in
7 paragraph 16 to detail your assessment of him. That
8 included, didn't it, a yearly appraisal which we see at
9 paragraph 18 in respect of Colonel Mendonca? Do you see
10 that there --

11 A. I do, sir.

12 Q. -- that you would have been the countersigning officer,
13 "an exceptional tour of duty" and so on. I am not going
14 to read it all out. If we go over the page, we see that
15 you had raised his potential for two-rank promotion to
16 "exceptional". Forgive me putting it this way, but
17 presumably, General, for a man of your experience, that
18 is not an annual appraisal that you would have given
19 lightly to a unit commander?

20 A. That is correct. My view was that Colonel Mendonca had,
21 as I said, in the most difficult and dangerous
22 operational circumstances, done extraordinarily well,
23 and I stood by that position because, at the time when
24 there was a suggestion that whether he might or might
25 not get a gallantry award -- because obviously that was

1 then being looked at after the death of Baha Mousa as
2 that investigation unfolded -- my view was very clear,
3 that that was pending. But from his performance in the
4 field of battle and on combat operations, he had led
5 well and, as I articulated in that, a DSO is not lightly
6 given, sir.

7 Q. Thank you. If we go back to your statement at BMI04913,
8 paragraph 16, obviously, General, as you will
9 appreciate, what any individual officer at different
10 levels of the command knew about the conditioning
11 process and what they knew about precise techniques and
12 what was going on is a matter for the chairman.

13 But if we look at paragraph 16 of your statement, in
14 general terms, would you expect any officer who was
15 aware of stress positions being used as part of
16 a conditioning process to have raised serious concerns
17 about their use?

18 A. Can you repeat that question slowly?

19 Q. Yes. Forgive me. In general terms, would you have
20 expected any officer who was aware of stress positions
21 being used as part of a conditioning process to raise
22 serious concerns about them?

23 A. I would not have suggested serious concerns. I would
24 have expected that officer to have taken the judgment
25 and the direction and the orders he had been given about

1 humane treatment about physical and mental abuse, and
2 therefore a stress position as unacceptable to me would
3 be also unacceptable to them.

4 Q. And that means order that they be stopped, does it?

5 A. And order that in fact they be stopped, yes.

6 Q. So far as hooding is concerned, if hooding was known to
7 have been used not as a security precaution but as part
8 of a conditioning process prior to tactical questioning,
9 would you similarly have expected an officer who knew
10 that to have intervened and to have stopped that?

11 A. Yes, because I think the guidance was clear about
12 humanity. In this case, if it was being used for
13 something it should not have been, it would be
14 inappropriate.

15 MR MOSS: For obvious reasons I do not ask you about the
16 individual understanding of any officer.

17 Thank you, Sir. Those are my questions.

18 THE CHAIRMAN: There may be a few more questions for you,
19 General. I hope we are going to finish before lunch.

20 Questions by MS HETHERINGTON

21 MS HETHERINGTON: General, just one topic for you which
22 follows on from what you have just been asked about.
23 You were just taken back to paragraph 16 of your
24 statement, where you say that it was obvious to you that
25 the conditioning techniques being used on prisoners

1 would be in breach of the general principles of humanity
2 and LOAC. That, as I understand it, is why you were
3 content that the direction based on those general
4 principles was adequate.

5 A. Correct, ma'am.

6 Q. With hindsight and knowing what we know about what
7 happened to Baha Mousa and the others held with him and
8 what was happening within QLR, do you accept that that
9 was an erroneous assumption for you to have made?

10 A. No. I think the direction and the orders were clear.
11 I expect them to be followed.

12 Q. That didn't change at all during the tour, even though,
13 as you have described in graphic terms, soldiers were
14 under perhaps unprecedented pressures, being subjected
15 to direct attacks, and dealing with increasing civilian
16 unrest? Did it occur to you during the tour that in
17 those circumstances there might be a real risk of
18 conduct that pushed at the boundaries or went over the
19 broad principles of humanity as you had set them or that
20 they might be re-interpreted in the light of the
21 circumstances soldiers found themselves in?

22 A. No, that is why we have a chain of command, and the
23 assumption is that in fact that that direction and
24 orders, guidance, the way I expressed myself and see
25 things, runs all the way down through, in this case, the

1 brigade commander, the battalion commanders, the company
2 commanders, and they would then take this and have that
3 responsibility. It would not change in them acting
4 properly and humanely.

5 Q. So you did not see the need to take steps yourself to
6 establish what was actually going on on the ground in
7 terms of the actions of soldiers, but also the division
8 of responsibilities and to issue more detailed direction
9 than you had?

10 A. I was very conscious of what was going on on the ground
11 because I was there every day seeing what was occurring.
12 After Baha Mousa's death, then obviously that --
13 a series of, then, clarity and direction and emphasis
14 was placed upon how people should conduct themselves in
15 these circumstances. But as far as the force was
16 concerned, my view was that they were acting, against
17 extreme provocation and in the most difficult
18 circumstances, well.

19 Q. Sorry, I did say I had one topic. I had forgotten to
20 turn over the page of my notes. I have one further very
21 short topic.

22 THE CHAIRMAN: Yes, go on.

23 MS HETHERINGTON: You explained that you were acting as the
24 review authority for internment at the time. Can I just
25 ask whether, in that role or otherwise, you became aware

1 of breaches of the time limit for transfer of detainees
2 to the TIF by battlegroups?

3 A. I cannot recall, and that is just an honest statement.
4 I would have expected, if there had been a consistent
5 and a trend of abuse of the time limit, then I have
6 every confidence that Colonel Barnett would have brought
7 it to my attention and we would have corrected it.

8 Q. Also in that role as the reviewer of internment, did you
9 make any inquiry about the methods by which the
10 intelligence that you were asked to consider in that
11 role had been gathered?

12 A. No. I am pretty comfortable with how the intelligence
13 is presented. In this case, we were working from
14 a fairly empty baseline. There was no special branch,
15 there was no architecture we could come into, so we were
16 relying on bits of human intelligence and other
17 intelligence to try and construct an understanding of
18 what we were looking at. But actually the situation was
19 extremely chaotic, the situation was extraordinarily
20 dangerous, and in that light we were merely pulling the
21 information we had available.

22 My judgment on the intelligence, as I saw it, was
23 one of experience rather than one of turning around and
24 saying, "Tell me exactly what the raw point of this
25 intelligence was". There just was not enough time in

1 the day or my inclination, on the basis, to follow that
2 all the way down the line, hence the reason that I felt
3 it appropriate that an independent body come out and
4 take those responsibilities from me, on the basis that
5 I was comfortable with the judgments I was taking.
6 I was not competent entirely and properly trained to be
7 able to in fact take such judgments on internment.

8 MS HETHERINGTON: Thank you very much, General.

9 Thank you, Sir.

10 THE CHAIRMAN: Thank you. Ms Dobbin?

11 Questions by MS DOBBIN

12 MS DOBBIN: Thank you, Sir.

13 General Lamb, in the witness statement which you
14 gave in 2006 -- the one to which you have been
15 referred --

16 A. Can you speak up a little?

17 Q. I am sorry. In the witness statement which you gave in
18 2006 -- it is the one that you have been referred to --
19 you set out in some detail the operational pressures and
20 you said that by August 2003 things had come really to
21 the point that you were standing on the edge of an abyss
22 and you went on to say that everything that happened in
23 Iraq at that time had to be looked at in that
24 operational context.

25 Upon reflection and standing at this distance, how

1 do you think that that operational context affected
2 prisoner handling?

3 A. I think it would have had an effect, but it affected
4 everything. It affected on my judgments of risks; it
5 affected on my judgments of what the unfolding problem
6 was and how we might be able to solve it. One ended up
7 in many ways putting fingers in a dyke just to try to
8 hold it long enough to try to understand where the
9 pressures were applying and how we might resolve them.

10 Q. Did it also mean for example -- or does it go without
11 saying -- that the sheer pressure on troop numbers for
12 example would have directly impacted on prisoner
13 handling because of difficulties in having enough troops
14 to move detainees at the very least; things like that?

15 A. It would have had a bearing but the truth of the matter
16 is that the basic responsibilities that we all carry,
17 the guidance that we had, the orders that we undertook,
18 you know, were being fulfilled to the best of our
19 endeavours at the time.

20 Were they all slightly compressed and therefore did
21 we have time -- for instance I had 11 nations: Should
22 I have reviewed every single legal procedure across
23 those 11 nations in order to have a full understanding
24 of how they conduct tactical questioning, how they do
25 prisoner handling and all the rest? Of course I should.

1 Did I have time to do that? No.

2 Q. General, please, it was not intended to be any sort of
3 criticism of you.

4 A. No, no.

5 MS DOBBIN: Thank you.

6 A. Sorry if I came back with a slightly -- it wasn't meant
7 to be.

8 THE CHAIRMAN: Mr Evans?

9 MR EVANS: No questions, thank you, Sir.

10 THE CHAIRMAN: Mr Moss?

11 MR MOSS: No, thank you, Sir.

12 Questions by THE CHAIRMAN

13 THE CHAIRMAN: General, that is all the questions from all
14 of them.

15 What I would like to ask you is one can well
16 understand -- and I have heard an array of evidence
17 about the stresses and strains of operating in Basra at
18 that particular time which appears to have got worse and
19 worse -- do you think that in any way excuses what
20 happened to Baha Mousa and the detainees?

21 A. No, Sir, not in any way.

22 THE CHAIRMAN: No.

23 A. It has a bearing --

24 THE CHAIRMAN: Yes.

25 A. -- but it does not excuse in any way inappropriate bad

1 behaviour.

2 THE CHAIRMAN: Yes. Very well.

3 Thank you very much. We are going to break off now
4 for our break for lunch. I think we will come back at
5 five to two, please.

6 General, thank you very much for coming to the
7 Inquiry. I am extremely grateful to you for the time
8 that you have spent on preparing for the Inquiry and
9 giving your statement and then coming and answering
10 questions. So far as I am concerned you are now free to
11 go, thank you very much.

12 A. Thank you.

13 (12.55 pm)

14 (The short adjournment)

15 (1.55 pm)

16 THE CHAIRMAN: Yes.

17 MR ELIAS: Thank you, Sir. I call Martin John Hemming.

18 Mr Hemming, please.

19 THE CHAIRMAN: Yes. If you would be kind enough to stand up
20 and I will ask that you are sworn.

21 MARTIN JOHN HEMMING (sworn)

22 THE CHAIRMAN: Yes, do sit down, Mr Hemming. If you would
23 be kind enough to speak into the microphone, we will
24 hear you. The acoustics, otherwise, are not all that
25 good.

1 Yes.

2 Questions by MR ELIAS

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

5 A. It's Martin John Hemming.

6 Q. Mr Hemming, if you look to a folder to your right hand,
7 you should find within it a copy of your statement to
8 this Inquiry. If we look at the last page of it,
9 please -- two statements, indeed -- the last page of the
10 first at BMI08483, would you confirm that your signature
11 appears above the date of 28 May?

12 A. Yes.

13 Q. 2010. Then the second statement, BMI08488, a short
14 statement, again does your signature above that date?

15 A. Yes.

16 Q. When you signed those statements, were you attesting to
17 the Inquiry that the contents of them were true to the
18 best of your knowledge and belief?

19 A. I was.

20 Q. Thank you very much. Then everyone has had the
21 opportunity to read those statements, Mr Hemming, and,
22 if I may say so, they are comprehensive in the ground
23 they cover and I don't propose to ask you very many
24 questions at all, but certainly not to cover ground that
25 is well dealt with in your statement.

1 I am going to turn to one or two topics, if I may.
2 First of all I will begin just by running briefly with
3 you through your career history, if you like. You tell
4 us you were called to the bar in 1972.

5 A. Yes.

6 Q. You were in private practice in the Midlands from 1974,
7 until joining the Treasury Solicitor's department in
8 1982.

9 A. That's right.

10 Q. You worked in two posts, the second of which was
11 advising the Ministry of Defence before, as you put it
12 in your statement, promotion to the Senior Civil Service
13 in 1988.

14 A. That is correct.

15 Q. Between 1988 and 1997 you held three posts, involving
16 advising the Cabinet Office and HM Treasury.

17 A. That is true.

18 Q. In January of 1998 you were promoted to the post of
19 Ministry of Defence legal adviser, which you tell us was
20 a post you held until leaving the ministry in January
21 2009.

22 A. That's right.

23 Q. Thank you. The Inquiry is concerned particularly, as
24 I think you know, about 2003/2004 --

25 A. Yes.

1 Q. -- and any involvement you may have had at that stage
2 with issues arising from the conflict in Iraq and the
3 stabilisation and peace-keeping phases of that
4 operation.

5 A. Yes.

6 Q. At that time you tell us -- if we have a look, please,
7 at paragraph 12 of your statement to this Inquiry, at
8 BMI08466 -- your role in 2003 you describe as leading
9 and managing the team of Treasury Solicitors, civilian
10 lawyers, providing legal advisory services and support
11 to the MoD across the range of departmental business.
12 You were also expected personally to advise as required
13 on legal issues that were of importance to the Defence
14 Secretary or other Ministry of Defence ministers, senior
15 officials and so on.

16 A. Yes.

17 Q. At paragraph 9 of your statement, you refer to your
18 reporting chain. You were the department's most senior
19 civilian legal adviser?

20 A. Yes.

21 Q. When you were appointed, MoD's lawyers were an
22 outstation of the Treasury Solicitor's department --

23 A. Yes.

24 Q. -- and your reporting officer, therefore, through until
25 April 2004, would have been, would it, the Treasury

1 Solicitor?

2 A. Yes, it would have been.

3 Q. Now as I say, I just want to touch upon one or two

4 issues largely covered in your statement: prisoner

5 handling issues arising from the conflict in Iraq, did

6 you give legal advice, as you recall, in that period

7 2003/2004 relating to prisoner handling issues?

8 A. Not on the physical treatment of prisoners and I don't

9 remember other advice actually.

10 Q. But you are quite clear that you didn't give any

11 advice --

12 A. Yes.

13 Q. -- in relation to what we have been calling the

14 physical --

15 A. Yes.

16 Q. -- handling aspects?

17 A. Yes.

18 Q. Therefore issues were never brought to you of that kind,

19 were they?

20 A. No. As I say in my statement, I was aware of the

21 position that was being taken by Vivien Rose, I think,

22 in around about September 2003 in relation to the

23 principle that it was possible to hood for security

24 purposes lawfully.

25 Q. I am going to come back to that, if I may, in just

1 a moment or two.

2 A. Yes.

3 Q. Can I take you, please, to a document that we shall look
4 at on the screen at MOD053150? It is not an email from
5 or to you. We see it is dated 4 February 2003. Just to
6 look at the last paragraph at the very top of the page:

7 "I think the paper may also usefully ask MoD legal
8 adviser in the paper for guidance on the applicability
9 of ECHR in this situation -- or whether we need to seek
10 a derogation."

11 A. Yes.

12 Q. I don't want, Mr Hemming, to go into any detail as to
13 that for reasons that I am sure you will be aware of,
14 but just to confirm what you say in your statement, that
15 it may well be that that was one of the triggers
16 anyway --

17 A. Yes.

18 Q. -- for the idea that ECHR advice should be sought from
19 the Attorney.

20 A. Yes, in fact, in preparing for the hearing, I think
21 I have seen an earlier document in January -- a group of
22 lawyers' meeting -- I wasn't there -- where I think the
23 ECHR advice point was also flagged up.

24 Q. So these were matters that were triggering that thought
25 process leading to the advice being sought --

1 A. Yes.

2 Q. -- in early 2003?

3 A. As I remember, we always realised that we were going to
4 need to cover the ECHR bases.

5 Q. Thank you.

6 Quite a separate point: did you have any hand
7 directly in the provision of information for
8 Parliamentary questions, the answers thereto, the
9 background notes?

10 A. Not that I remember. Certainly we would not have been
11 providing, as it were, information about the facts of
12 what happened in any given instance.

13 Q. You are just dropping your voice a little.

14 A. Sorry, we would not have been providing information
15 about the facts of what was happening in theatre, for
16 example. That would be coming from the people who had
17 the sources.

18 Q. That would be coming perhaps not --

19 A. PJHQ to theatre, I would expect, yes.

20 Q. Yes.

21 But in similar vein, could I ask you, please, to
22 look with me at two paragraphs of the statement from the
23 then minister, Geoffrey Hoon? Can we have on the
24 screen, please, BMI08529, paragraph 24, first of all,
25 where Mr Hoon says this:

1 "I have been asked by the Inquiry to give an account
2 of what I knew, what I was told, the knowledge I had and
3 other discussions or communications that took place in
4 relation to the banning of hooding by the CJO ... in
5 October 2003. The letter from the CJO ... was issued
6 over one month after the death of Baha Mousa. During
7 this period there were discussions about what action to
8 take. I certainly recall that following the death there
9 were numerous discussions in the department with
10 General Reith, the chiefs of the general staff, the
11 Permanent Secretary ... and Martin Hemming about the
12 lawfulness of hooding."

13 A. Yes.

14 Q. Do you recall that?

15 A. I don't remember any particular conversation with the
16 Defence Secretary over hooding. I have seen his
17 statement. I note that he says his understanding was
18 that it could be lawful to hood for security purposes,
19 which, if he had asked me, is what I would have said was
20 my view. But I don't remember any meetings actually
21 with the chiefs of staff or the permanent secretary or
22 indeed John Reith where it was discussed with me.

23 Q. Perhaps more importantly, do you have any recollection,
24 Mr Hemming, of giving the minister your view, your
25 advice, about the lawfulness of hooding?

1 A. I do not have any recollection of discussing hooding.

2 Q. Can we go to paragraph 26 in the same statement --

3 A. Yes.

4 Q. -- where the then minister is saying he learnt at the
5 time of these discussions the detail of the Heath
6 ruling, although he had been aware of it in general
7 terms. He says four lines up from the bottom, at the
8 end of the line:

9 "It was during these discussions that I was advised
10 that hooding was considered to be legal, albeit for
11 operational security purposes only, and that this was
12 a view shared by other countries in the coalition."

13 A. Yes.

14 Q. My question to you is simply to ask whether you recall
15 that being your advice to him.

16 A. I don't recall that was my advice to him. Whether or
17 not other lawyers had meetings with him, I don't know.

18 Q. I was going to come to hooding next, so let's deal
19 with it from this document, as it were.

20 A. Okay.

21 Q. That would have been your advice, if asked at the time,
22 would it, that hooding was considered to be legal,
23 albeit for operational security purposes only?

24 A. Provided it did not cross into being inhumane, yes.

25 Q. You were aware, were you, of that ban on hooding that is

1 referred to there by the minister in or about
2 October 2003?

3 A. I think I must have been.

4 Q. Did you have a view at that time as to whether hooding
5 in itself was humane or not?

6 A. I think my view was that provided the hoods were applied
7 for security reasons in a way which did not cross the
8 boundary into being inhumane, it was obviously humane,
9 yes.

10 Q. So -- may I put it this way -- what does that mean?

11 A. I think it means I don't think hooding for security
12 reasons was axiomatically inhumane. It would depend
13 upon the circumstances, the conditions, the individual,
14 the length of time, all those sorts of considerations.

15 Q. So it may be in certain circumstances that hooding, as
16 it were, from the first moment, could be inhumane, but
17 in other circumstances you would say it may not be?

18 A. Perhaps not from the first moment, but very close to the
19 first moment I suspect it could be inhumane.

20 Q. That is the advice that you would have given if you were
21 asked to give it in that sort of detail?

22 A. If I had been asked, that's what I would have said was
23 my view, yes.

24 Q. Do you think, looking back on it, Mr Hemming -- perhaps
25 with hindsight -- that hooding in fact, whatever the

1 circumstances, is inhumane?

2 A. No, I don't think -- I don't think I do agree that it
3 is -- axiomatically inhumane is what you are saying,
4 I think.

5 Q. Yes.

6 A. No, I don't agree.

7 Q. Had you ever experienced a sandbag over your head?

8 A. No, I hadn't.

9 Q. Would it have mattered whether it was a sandbag or some
10 other bag as to --

11 A. Well -- sorry.

12 Q. Please, you were going to answer.

13 A. My assumption is a sandbag, it's -- air can move through
14 it, so the likelihood of restricting breathing is
15 obviously much reduced compared with using a plastic
16 bag.

17 Q. Could we have a look, please, at a document we find at
18 MOD020228? I think this may be the document you were
19 referring to or at least part of the chain of documents
20 that you were referring to a little earlier.

21 If we start at the bottom, because these are emails
22 that, as it were, run up the page, if you follow me.

23 A. All right.

24 Q. 13 May at the bottom, addressed to Martin and Vivien
25 re hooding. If we just go over the page, we can see the

1 author, Ari. Who was that?

2 A. That was the then PJHQ legal adviser. I think she had
3 been there five or six weeks at that point.

4 Q. So as you can see under the heading "hooding", addressed
5 to you and to Vivien.

6 A. Yes.

7 Q. "As you are aware this issue is has caused some concern
8 over the last day or so ..."

9 This is now 13 May 2004. As I put it to other
10 witnesses in the past, the balloon was going up, as it
11 were, as to certain practices in Iraq so far as the
12 media were concerned at this stage, as you may recall.

13 "... I am writing to seek your guidance on whether
14 the AG should be engaged to provide a clear legal
15 guidance on the following points as the issue causes us
16 some difficulty at an operational level.

17 "1. Is hooding unlawful per se; or.

18 "2. Is it permissible in limited circumstances.

19 "What concerns me is that hooding has been used in
20 various theatres for as a practical method and for
21 a limited purpose namely.

22 "A temporary measure whilst the person was in
23 transit.

24 "For force protection and protect the route to the
25 facility, et cetera.

1 "For his own security.

2 "To protect a HUMINT, where that was applicable.

3 "I have sought clarification and await a response on
4 the question of whether or not hooding was used for the
5 purposes of disorientating a prisoner, in which case it
6 clearly violates ECHR jurisprudence and would therefore
7 amount to 'inhuman and degrading treatment'."

8 Pausing there, would you have agreed that hooding
9 used for that purpose, disorientating a prisoner, would
10 clearly violate the law?

11 A. I think it would run a very serious risk of doing it,
12 yes.

13 Q. If we go over the page, please, I just want to go to the
14 last paragraph on the page, beginning:

15 "In the circumstances I wonder whether it is time to
16 revisit this issue and seek clear guidance so that
17 troops deployed, now or in the future, know exactly what
18 the position is and equally it allows us to give a clear
19 steer as legal advisers. In the meantime guidance will
20 be issued by the appropriate bodies to the forces to the
21 effect that no hooding is permissible until we receive
22 clear guidance on it.

23 "I would welcome your thoughts on this as soon as
24 possible."

25 Going back to the previous page, then, please, we

1 see the response from Vivien Rose, which begins:

2 "I would not be in favour of asking the AG at this
3 point."

4 She goes on:

5 "I understands that the practice has now finally
6 been stopped in Iraq at least so the answer to the
7 question is presumably academic for the period from now
8 on. We do not know where the current public debate
9 about it will end -- and we do not want to push the AG
10 into taking a position in the abstract that we and he
11 may then regret in the light of some later claim or
12 allegation."

13 Did you see that exchange?

14 A. I don't remember seeing the email back to Ari, although
15 I say in my statement I think it is quite likely Vivien
16 would have talked to me about the issue of going to the
17 Attorney, yes.

18 Q. And you agree, did you, with the proposition that the
19 matter should not be, as it were, staffed up to the
20 Attorney General?

21 A. I would have agreed not to go to the Attorney at that
22 time.

23 Q. Why?

24 A. Well, at that time -- I mean it was an academic
25 question. I think I say in my statement that there was

1 a submission, which I think was copied to me, which
2 I have seen in the papers, from Stuart Kistruck, telling
3 ministers that hooding had been banned in all
4 operational theatres, including Afghanistan and Bosnia,
5 so everywhere that British forces were in operations
6 hooding had been banned, and, in those circumstances,
7 I would not have gone to the Attorney. If it had come
8 back on agenda, then things would have been different
9 and we could have gone to the Attorney to talk about it
10 at that stage.

11 Actually, on something like this, I would have
12 wanted to go to the Attorney with a legal view and with
13 a practical proposition. Given the difficulties with
14 hooding, you would expect to be going to the Attorney if
15 you were seeking to argue that hooding was lawful, with
16 the necessary precautions and safeguards to avoid it
17 being used in an inhumane way.

18 Q. So you took, did you, the line that because hooding was
19 no longer on the agenda for use, it was now ordered not
20 to be used --

21 A. Yes.

22 Q. -- that was, as it were, the end of the matter?

23 A. It was academic for the time being. If it was to be
24 revived, then things might be different. The other
25 point which would have been in my mind was the

1 ministerial code which has passages on consulting the
2 Attorney General. I think at this time it was a rather
3 longer passage in the ministerial code than it now is,
4 but the key element of going to the Attorney is you go
5 in good time, before the Government is committed to an
6 important position having legal ramifications. And the
7 Government had actually just banned hooding completely
8 everywhere, so it wasn't on the agenda.

9 There is one other point which I should mention at
10 this time as well, which would certainly have been in
11 Vivien's mind. There was a great deal going on with the
12 Attorney. This was point at which we were dealing with
13 the negotiation in New York of the follow-on -- or the
14 Security Council resolution which was put in place --
15 I think it was adopted around about 8 or 9 June and it
16 came into force at the end of June. I have a pretty
17 strong recollection that the issues which were arising
18 there about the legal position post 30 June were issues
19 which were also engaging the Attorney and they were very
20 busy.

21 Q. So the Attorney was a busy man?

22 A. Certainly.

23 Q. Were you aware at this time, Mr Hemming, of differences
24 of opinion, not only amongst the lawyers about the
25 lawfulness or otherwise of hooding in itself, but also

1 differences of opinion amongst soldiers as to whether
2 hooding was required as a practical measure in certain
3 circumstances?

4 A. I don't think I was. I have seen in the papers an email
5 from Nick Clapham and some medical evidence around about
6 the same time. I had not seen that, I don't think,
7 before preparing for the Inquiry.

8 Q. Presumably -- forgive me -- if you had been aware that
9 those were issues that were being debated --

10 A. Yes.

11 Q. -- I put it in shorthand of course -- practical
12 considerations as to whether hooding was or might be
13 required for the future --

14 A. Yes.

15 Q. -- you might not have so readily regarded it as a matter
16 that was dead and buried?

17 A. Well, I don't think I regarded it as a matter that was
18 dead and buried in any event. I know from the papers
19 there was a review. When I did my statement, I had
20 little recollection. But now I have seen a much fuller
21 set of papers I think it is probable I knew that the
22 review was going on.

23 It strikes me that the natural thing to do, had that
24 review ended in something going to ministers or to the
25 CDS which recommended using hooding for security

1 purposes -- that's the point at which I would be pretty
2 confident, given what was happening, that ministers
3 would themselves have said to me, "I think we would like
4 to see what the Attorney says", particularly since
5 a Parliamentary statement would have been planned and
6 where there would have been a lot of interest in the
7 question.

8 But at the time that I agree with Vivien that we
9 didn't need to go to the Attorney, it was an academic
10 question because it had been banned by order everywhere
11 that British forces were operating.

12 Q. It might be said, nonetheless, that you should have
13 taken a view in legal terms that hooding was inhumane
14 and therefore unlawful, whatever the circumstances were.
15 What would you say to that?

16 A. I think it is a question you asked me previously, "Is it
17 axiomatically inhumane?" and I don't agree that it is.
18 I think it would depend upon the circumstances in which
19 it is being used.

20 Q. I understand that. But it was not a matter about which
21 you thought you ought to take further, if you like
22 higher, advice?

23 A. The situation was one where it was completely banned,
24 so --

25 Q. I follow.

1 A. -- it was academic.

2 Q. Then just two other matters, please, from me. The first
3 is simply to record this, because I don't want to go
4 into the detail of it. Your second statement deals with
5 matters relating to Colonel Mercer --

6 A. Yes.

7 Q. -- and matters that he has raised about conduct alleged
8 to have been carried out by you following the court
9 martial.

10 A. Yes.

11 Q. In that statement you deal with those issues and you
12 deal with them fully and -- can I put it
13 straightforwardly -- you refute his account of the
14 matter and say that he is mistaken.

15 A. On what he said about me, yes.

16 Q. I do not propose to deal with it further. Your
17 statement, of course, is there, your second statement,
18 and no doubt will be referred to by those who want to
19 know more.

20 Finally, may I take you, please, to what is
21 a document we find at MOD053828? It is dated 17 May
22 2004. You can see to whom it is sent. You can see the
23 subject, "Draft Cabinet colleague's paper", of low
24 importance it is said. I just want to refer you,
25 please, to the handwriting towards the foot of the page.

1 Do you see there is the reference there, "Martin Hemming
2 is content", as it seems to say.

3 A. Yes.

4 Q. I just want to take you three pages in at MOD053831,
5 please. At the very foot of the page, Mr Hemming, in
6 the last paragraph, the last two lines:

7 "There is, however, no evidence that hooding was
8 used at any time during tactical questioning or
9 interrogations in Iraq."

10 Do you see that?

11 A. Yes.

12 Q. Was it your understanding of the law and would you have
13 so advised that hooding for the purposes of tactical
14 questioning was unlawful?

15 A. Yes.

16 Q. Just so that we are clear about it, that means, does it,
17 not only hooding if it were ever practised during
18 tactical questioning, but in preparation for it?

19 A. Yes.

20 Q. That would be unlawful too?

21 A. Yes.

22 Q. I don't know whether you recall the document or whether
23 you recall seeing it or indeed whether you were content,
24 as that handwritten note indicates, but do you recall
25 seeing the document or a document saying what is said

1 here, "No evidence that hooding was used at any time
2 during tactical questioning or interrogations in Iraq"?

3 A. I have no strong recollection of reading it, though,
4 having seen the note, it looks as though I said
5 something about it.

6 Q. Were you in fact ever aware, not least from the
7 circumstances of the Baha Mousa case and his own
8 death --

9 A. Yes.

10 Q. -- that hooding does appear to have been used prior to
11 tactical questioning on a number of detainees?

12 A. Prior to or during? Sorry.

13 Q. Sorry?

14 A. Do you mean prior to or during?

15 Q. I mean prior to --

16 A. Yes.

17 Q. -- but in preparation for, if you like.

18 A. I say in my statement that I was aware -- I am not
19 entirely sure how -- that hooding formed part of the
20 circumstances of the Baha Mousa case, but I didn't know
21 how it had been used, as it were.

22 Q. You didn't ever know that in fact it was hooding used
23 prior to tactical questioning and apparently for that
24 purpose?

25 A. No. My understanding of the connection with the

1 intelligence corps tactical questioners I am very
2 confident I derived reading the court martial papers.

3 MR ELIAS: Thank you very much.

4 THE CHAIRMAN: Yes, I expect you will be asked a few more
5 questions by other counsel, Mr Hemming.

6 Mr Singh?

7 Questions by MR SINGH

8 MR SINGH: Sir, thank you. Mr Hemming, a few moments ago,
9 in answer to a question from Mr Elias, you said that
10 hooding for the purpose of disorientation would, if
11 I recall your answer correctly --

12 A. I don't think I mentioned hooding for disorientation.

13 Q. Let me finish the question, if you don't mind.

14 A. Sorry.

15 Q. Let me put it this way: if a person were hooded for the
16 purpose of disorientation, is it your view that that
17 would carry very serious risks of being unlawful?

18 A. If it is for disorientation in relation to
19 interrogation, yes.

20 Q. Only very serious risks? Is there any doubt about it?

21 A. No, I don't think there is any doubt about it.

22 Q. It is clearly unlawful, isn't it?

23 A. I think it is probably clearly unlawful, yes.

24 Q. If you had been made aware -- and I would like really to
25 know, please, about your state of mind in 2003 and

1 2004 -- that hooding had been used in Iraq for the
2 purpose of disorientation, what would your reaction have
3 been?

4 A. I would have asked more questions.

5 Q. If a lawyer had said that to you or brought it to your
6 attention, what would your reaction to them have been?

7 A. I would have asked questions about the statement, how it
8 had arisen.

9 Q. Can we look at a document, please, at MOD020214? This,
10 you will see -- the main email at least on this page --
11 is dated 12 May 2004. Do you see that?

12 A. Yes.

13 Q. It is from LA11S, which the Inquiry understands to be
14 Rachel Quick, and we see Rachel's name at the bottom,
15 don't we?

16 A. Yes.

17 Q. It is sent to a couple of addresses. The first one is
18 your email address, isn't it?

19 A. Yes.

20 Q. It is addressed to, by name at least -- the second email
21 address, someone called "Humphrey". Is that
22 Humphrey Morrison, do you know?

23 A. I think it must be, yes.

24 Q. Rachel Quick says in this that she has spoken to PJHQ J2
25 intelligence and they have explained hooding is not

1 permitted per se, nor trained upon as an interrogation
2 tactic. We can see what she says in the rest of that
3 paragraph, including what she describes as the "bad
4 news".

5 There is some initial confusion in theatre over what
6 type of blindfold was permitted to be used upon capture,
7 and we can all see the rest of that. Then she has
8 a little sub-heading, do you see, "Why do prisoners need
9 to be blindfolded?"

10 A. Yes.

11 Q. And she says:

12 "There are a number of reasons, including the
13 scenario I explained to protect the ID of the HUMINT
14 source. Other reasons include, blindfolding the
15 prisoner on capture to subdue them. It has also been
16 used as a tactic to disorientate the prisoner -- it
17 apparently makes them more amenable to interrogation."

18 Did you see this at the time?

19 A. I have no recollection of seeing this.

20 Q. Does that mean that you did not see it or you just do
21 not have any recollection one way or the other?

22 A. It means I don't remember seeing it.

23 Q. If you had seen it, Mr Hemming, what questions would you
24 have asked of Rachel Quick?

25 A. I would have asked her what the source was, what it was

1 about.

2 Q. Anything else?

3 A. Well, I think my starting point would be to ask her to
4 explain where this had come from.

5 Q. You were asked some questions a moment ago by Mr Elias
6 about the email exchanges with Vivien Rose and Ari. Can
7 we please just go back to those for a moment at
8 MOD020228? You agreed, as I understand it, with the
9 first sentence of Vivien's email, that the question is
10 presumably academic for the period from now on.

11 Did you agree or do you agree with the next reason
12 that she gives for not consulting the Attorney General,
13 namely that, "We do not know where the current public
14 debate about it will end -- and we do not want to push
15 the AG into taking a position in the abstract that we
16 and he may then regret in the light of some later claim
17 or allegation".

18 A. No, I would not actually have agreed with that.

19 Q. Sorry, sir, I'm --

20 A. No, I would not have agreed with that, no. In fact,
21 I think actually, had we gone to the Attorney at that
22 time, there was considerable prospect he would have
23 agreed with our position.

24 Q. What about what she says towards the end of the second
25 paragraph?

1 "The chances of getting an answer out of the AG in
2 anything quicker than months is nil in my view."

3 A. Yes.

4 Q. Would that have been a good reason not to consult the
5 Attorney on an important point of law?

6 A. I don't know whether she is saying that was the reason
7 why she wasn't consulting. I don't think that was her
8 view. But it was actually in practical terms -- because
9 I have already mentioned the amount of business going on
10 at that time, the Attorney's office was extremely busy
11 and they, like any organisation, had to prioritise, and
12 an academic question, which -- I don't know whether we
13 are agreed -- would probably have gone to the lower end
14 of the pile. So I think it was a fairly rational
15 assessment about the prospects of getting an outcome --

16 Q. Yes.

17 A. -- quickly.

18 Q. You said more than once, as she does, that the question
19 had become academic, but it had only been banned very
20 recently in all theatres at this point because it had
21 been, in fact, banned only in Iraq initially in late
22 2003; isn't that right?

23 A. I understand so. I gather -- I saw Sir John Reith's
24 evidence where he said the failure to ban elsewhere, in
25 September I think he said, was an oversight.

1 Q. Yes, and the Inquiry has heard some evidence to the
2 effect that in fact, even after the Prime Minister had
3 made a statement in the middle of May 2004 that there
4 had been a ban, it then transpired that even in Iraq
5 special forces had continued to use it and it was only
6 banned just after the Prime Minister's statement; do you
7 recall that?

8 A. Yes.

9 Q. So by the time of this email, 17 May 2004, it has only
10 just been banned in all theatres and it has been banned
11 as a matter of policy, hasn't it, not as a matter of
12 law?

13 A. Yes.

14 Q. So given what you know through your many years of
15 experience of military life, that orders can change
16 quickly if necessary because developments can be very
17 fast on the ground, can't they -- given that, wouldn't
18 it have been sensible, precisely because there was now
19 the luxury of some time, to take the Attorney's view on
20 the legality once and for all?

21 A. Well, I mean, what I had seen at that time was a very
22 unequivocal statement being made to the
23 Defence Secretary that it had been banned third time
24 round -- it had been banned, then re-banned and then
25 re-re-banned -- been banned in all operational theatres

1 unequivocally. I think reference might have been made
2 to the problem with the SF. And also, having seen the
3 review work that went on subsequently, I rather doubt it
4 was something that was simply going to change overnight.

5 Q. Can I move to a different topic, please? In February
6 2004, are you aware that in that month the ICRC --

7 A. Yes.

8 Q. -- produced a report about Iraq --

9 A. Yes.

10 Q. -- including, the UK's activities there?

11 A. The coalition forces'.

12 Q. Including the UK's activity there.

13 A. It did, yes, but it did not discriminate between the UK
14 and the US in the report.

15 Q. You saw that report, didn't you?

16 A. I saw the report in -- I think I read the report in --
17 when it was leaked by the Wall Street Journal in May.

18 Q. Can we see a document, please, at MOD053398? Towards
19 the bottom of that is an email from Ari again. There is
20 a thing addressed to you. The heading is "ICRC report".
21 When you say, on 5 March, "Ari, I think it would be
22 useful to see it", what were you referring to?

23 A. The report.

24 Q. Did you not see it at that time?

25 A. No, I don't think I did.

1 Q. Can we see, please, MOD053397? Here we have an email of
2 8 March 2004 from somebody at the bottom signing off as
3 "Neil". Do you know who that is?
4 A. I think it is Neil Brown, the lawyer at PJHQ at that
5 time.
6 Q. Indeed. We have heard evidence from Commodore Brown.
7 It seems to be addressed to Martin and Vivien.
8 "As Arvinder has mentioned, the ICRC report is being
9 faxed to you this morning."
10 A. Yes.
11 Q. Was that done?
12 A. I think it was done.
13 Q. So was it in March 2004 that you read the ICRC report --
14 A. No, I don't think it was.
15 Q. Why not?
16 A. If you carry on, I think you will find a minute from
17 Vivien to me.
18 Q. Well, if need be --
19 A. Well, I can explain.
20 Q. Yes, please do.
21 A. When the Wall Street Journal leaked the report, which
22 I think was on 7 May, there was a certain amount of
23 concern in the department about the knowledge that
24 ministers had had. It is obvious from the note that
25 I am referring to that I asked Vivien to tell me what

1 had happened to the report with us. Having seen
2 Vivien's note, it is entirely consistent with neither
3 she nor I thinking that I had seen it.

4 Q. So was it on or around 7 May that you read it?

5 A. Well, I would have read it shortly after it was leaked,
6 yes.

7 Q. To the best of your recollection, the date that you gave
8 a moment ago was around 7 May; is that right?

9 A. I think that is the date it was leaked in the Wall
10 Street Journal. Quite when it surfaced in here I don't
11 know.

12 Q. Can we look at just one extract of that report? The
13 cover page we see at MOD012243. The relevant extract is
14 at MOD012257.

15 THE CHAIRMAN: Is this your last topic, Mr Singh, because we
16 are getting close to time.

17 MR SINGH: Yes, I am sorry about that, Sir. I am afraid
18 I do have a few other topics.

19 THE CHAIRMAN: Well please be as quick as possible because,
20 as you know, we have a long day.

21 MR SINGH: I do appreciate the situation, Sir.

22 Paragraph 32 on MOD012257, please.

23 A. Yes.

24 Q. "On 1 April ..."

25 Obviously that is 2003 because this report is from

1 February 2004.

2 "... the ICRC informed orally the political adviser
3 ..."

4 The Inquiry knows that person to have the cipher of
5 "S034".

6 "... of the commander of British armed forces at ...
7 central command ..."

8 That is Air Chief Marshal Burridge. Then a little
9 further on in the same paragraph, do you see:

10 "This intervention had the immediate effect to stop
11 the systematic use of hoods and flexi-cuffs in the
12 interrogation section of Umm Qasr."

13 Do you remember reading that at the time?

14 A. Well, I read it.

15 Q. All right.

16 A. I would have read it, yes.

17 Q. There is a memorandum from S034 that the Inquiry has
18 seen many times, but if I can just quickly --

19 A. Yes.

20 Q. -- ask you to see it so you can see what the question is
21 going to be about. It is MOD050815. It is dated 11 May
22 2004.

23 A. Yes.

24 Q. I will not go to it in the interests of time, unless
25 I am asked to, but at MOD050816, in the first half of

1 that page Mr Hemming [sic] deals with the concepts of
2 hooding and what is there called "harsh treatment",
3 including stress positions.

4 A. Yes.

5 Q. Do you recall seeing this?

6 A. I don't recall seeing this minute, no.

7 Q. Can I just go to MOD050812 please? There is a series of
8 emails on that page and, from the email addresses at
9 least, it does appear to have been copied. Then if we
10 go to the next page, at MOD050813, we do see that your
11 email address appears about --

12 A. No, that is not my address.

13 Q. "MODLA-Hd PS" --

14 A. Yes.

15 Q. -- who is that?

16 A. At that time, my personal secretary.

17 Q. And did they not show it to you?

18 A. I don't remember seeing it. In fact, at that time,
19 I was existing with agency secretaries, so I am not
20 100 per cent sure it was not a sort of period when
21 I haven't got one. But I don't remember seeing the
22 minute, although I recognise that quite a lot of the
23 content --

24 Q. Yes.

25 A. -- is in the ministerial paper for Cabinet colleagues.

1 Q. Indeed. Just on that, you were asked some questions
2 about a document which begins at MOD053828. I just want
3 to ask one supplementary question about this. This is
4 where you expressed your contentment with the draft
5 paper which then follows. One passage you were not
6 asked to look at I would like to go to at MOD053832. In
7 that final paragraph, the first sentence reads:

8 "There is no firm evidence that the hooding of
9 prisoners at the prisoner of war camp joint force
10 interrogation team facility during major combat
11 operations went beyond the normal use for arrest/transit
12 activity."

13 That just was not accurate, was it?

14 A. I think there was other material in here which also
15 dealt with the complaints at Umm Qasr, though, beyond
16 this paragraph.

17 Q. No doubt if there is other material that the Inquiry
18 should know about --

19 A. In this paper, I thought. I thought there was other
20 material in this paper.

21 Q. No doubt you will be taken to it if there is.

22 THE CHAIRMAN: Well, we can look at that.

23 MR SINGH: Indeed. Finally, Sir, I do have some questions
24 I need to ask this witness about the MoD manual because
25 he is one of the people who read it. I have asked

1 questions of others about that. If you are otherwise
2 content for me to take it as read what I would ask this
3 witness --

4 THE CHAIRMAN: Well, I suspect that I am quite content to
5 take it as read.

6 MR SINGH: Sir, as long as we can proceed on that basis.
7 I think you know the submission we are going to make in
8 due course.

9 THE CHAIRMAN: I do indeed, yes.

10 MR GARNHAM: Well, Sir, except if it is to found a criticism
11 of this witness, in which case it should be put to him
12 so that he can deal with it.

13 THE CHAIRMAN: Well, can we reach this position, that you
14 can put compendiously any proposed criticism or possible
15 criticism of him in relation to it. That would be
16 a sensible and fair way to do it.

17 MR SINGH: Yes, yes. Mr Hemming, dealing with this as
18 quickly as I can, what this question concerns is the
19 joint service manual of the law of armed conflict. You
20 recall that that was finally published in 2004, but had
21 gone through various drafts which were available, in
22 fact, in Iraq in 2003. You are described in, I think,
23 the preface to that book or manual as being, along with
24 Sir Michael Wood, one of the senior legal advisers to
25 the Government who read the entirety of the text. Is

1 that right?

2 A. I'm not sure I read the bit on prize law that carefully,
3 but I read the bits I knew something about.

4 Q. There are two passages in particular. If necessary we
5 will go to them, but perhaps I can do it compendiously,
6 as the chair has asked me to do.

7 Do you remember that it does refer to the ECHR in
8 passing at 11.19?

9 A. You would have to remind me of what the reference is.

10 Q. We will just get that for you.

11 A. It is not Bancovich, is it?

12 Q. Yes, it is the footnote reference to Bancovich, exactly.

13 It is MOD036556. Now you and I know, Mr Hemming, don't
14 you, that to those who are specialist lawyers in this
15 field, the term "law of armed conflict" has a technical
16 specific meaning which does not necessarily mean the
17 entirety of the law that relates to armed conflict.

18 Would that be fair?

19 A. I think so.

20 Q. Yes. It is often used by lawyers, isn't it, to contrast
21 with international human rights law because there is
22 a body of law known as "international humanitarian law",
23 which is different?

24 A. Yes.

25 Q. Yes. This book, you and other people decided, is this

1 right, should only deal with the law of armed conflict
2 in the technical sense of international humanitarian
3 law?

4 A. Well, I was not part of the editorial board. I didn't
5 decide on its content.

6 Q. In this passage there is a brief reference to human
7 rights law, but do you think that it should at least
8 have alerted the reader that if they wished to obtain
9 more detailed guidance as to the content of human rights
10 law, they are going to have to look at more specialist
11 books?

12 A. I suppose it could have said that, yes. But it wasn't
13 intended, I don't think, to be given to every soldier.

14 THE CHAIRMAN: I don't want to stop you, Mr Singh, but it is
15 not absolutely to the forefront of the issues I am going
16 to have to decide.

17 MR SINGH: Could I ask one final question, which is about
18 the blindfolding passage?

19 THE CHAIRMAN: One final one.

20 MR SINGH: Certainly, Sir. Could we have, please,
21 MOD036434? This is paragraph 8.34.2. Do you see there
22 it says, "Blindfolding and segregation may be necessary
23 in the interests of security ..."

24 A. Yes.

25 Q. "... but these discomforts ... must be truly justified

1 and be for as short a period as possible."

2 If we go back to the previous page, just to see the
3 beginning of that paragraph, do you see it has the
4 heading "Interrogation"?

5 A. Yes.

6 Q. Was that a sensible thing to have that passage in
7 a section headed "Interrogation"?

8 A. Well, as I understand, it is lifted completely from the
9 manual the ICRC recommend to states to adopt in their
10 own model manual of military law.

11 MR SINGH: Sir, we can make submissions about whether that
12 is to do with interrogation. Sir, thank you for your
13 patience.

14 THE CHAIRMAN: Thank you.

15 Ms Edington, do you want to ask any questions?

16 Questions by MS EDINGTON

17 MS EDINGTON: Sir, please, if I may.

18 THE CHAIRMAN: Ms Edington, I am not really wanting to go
19 into the dispute between Mr Hemming and your client.

20 MS EDINGTON: Sir, I wonder if I might --

21 THE CHAIRMAN: I just don't see it as terribly relevant to
22 the issues I have to deal with.

23 MS EDINGTON: Sir, I hear what you say, but of course

24 Colonel Mercer has given oral evidence and that --

25 THE CHAIRMAN: But it just is not at the forefront or indeed

1 anywhere near it of the issues I have to deal with and I
2 don't see any way in which I can resolve it either.

3 MS EDINGTON: In which case, I am grateful for that
4 indication, Sir. Thank you. I have no questions.

5 THE CHAIRMAN: Thank you. Mr Garnham?

6 Questions by MR GARNHAM

7 MR GARNHAM: Thank you, Sir.

8 Four topics please. You were asked by Mr Elias
9 about the discussions that followed the death of
10 Baha Mousa in September and October 2003 resulting in
11 the order banning hooding.

12 A. Yes.

13 Q. Do you have any recollection of what you were primarily
14 engaged upon at that time?

15 A. I have an extremely strong recollection of what I was
16 doing to the exclusion of almost everything else. It
17 was the Hutton Inquiry.

18 Q. What stage of the Hutton Inquiry were we at in September
19 2003?

20 A. By September we were in the middle of evidence. In fact
21 I did check up on the Hutton Inquiry website, the week
22 when Baha Mousa died, I think the deputy chief of the
23 defence intelligence gave evidence, Richard Hatfield,
24 the personnel director, gave evidence, Andrew Gilligan
25 was giving evidence and I think the following Monday

1 Geoff Hoon was giving evidence as well, and I think
2 I spent the whole weekend in the office.

3 Q. Thank you. Second question: did you ever understand
4 from anything you came across during 2003 and 2004 that
5 hooding had ever been used during the process of
6 tactical questioning?

7 A. No.

8 Q. Third topic: may we have on the screen, please,
9 MOD020228? The bottom email is dated 13 May. That is
10 the day after the email to which Mr Singh took you in
11 which Rachel Quick refers to hooding being used for
12 disorientation.

13 A. Yes.

14 Q. Can we go back to the bottom of that page, please, and
15 look at the last paragraph. This is from Ari and is
16 addressed to you and Vivien. It indicates that she
17 sought clarification and awaits a response --

18 A. Yes.

19 Q. -- on whether or not it is used for the purpose of
20 disorientating, in which case "... it clearly violates
21 ECHR jurisprudence and would therefore amount to
22 'inhuman and degrading treatment'". Do you recollect
23 seeing that?

24 A. I am not sure I saw it.

25 Q. Would your view be different from Ari's on that topic?

1 A. No, no.

2 Q. Thank you. Lastly, please, may I have back on the
3 screen MOD053832, which is part of the report to Cabinet
4 colleagues to which Mr Singh took you a moment ago. He
5 read to you the first sentence referring to the lack of
6 firm evidence about hooding at the JFIT facility during
7 combat operations went beyond normal use.

8 A. Yes.

9 Q. He did not read the next sentence, which says:

10 "Anecdotally there may have been problems stemming
11 from the very large number of PWs in civilian clothing
12 being held at the facility designed for military
13 prisoners. There were very limited facilities for
14 separating prisoners so it appears hooding was used on
15 prisoners held at the centre."

16 Did you know to what that related?

17 A. I am not sure I did know what it related to, but it
18 seems to be talking about the JFIT.

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

20 THE CHAIRMAN: Yes, Mr Elias.

21 Further questions by MR ELIAS

22 MR ELIAS: Just one matter to clarify. Can we just go back
23 to an answer you gave to your own counsel at [draft]
24 transcript page 167 today, please, line 18? Just so we
25 are clear about it, Mr Hemming, the second question:

1 "Did you ever understand from anything you came
2 across during 2003 and 2004 that hooding had ever been
3 used during the process of tactical questioning?

4 "Answer: No."

5 A. Yes.

6 Q. Did the process of tactical questioning include periods
7 in custody prior to tactical questioning?

8 A. I'm sorry, I am not -- I don't entirely understand the
9 question.

10 Q. I want to know what you meant --

11 A. Oh.

12 Q. -- when you agreed with that proposition that you never
13 understood from anything you came across that hooding
14 had ever been used during the process of tactical
15 questioning. What did you understand by "the process of
16 tactical questioning"?

17 A. The actual conduct of questioning.

18 Q. Does that include the period, if you like, in
19 a detention facility, before questioning or between
20 questioning sessions?

21 A. I suppose it could include that, yes.

22 Q. Did you ever learn that prisoners were being kept hooded
23 before tactical questioning sessions themselves?

24 A. Well, from what I saw of S034's report that was put into
25 the ministerial briefing, it is implicit there, isn't

1 it, that people were being hooded at the JFIT in
2 relation to questioning?

3 Q. And you understood that?

4 A. I think so, if I had thought about it.

5 Q. So your answer to Mr Garnham related to the tactical
6 questioning session itself?

7 A. Yes, I think so.

8 MR ELIAS: I follow. Thank you.

9 THE CHAIRMAN: Yes. Very well.

10 That is all the questions that we have for you,
11 Mr Hemming. Thank you very much. Thank you for giving
12 evidence and preparing for it and the like, and I am
13 very grateful to you for coming here and you are now
14 free to go. Thank you.

15 Now, before we get to the next witness, we have
16 a read only witness?

17 MR ELIAS: We have, Sir, a supplementary statement that was
18 submitted to the core participants yesterday. May I ask
19 Mr Halliday to deal with that?

20 THE CHAIRMAN: Yes.

21 Summary of supplementary witness statement of GAVIN DAVIES

22 MR HALLIDAY: Yes, Sir, it is the supplementary statement of
23 Gavin Davies. You will recall that he was the SO2 legal
24 adviser at the NCC.

25 THE CHAIRMAN: I do.

1 MR HALLIDAY: He gave oral evidence to the Inquiry on
2 29 March of this year.

3 THE CHAIRMAN: Yes.

4 MR HALLIDAY: After that, following your ruling that the
5 Attorney General's advice on applicability of the ECHR
6 remains privileged, the Inquiry asked Lieutenant Colonel
7 Davies to provide a short supplementary statement. In
8 that statement he confirms that he did read the
9 Attorney's advice. He also says that his own view was
10 that during his time in theatre, the ECHR did not apply
11 in Iraq; that the *lex specialis* for the conflict was the
12 law of armed conflict and not human rights law and that
13 human rights law would become applicable at some stage
14 when sufficient control was exercised over Iraq by
15 coalition forces.

16 He states that even if he had taken the opposite
17 view and concluded that the ECHR did apply during his
18 time in Iraq, that would not have changed his views on
19 the standards to be applied to prisoners.

20 Supplementary witness statement of GAVIN DAVIES

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Witness Name: Lt Colonel Gavin
Davies

Statement No: 2
Exhibits: None

Dated: 09 June 2010

THE BAHA MOUSA PUBLIC INQUIRY

Witness Statement of Lt Colonel Gavin Davies

I, Lt Colonel Gavin Davies will say as follows:

1. I make this statement in response to the Inquiry's Rule 9 Request dated 27 April 2010 for a second witness statement dealing with certain issues surrounding advice given by the Attorney General in 2003. I seek here to cover everything it raises to the best of my ability and recollection.

2. I have been asked to confirm whether or not I have ever read the Attorney General's 2003 advice on the application of the European Convention on Human Rights (ECHR). I can confirm that I have read that advice.

3. I have also been asked what my own view was as the application of the ECHR in Iraq in 2003. During my period of deployed service on Op TELIC 1, I believed

1 that the Lex Specialis for the conflict was the Law of
2 Armed Conflict and not Human Rights Law. I considered
3 that Human Rights Law would become applicable at some
4 stage during the course of the conflict when sufficient
5 control was exercised over Iraq to be able to apply it.

6 4. I have been asked to describe what impact the
7 ECHR had on the prisoner handling issues that I was
8 involved in. As explained above, I did not believe that
9 the ECHR applied during my time in theatre. I would add
10 that even if I had taken the opposite view it would not
11 have changed my views on the standards to be applied to
12 prisoners.

13 5. I have been asked whether I ever discussed with
14 (then) Commander Neil Brown the content, or reason for
15 the content, of his email of 2004 (please see
16 MOD020204). At the time of that email, I no longer
17 worked for Commander Brown, having moved to the
18 Operational Law Branch in June 2003. I was not aware of
19 its content until it was shown to me in the course of
20 this Inquiry and have never discussed the content of his
21 email with him.

22 6. The Inquiry has also asked me whether I was
23 involved in any discussions as to the applicability of
24 ECHR to events in Iraq in 2003 and if so, with whom.
25 I cannot recall any specific discussions on this

1 subject, although it is possible that some may have
2 taken place on an informal basis.

3 Statement of Truth

4 I believe that the facts stated in this witness
5 statement are true.

6 Signed: Gavin Davies.

7 Dated: 09 June 2010.

8 THE CHAIRMAN: Thank you very much.

9 Now we will have our next witness.

10 MR ELIAS: Sir, I wonder if it would be convenient, if we
11 are going to take a break, to take it now.

12 THE CHAIRMAN: I don't mind. If you think that is sensible,
13 then we will do it.

14 MR ELIAS: I am grateful.

15 THE CHAIRMAN: Ten minutes please.

16 (2.55 pm)

17 (A short break)

18 (3.05 pm)

19 MR ELIAS: Sir, may I call Geoffrey Hoon, please, Mr Hoon.

20 THE CHAIRMAN: Yes. Mr Hoon, would you stand please to take
21 the oath?

22 GEOFFREY WILLIAM HOON (affirmed)

23 THE CHAIRMAN: Thank you very much. Do sit down. Make
24 yourself as comfortable as you can sitting in the
25 witness-box. I am sure we will be able to hear you

1 May I begin by looking very briefly at your career
2 history? You set it out in paragraph 2. I need not
3 have it put on the screen. You tell us that you were
4 called to the Bar in 1978. You studied law and became
5 a law lecturer at the University of Leeds until 1982.
6 You held a post as a visiting professor of law at the
7 university of Louisville, Kentucky, 1979 to 1980, after
8 which you practised common law at the Bar for two years
9 before being elected a member of the European Parliament
10 in 1984.

11 A. That's correct.

12 Q. You served, you tell us, in Brussels and Strasbourg for
13 ten years and at the 1992 general election you were
14 elected to the House of Commons as an MP, a position
15 which you held until the last election, when you stepped
16 down.

17 A. That's right.

18 Q. You tell us that in Parliament you held the posts of
19 opposition whip in 1994, shadow spokesman on trade and
20 industry in 1995 and, following the 1997 election, you
21 became Parliamentary Under-Secretary of State at the
22 Lord Chancellor's department, promoted to the rank of
23 Minister of State in the same department in 1998. You
24 briefly served in the Foreign and Commonwealth Office
25 before, in 1999, being appointed Secretary of State for

1 Defence, a post which you held until 2005 --

2 A. That is correct.

3 Q. -- the general election at that stage, after which you
4 took over the role of leader of the House of Commons.

5 A. That's right.

6 Q. It is obviously in relation to your Secretary of State
7 at the Ministry of Defence that the Inquiry particularly
8 wishes to hear from you.

9 Your responsibilities in that role, you tell us --
10 can we have a look, please, at paragraph 4 of your
11 statement, at BMI08522? Perhaps paragraphs 4, 5 and 6
12 help us with a little of the picture. You tell us that
13 your key advisers at the Ministry of Defence were
14 Adam Ingram, from whom, of course, the Inquiry has
15 heard, Armed Forces Minister, the Permanent Secretary,
16 Kevin Tebbitt, and General Reith, then the chief of
17 joint operations.

18 You say you also regularly consulted the chief of
19 the defence staff, the chief of the general staff, and,
20 in addition, as you say at the end of that paragraph,
21 "... Martin Hemming, the legal adviser to the Ministry,
22 regularly provided guidance on numerous legal matters".

23 A. Could I just make clear that key advisers to the subject
24 matter of this Inquiry, there were a vast range of other
25 responsibilities where I would have had other and

1 different key advisers.

2 Q. I understand.

3 You say -- and I think Mr Ingram confirmed it when
4 he gave evidence -- in paragraph 5 of your statement,
5 that:

6 "Adam Ingram took the lead on a day-to-day basis for
7 issues relating to the armed forces ...", including
8 prisoner handling matters.

9 A. That's right.

10 Q. You also refer in paragraph 6 to staff in the private
11 office who provided you with advice. Peter Watkins was
12 your principal private secretary at the time and
13 Martin Williams was the military adviser, was he,
14 seconded, as you say, from the Royal Navy?

15 A. Again, if I can make clear, that was in relation to the
16 issues subject to this Inquiry. There were other
17 members of the private office who would have other
18 responsibilities.

19 Q. So those were the two who would have had
20 responsibilities in relation to prisoner handling,
21 putting it broadly?

22 A. That is correct.

23 Q. Thank you. May I ask you just a little then, please,
24 about Iraq and the conflict there and indeed the
25 stabilisation or peace-keeping phase of that operation?

1 Were you aware that British troops were hooding
2 prisoners in Iraq?

3 A. Only after the death of Baha Mousa.

4 Q. So you had no knowledge of it before?

5 A. No.

6 Q. Obviously -- and a number of witnesses have told us this
7 and perhaps you would agree -- hooding of prisoners, not
8 least because of the hay, if you like, which the media
9 were likely to make of such an issue, was a sensitive
10 matter.

11 A. It certainly became one, yes.

12 Q. If your department -- members of your department -- had,
13 through their work, come to know that hooding was being
14 employed by soldiers in Iraq, used on prisoners, indeed,
15 from some of the evidence the Inquiry has heard, that
16 hooding was a standard operating procedure at the point
17 of capture, for example, is that not something which you
18 would have expected to have been told about?

19 A. In the sense that it was a standard operating procedure,
20 then no because, up and until the death of Baha Mousa,
21 this was not a sensitive issue. This was not an issue
22 that I -- was raised with me or I needed to be informed
23 about.

24 Q. You tell the Inquiry in your statement that you weren't
25 aware of concerns raised by the ICRC in March/April

1 2003.

2 A. I was not.

3 Q. You were not aware of those, were you -- those concerns,
4 that is to say -- until after the death of Baha Mousa?

5 A. I was certainly aware of them after the death of
6 Baha Mousa, but in truth I don't believe that I became
7 aware that the ICRC raised these issues actually until
8 I was preparing for this Inquiry.

9 Q. Again, if a witness who has the cipher S034 -- I think
10 you know to whom I am referring --

11 A. I do.

12 Q. -- had contacted your private office with information
13 about an ICRC complaint to the effect that hoods had
14 been used, amongst other things, would you have expected
15 to have learnt about that?

16 A. I would, but, to be fair to the witness, whose evidence
17 I have read, it would depend on the terms on which she
18 communicated that information to my private office. I,
19 as I make clear in my statement, do not recall having
20 been informed about that directly. I have taken the
21 opportunity of checking with the members of my then
22 private office. They cannot recall such a conversation.

23 It is perfectly possible -- and it seems to be
24 consistent with the terms in which witness S034 gave
25 evidence -- that she communicated this information in

1 such a way as to indicate that the problem had been
2 resolved and therefore no action need be taken.

3 Q. But given that it had the sensitivities and the
4 possibility of media exposure, for example, would it not
5 have been something that you would have wanted to know
6 about?

7 A. Well, again, to repeat what I have just said, I think it
8 rather depends upon the terms in which she communicated
9 that information, assuming she did do so. If she said,
10 "This was a real problem for the Government, for the
11 Ministry of Defence and action that needs to be taken",
12 then certainly I would have expected to have been told
13 about that.

14 If, in contrast -- I think this is the impact of her
15 evidence as I understand it -- she said, "Actually these
16 issues have been raised, but they have been resolved in
17 the field, the ICRC are now content with what has
18 happened", I can conceive that a private secretary might
19 judge that that was a matter that had been dealt with
20 and did not need to be recorded. But certainly, if
21 I can make it plain, this was not recorded, there is no
22 note of this telephone call and no information was
23 communicated to me about it.

24 Q. Now you were made aware of hooding, you tell us, after
25 the death of Baha Mousa.

1 A. It is clear from the initial report about his death that
2 he had been hooded and that was, as I think became clear
3 later, a contributory factor in his death.

4 Q. When you learnt, no doubt, then quite close to the time
5 of his death, because this would have been a matter
6 reported directly to you at the time -- is that right?

7 A. That's right, or as soon as after as the information was
8 available, yes.

9 Q. Of course. But we are talking about hours or a day,
10 aren't we?

11 A. Yes.

12 Q. As soon as you learnt of the death of Baha Mousa and the
13 potential involvement, if you like, of hooding in his
14 death, what was your reaction to that?

15 A. Well, I was clearly deeply shocked that a man had died
16 in such circumstances at the hands, apparently, of
17 British soldiers. It is a matter that needed a thorough
18 investigation and one was begun almost immediately.

19 Q. What was your reaction to learning that he had been
20 hooded?

21 A. I was shocked. It was not something that could have
22 been acceptable in those particular circumstances.
23 I regarded the hooding at the time as part of the abuse
24 to which this unfortunate man had been subjected.

25 Q. Did you have a view at the time, Mr Hoon, as to whether

1 hooding as a practice on prisoners was or was not
2 acceptable in any circumstances?

3 A. At the time, that is the point at which I had been told
4 about his death and received written information
5 about it, I think it is fair to say that I was generally
6 aware, from my general knowledge, that hooding was part
7 of a set of practices that had been banned in the 1970s
8 arising out of investigations in Northern Ireland. So
9 I would not have expected hooding to be part of any
10 questioning or interrogation of prisoners in Iraq or
11 elsewhere. But clearly, in the course of the
12 discussions I had arising out of the death of
13 Baha Mousa, I learned about hooding for limited purposes
14 in the course of moving prisoners around, in the course
15 of transit.

16 Q. So that means, does it, that after the death, in the
17 course of discussions about his death and hooding, you
18 then learned that hooding was, in fact, used for what
19 sometimes in shorthand has been referred to as
20 "operational security reasons"?

21 A. We discussed the circumstances of what is meant by
22 "operational security reasons". That was both to
23 protect information about the disposition of British
24 forces in the immediate aftermath of a conflict --
25 I think it is fair to say as well, in relation to Iraq,

1 that quite often when these matters were discussed, one
2 of the issues that was mentioned more than once to me
3 was the need from time to time to protect informers, to
4 protect people who were helpful to British forces, from
5 potential threats from their fellow countrymen and,
6 therefore, it was not solely to do with operational
7 security in terms of the security of British forces; it
8 was also to do with the security of individual
9 prisoners.

10 Q. Understanding that, when you had these discussions about
11 hooding and the purposes for which it may be used, did
12 you give consideration as to whether hooding was itself
13 humane?

14 A. Sorry, I missed the last word.

15 Q. Humane.

16 A. Humane. I think it is fair to say that I gave -- we had
17 discussions about whether hooding itself was lawful and
18 that was clearly my main concern. The extent to which
19 something is humane is clearly relevant to its
20 lawfulness, but the advice that I was given throughout
21 these discussions was that it was lawful for the
22 purposes that we have just discussed, for the purposes
23 of limited security in the immediate aftermath of
24 a conflict. It was clearly not lawful for any other
25 purpose.

1 Q. So what is the answer to my question? Did you yourself
2 give consideration to whether the practice was itself
3 humane?

4 A. I had certain responsibilities and those
5 responsibilities were to do with ensuring that British
6 forces behaved in a lawful way. My own personal view as
7 to whether this was or was not humane I am not sure was
8 strictly relevant to the job that I was doing at the
9 time.

10 Q. But it perhaps may be relevant, might it, if you wanted
11 to, as it were, drive the argument in a particular
12 direction?

13 A. If I take your question as a hypothetical, if I had
14 personally come to the view that this was inhumane,
15 would I have then decided, as a matter of policy, that
16 the Ministry of Defence should, for example, ban hooding
17 in accordance with my personal view? That might have
18 been a possibility, but I do not think it would have
19 been good practice for the Minister of Defence or any
20 other Government department to simply change its policy
21 in relation to the particular views of the particular
22 Secretary of State at the time.

23 Q. Mr Hoon, that is not quite my suggestion either.
24 I simply ask whether you had a view and, if you did,
25 whether you used it in order to seek to influence

1 officials or lawyers.

2 A. If you will forgive me, I rather thought I did answer
3 your question and --

4 Q. Well, what was your view?

5 A. If I may just finish. One further point is that we were
6 part of an international coalition and, therefore,
7 whatever view was taken in the United Kingdom
8 necessarily was also affected by views of international
9 and European law taken by our partners in that
10 coalition. So when troops work very closely with forces
11 from other countries, it is important that there is
12 a consistent and settled view of the coalition. My
13 understanding was that, for the purposes that we have
14 just discussed, hooding was lawful, but for only those
15 purposes.

16 Q. And you yourself did not have a view about whether it
17 was indeed humane or not?

18 A. Well, I have a range of personal views and I am freer
19 today to express them than before, but I don't think at
20 the time I particularly took a view about this, other
21 than the legal view that I thought was the right thing
22 to do as Secretary of State for Defence.

23 Q. The legal view being given to you, that it was lawful
24 for these operational security purposes, who gave you
25 that advice?

1 A. Certainly in my statement I had assumed that that view
2 came from Martin Hemming. Having just listened to him
3 giving his evidence and describe what he was engaged in,
4 particularly in September 2003, it may well be, because
5 I saw Mr Hemming on a pretty regular basis in the five
6 and a half years that I was in the Ministry of Defence,
7 that I simply view him as the generic legal adviser.
8 But certainly in the course of discussions about hooding
9 and its lawfulness, the view was very clearly expressed
10 on more than one occasion from the Department's lawyers
11 that, for the purposes that we have discussed and I have
12 described, hooding was, in those limited circumstances,
13 lawful.

14 Q. Was it your understanding that that was a consistent
15 view that you were being given by all those who advised
16 on this point?

17 A. That was certainly my understanding and a consensus view
18 also shared by our coalition partners.

19 Q. Can we have a look then please -- just staying with this
20 period at about the death of Baha Mousa -- at a document
21 which I think you tell the Inquiry you did see. It is
22 at MOD048699. It will come on the screen, Mr Hoon,
23 alongside you.

24 It is dated 16 September 2003. It is a document
25 that you can see from the heading relates to a death and

1 an Iraqi child seriously injured. I obviously do not
2 want to go into that aspect. The "death of one
3 detainee" is the death of Baha Mousa. You would have
4 seen this document?

5 A. I have seen that document, yes.

6 Q. The top right-hand corner, that is Martin William's
7 note, "Secretary of State to note, MW"?

8 A. Yes, it, is yes.

9 Q. If we go over the page, please, just to see what your
10 state of knowledge would have been if you had read the
11 document, at paragraph 5, we can see, can't we --
12 I don't want to read it out unless you tell me that you
13 don't recall it -- that there is reference to the acts
14 of Baha Mousa struggling, slipping his hood, the guards
15 replacing his hood, his pulse being checked and, three
16 minutes later, the guard suspecting that he might not be
17 breathing, leading on very shortly to his death.

18 You would have been aware then, would you, that the
19 suggestion was that Baha Mousa had been hooded more or
20 less up to the time of his death?

21 A. Certainly I was aware that hooding was an issue in his
22 death and that was why I was both shocked and concerned
23 that that should have happened.

24 Q. If we read towards the end of the paragraph, we can see:

25 "At this point the individual had been in custody

1 for a total of 36 hours. He had spent 23 hours and
2 40 minutes of this hooded, albeit not continually."

3 That presumably would have been a great shock to
4 you, that someone could have been kept hooded for
5 anything like that period of time.

6 A. Not only shocked, but clearly something quite wrong. As
7 I said earlier, I regarded that as part of the abuse
8 that Baha Mousa had been subjected to.

9 Q. Were you aware at this time or at about this time that,
10 quite apart from the hooding, Baha Mousa had also
11 sustained quite serious injury?

12 A. I think -- although it doesn't specifically say so in
13 this particular document, I think there was a further
14 document some two days later that made it plain that he
15 had apparently been subjected to a very severe beating
16 and that that may, highly likely, have been the cause of
17 his death.

18 Q. When you learnt from that document that maybe hooding
19 had had some part to play in the death of a prisoner
20 and, from that account, that a prisoner had been hooded
21 for, albeit a few minutes [sic], 24 hours out of
22 a 36-hour custody detention, did you take the view that
23 that was something which therefore called for some
24 review of the practices in Iraq?

25 A. I think there were two aspects to it: firstly to ensure

1 that there was a proper and thorough investigation of
2 the circumstances leading to Baha Mousa's death and the
3 Royal Military Police SIB were tasked to investigate
4 those circumstances; secondly, there were also
5 significant discussions with senior members of the
6 military, particularly General Reith, but also other
7 members of the Department, about what action should be
8 taken in relation to this death and the use of hooding
9 by British soldiers in this way.

10 Q. Did you, as it were, initiate that inquiry or know that
11 it was going on?

12 A. Well, as far as the SIB were concerned, that's a matter
13 that proceeded fairly automatically, I think it is fair
14 to say --

15 Q. Well, that is a separate investigation, isn't it?

16 A. Yes, it is.

17 Q. I understand that you would not, like everyone else,
18 have wanted to get involved in that. It would not have
19 been proper. But in relation to the more general
20 issue --

21 A. It would not have been proper for me to get engaged, but
22 had it have not happened, then I would have certainly
23 asked questions as to why not. But it did happen and it
24 necessarily required that ministers and others did not
25 comment on the particular circumstances until the

1 investigation had been completed.

2 As far as the second aspect is concerned, obviously
3 I wanted to know from senior members of the military
4 what exactly was going on as far as hooding itself was
5 concerned. Why was this man hooded for so long? What
6 were the circumstances? Why was hooding being used?
7 Was it being used for purposes that were, for example,
8 against the law?

9 Q. If we have a look, please, at paragraph 24 of your
10 statement to this Inquiry, at BMI08529, you tell us in
11 that paragraph -- the second line -- about discussions.
12 You begin to tell us about discussions that took place
13 in relation to the banning of hooding by the CJO,
14 General Reith, in October 2003. You refer to the fact
15 that the letter from the CJO banning hooding was issued
16 a month after the death of Baha Mousa or thereabouts.
17 But you say this:

18 "During this period there were discussions about
19 what action to take."

20 Those discussions involved you, amongst others?

21 A. Yes, they did, yes, and I am sure Adam Ingram would have
22 had his own discussions, although he and I certainly
23 talked about this. There was -- I believed it was
24 important, given the circumstances that you have set
25 out, that I understood precisely what was going on in

1 terms of the fact that this man had been hooded for such
2 an appalling period, and that -- those investigations
3 provided quite a lot of information about the use of
4 hooding that I had not previously been made aware of,
5 including, for example, the fact that hooding had been
6 banned previously by General Brims and, for some
7 unaccountable reason, that banning had not been
8 continued.

9 Q. Hooding had re emerged, as it were?

10 A. Yes, and I don't think I have either then or since seen
11 any particular explanation as to why his order in April
12 or May was not continued through the summer.

13 Q. Just staying with paragraph 24, just to record, Mr Hoon,
14 the numerous discussions you suggest were in the
15 Department with General Reith, chiefs of the general
16 staff, the Permanent Secretary, Mr Hemming. You say
17 they were about the lawfulness of hooding and there are
18 also regular discussions with Adam Ingram. You would
19 have discussed the legal issues involved with him and
20 there obviously were, from what you say there, a number
21 of meetings about these issues.

22 A. Yes, although, can I make plain, this cast were not
23 always assembled for all of the meetings --

24 Q. Understood.

25 A. -- so these would be perhaps bilateral meetings.

1 I might talk about these issues perhaps with
2 Adam Ingram, perhaps with the Permanent Secretary,
3 perhaps with General Reith. So there would not all be
4 all of us sitting around and having a formal discussion.

5 Q. I understand. You tell us at paragraph 26 -- can we
6 just go to that please -- that at about the same time,
7 as I understand it, you would have learnt the details of
8 the Heath ruling, although, as you say, you had already
9 been aware of it in general terms. You say there was
10 a debate as to the extent to which it was lawful to hood
11 for security purposes, such as during the transit of
12 prisoners or for the security of prisoners and soldiers.

13 "In the course of these discussions I can remember
14 that the military placed a great deal of emphasis on the
15 use of hooding to protect prisoners where for example it
16 was necessary to protect the identity of informers. It
17 was during these discussions that I was advised that
18 hooding was considered to be legal, albeit for
19 operational security purposes only and that this was
20 a view shared [as you have told us in your evidence] by
21 other countries in the coalition."

22 A. That's right.

23 Q. Were you aware in these discussions that perhaps there
24 were two sides of the argument, both in relation to
25 whether hooding was lawful and in relation to whether

1 hooding was necessary as a practical operating or
2 operational tool, if you like?

3 A. When you say "two sides", if we are focusing only on the
4 limited circumstances in which it was, I was told,
5 lawful to hood prisoners, then I do not recall anyone at
6 that stage ever saying that there was any doubt about
7 the lawfulness of this practice in those limited
8 circumstances.

9 Q. You were never aware of anyone taking the view that
10 hooding was unlawful, as it were, come what may?

11 A. I was not -- it was never suggested to me that hooding
12 per se was unlawful and that hooding per se was contrary
13 either to the European Convention or to more general
14 principles of international law.

15 Q. Did you understand that, if you like, on the soldiering
16 side, there were, to some extent, two sides of the
17 argument, those who said, "We don't need hooding at all"
18 and those who said, "We must retain it because it may be
19 necessary in certain operational circumstances"?

20 A. I think it is clear that, for the military on the
21 ground, in an operation, there must be a judgment made
22 at the point at which hooding for security reasons is no
23 longer necessary, in the sense that either the situation
24 is so under control that there is no longer a threat
25 from the enemy or where informers or others are accepted

1 as cooperating with coalition forces and, therefore,
2 there is no requirement to protect their identity. But
3 that is a judgment made by military commanders on the
4 ground, it would seem to me.

5 Q. At all events, in the light of the discussions which you
6 refer to in those two paragraphs in particular, you
7 didn't feel that the time had come for the matter, as it
8 were, to be sent up to the Attorney to take his advice
9 as to the lawfulness or otherwise of the practice?

10 A. No, because the advice that I was being given about the
11 law was very clear. Normally my experience of asking
12 the Attorney General for advice is where there is some
13 significant doubt. I was not given any reason to
14 suspect that there was any significant doubt about the
15 advice that I was being given.

16 Q. You have told us that you were made aware of the fact
17 that there had been a ban earlier in 2003, that hooding
18 had apparently re-emerged and you refer to this in
19 paragraph 25 of your statement. Could we just have
20 a look at that, please, where you say this in the first
21 three lines:

22 "I remember I was informed that hooding had first
23 been banned by General Brims ... but the practice had
24 re-emerged in Op Telic 2, a development that I was not
25 happy about."

1 What did you do about that?

2 A. Well, that led to the conversations with General Reith
3 in particular, but in time the decision that he took to,
4 in a sense, repeat the banning order that General Brims
5 had previously made.

6 Q. Now the Inquiry has heard evidence that the banning
7 order made in October 2003 was Iraq-specific and it
8 wasn't until May 2004 that the ban was extended to all
9 theatres in which UK forces were operating.

10 A. Well, I think in a sense it is worse than that because
11 I discovered in the early part of May 2004 that actually
12 special forces were continuing hooding even in Iraq, so
13 it required a third effort to ensure that even in Iraq
14 itself hooding was banned entirely.

15 Q. You weren't aware of the fact, were you, that it was
16 Iraq-specific in October and not worldwide, as it were?

17 A. I think all of our discussions were focused on Iraq and
18 on the operations there. So I am not suggesting that
19 I expected it to have been a worldwide ban. It was
20 specifically about the problems that we had experienced
21 in Iraq and the use of hooding in those circumstances.

22 Q. So when the ban was forthcoming in October of 2003, did
23 you understand that the ban was introduced because of
24 what had happened to Baha Mousa or for other reasons?

25 A. I think it is fair to say that it was a combination both

1 of the circumstances of Baha Mousa's death and the fact
2 that, consistent with what General Brims had decided in
3 April/May earlier in the year, there was no longer any
4 specific operational requirement for it. The advantage
5 of the latter was, of course, that that was consistent
6 with the legal advice that I had been given and
7 consistent with the operational practice of British
8 armed forces.

9 Q. Were you ever told in any detail what change in
10 operational circumstances had arisen that meant that
11 hooding was no longer -- it was no longer necessary to
12 employ it?

13 A. Well I think I have outlined in very general terms what
14 I would have expected to happen, which is that
15 a judgment would be made by the commander on the ground
16 as to the security circumstances, both as far as British
17 forces were concerned and indeed in those limited
18 circumstances where they might seek to protect the
19 identity of, as I say, an informer. That is an
20 operational judgment that I would expect the commander
21 to make at a certain stage in the operation.

22 Q. The Inquiry has heard now quite a lot of evidence,
23 Mr Hoon, that substituting hoods with blacked-out
24 goggles or even conceivably blindfolds was an option for
25 deprivation of sight. Was there any distinction to be

1 drawn in the effectiveness in your mind of the use of
2 goggles or blindfolds as against hooding?

3 A. I think only in relation to that second and more limited
4 category, where an individual was an informer, was seen
5 to be helping British forces. I mentioned earlier that
6 that was raised with me on more than one occasion by
7 members of the military. There were particular
8 difficulties in the early part of operations in southern
9 Iraq about local militia still loyal to Saddam Hussein
10 taking revenge on people, for example, who had been seen
11 to cheer British troops. So there were real concerns
12 about the threat to individuals.

13 Q. So hooding for their own protection would be something
14 that you would have regarded as being perhaps
15 a necessary tool which the use of goggles or blindfolds
16 could not achieve?

17 A. Well, I am giving you a -- you asked me a specific
18 question about whether, in all circumstances, goggles
19 could have replaced hooding, and I am simply giving you
20 one example of where that might not have been the case,
21 because the goggles might not have protected the
22 identity of person in question. But I accept these are
23 very tightly defined, very limited circumstances and
24 ones that would only pertain, perhaps, in the very early
25 part of an operation.

1 Q. Could I move on then, please, just to two or three other
2 matters? Were you ever aware -- was it ever brought to
3 your attention -- that there may be any deficiency in
4 the guidance, the written guidance, being given to
5 troops on the ground as to how they should handle
6 prisoners?

7 A. Not at the time. But I think it is clear from the work
8 of this Inquiry and what I have read that this Inquiry
9 has demonstrated that there were some deficiencies in
10 that work and I think it is right that those issues
11 should be exposed in the way that the Inquiry has been
12 able to do so.

13 Q. But you were not made aware of those deficiencies at the
14 time?

15 A. Not at all.

16 Q. Now that you do know the position, as you indicate you
17 do, was that not something that ought to have been
18 brought to your attention?

19 A. It is quite a difficult question to answer in the sense
20 that it was not drawn to my attention. I can't entirely
21 answer for the people who, if I put it this way, failed
22 to draw it to my attention because that assumes some
23 knowledge about this deficiency somewhere within the
24 Department.

25 Q. If we assume that there was such knowledge --

1 A. Well, what I am saying is that I don't know, which is
2 why I am having difficulty in answering your question.
3 I do not know whether there was such a deficiency at the
4 time. What I can categorically say is that these issues
5 were never, ever drawn to my attention at the time.

6 Q. May I just ask you a little, please, about responses to
7 letters that were sent to you as a Member of Parliament,
8 as the Secretary of State? Could I just take you to one
9 or two examples as to the responses that went out anyway
10 in your name? Can we have a look, please, at a document
11 which is at MOD051009? If we go to the very end of it,
12 three pages further on please. Thank you very much.

13 I think you have seen the document before, but you
14 can see it says "Signed on original, Geoffrey Hoon".

15 A. It would be helpful if it could be made larger on my
16 screen, please. Thank you.

17 Q. We can see, can't we, that it is addressed to The
18 Honourable Nicholas Soames MP and it is dated 18 May
19 2004 and would seem to be a response to a letter from
20 him of 11 May.

21 I just want to ask you, please, about a paragraph on
22 the second page, the bottom paragraph. Can we enlarge
23 that? Thank you.

24 You would not have drafted these letters initially,
25 would you?

1 A. No, they would have been drafted in the relevant part of
2 the Department.

3 Q. Before signing them, you would have satisfied yourself
4 that the content represented your state of knowledge and
5 what you ultimately wanted to say?

6 A. Yes.

7 Q. You say this in this paragraph:

8 "The policy on hooding is quite straightforward. We
9 regard the use of hoods during interrogation as contrary
10 to the Geneva Conventions ..."

11 Just pausing there -- and you may have heard my
12 questions to the previous witness -- did you understand
13 hooding during interrogation, that is to say whilst
14 being questioned, as being contrary to the
15 Geneva Conventions?

16 A. Yes.

17 Q. What about hooding, as it were, in preparation for
18 questions?

19 A. If the purpose of hooding was to prepare for
20 questioning, to -- the word sometimes that I have seen
21 used is "condition" or "disorientate" or in any other
22 way affect the mind of the person being questioned, then
23 I would regard that as being unlawful and wrong.

24 Q. So when you used the language here, "We regard the use
25 of hoods during interrogation as contrary to the

1 Geneva Conventions", you might well have said "for the
2 purposes of interrogation"?

3 A. I might well have said that.

4 Q. That's what you would have meant, in effect?

5 A. Yes.

6 Q. I follow.

7 "This technique has never been part of the standard
8 operating procedure on Operation Telic. The Defence,
9 Intelligence and Security Centre explicitly teaches
10 instructors not to use this technique. However there
11 are some circumstances in which hooding prisoners can
12 legitimately be used during their capture to conceal
13 sensitive information such as the disposition of
14 friendly forces."

15 That records what you have told the Inquiry, doesn't
16 it, in essence?

17 A. Yes, it does.

18 Q. You go on to say this:

19 "We always recognised that it was desirable to cease
20 the practice as quickly as possible and commanders on
21 the ground judged that we could safely do so by May last
22 year."

23 "We always recognised that it was desirable to cease
24 the practice ..." of hooding. Was that right?

25 A. Bearing in mind that this is a year after the events,

1 but certainly that was the Department's view of hooding
2 for purposes of transit of the prisoners, and I think it
3 is wholly consistent with what I have just told the
4 Inquiry in response to your questions.

5 Q. I don't quite understand that, Mr Hoon, if you will
6 forgive me.

7 "We always recognised that it was desirable to cease
8 the practice ..."

9 As I understand your evidence, you were not even
10 aware it was happening until after the death of
11 Baha Mousa.

12 A. I am writing a letter on behalf of the Ministry of
13 Defence as Secretary of State and it is clear from the
14 language that I am using that I am not writing in
15 a personal capacity; I am writing on behalf of the
16 Department and that is why the letter had been sent to
17 me. It is important to distinguish my personal position
18 and my personal knowledge from the responsibilities
19 I had to write on behalf of the Department.

20 Q. Where on behalf of the Department do we see any
21 suggestion that it had always been the Department's view
22 that hooding would cease as soon as possible?

23 A. Because the law, as we have discussed, requires that
24 hooding may only be used for circumstances of security
25 to protect British forces and British information.

1 Clearly, once those security circumstances have come to
2 an end, it would be desirable to cease the practice
3 because thereafter there could not be any lawful
4 jurisdiction for it.

5 Q. If we look, then, at MOD050968. This is another letter
6 to Nicholas Soames, a little later, 25 May now. Again
7 it is signed by you. I appreciate and I certainly do
8 not make the point that you were dealing with the matter
9 personally; you were writing, as it were, on behalf of
10 the Department as the minister. But you say this in the
11 last paragraph:

12 "Local commanders took decisions to cease the
13 hooding of detainees when they believed the
14 circumstances permitted."

15 What was your understanding about that? What was it
16 that had occurred, for example, in April 2003, when
17 General Brims gave his order, the one that it seemed did
18 not have full effect -- what was it that happened then,
19 as you understood it, that had changed the circumstances
20 on the ground that hooding was no longer required?

21 A. Bearing in mind that I only learned about this in the
22 period after Baha Mousa's death, but my understanding
23 was that General Brims had seen some prisoners hooded,
24 that he judged that it was no longer necessary for that
25 practice to continue on security grounds and that he

1 ordered that it should stop.

2 Q. That would have been your understanding at the time of
3 writing that letter, would it?

4 A. It was my understanding from September 2003 onwards, so
5 certainly it was still my understanding in 2004, yes.

6 Q. Finally in this regard, can we look, please, at a letter
7 we find at MOD050534? It is dated 23 June 2004, written
8 to The Right Honourable John Denham MP and again signed
9 by you, in relation to a letter, as we can see from the
10 first paragraph -- could we enlarge that -- written on
11 28 May, on behalf of his constituents, about recent
12 allegations of human rights abuses in Iraq. If we just
13 go over the page, please, to the first full paragraph
14 there:

15 "You also mentioned that [your constituent] ... is
16 particularly concerned over the use of hooding on Iraqi
17 detainees. Hooding, as a temporary means of detaining
18 and transporting prisoners, was used earlier during
19 operations in Iraq. This was in line with UK policy as
20 we believe that, where there is a strong operational
21 rationale, this is acceptable under the terms of the
22 Geneva Conventions. However, hooding has not been used
23 during interrogations."

24 By that you would have meant, would you, not used
25 for the purposes of interrogation?

1 A. Yes.

2 Q. That is what you were writing in June 2004. Can we have
3 a look at another document, please, at MOD048704? You
4 see the date is 18 September and I think it is
5 a document that you were referring to just a little
6 earlier. This is the document to which you were
7 referring a little earlier, isn't it?

8 A. Yes I think it was.

9 Q. The update --

10 A. The update.

11 Q. -- on the Baha Mousa death. As we can see, in the top
12 right-hand corner, whose handwriting is that? It is
13 addressed to you, isn't it?

14 "Secretary of State.

15 "This could be very messy.

16 "Two soldiers have been arrested.

17 "Minister (Armed Forces) ..."

18 Mr Ingram, that would be, wouldn't it?

19 "... will deal as lead minister."

20 A. Almost certainly Martin Williams, my military assistant.

21 Q. So it follows that you would have obviously read this at
22 the time it came through. What you were told in this
23 document on 18 September, if we go over the page,
24 please, to paragraph 5, under "Medical update":

25 "One of the individuals who had been detained

1 died on the night of 15 September whilst still in ...
2 custody ..."

3 Well, you knew that. Then halfway through the
4 paragraph:

5 "A second individual was admitted to 33 Field
6 Hospital at Shaibah ... with acute renal failure,
7 believed to be as a result of trauma."

8 And there is reference in that paragraph to a third
9 individual taken to Field Hospital "... with
10 circumferential soft tissue injuries to the abdomen with
11 some blistering. The individual has been treated and is
12 now mobile".

13 So you would have been aware of fact that at least
14 there were allegations of assault in relation to these
15 detainees --

16 A. Yes.

17 Q. -- on 18 September?

18 A. Yes.

19 Q. If we go on to paragraph 7 please:

20 "In this instance [this is in relation to the death
21 of Baha Mousa] the tactical questioning ... of the
22 suspects was conducted by two intelligence corps staff
23 sergeants, both fully trained in tactical questioning.
24 It would appear that the hooding of the suspects took
25 place on the advice of one of the staff sergeants.

1 However, there is currently no documentation in theatre
2 covering tactical questioning procedures. MND(SE) are
3 reviewing this urgently."

4 When you read that, did it occur to you that the
5 hooding appeared to be part of the tactical questioning
6 process?

7 A. This letter was written three days or thereabouts after
8 the death of Baha Mousa. There was almost certainly, by
9 then, the start of a detailed investigation into why and
10 how he had died. That was a matter for the SIB and
11 I was content for them to pursue that investigation and
12 it is important that they should do so free of any of my
13 views or thoughts or suspicions.

14 I don't believe, with the benefit of the reading
15 that I have made since then -- not least of the evidence
16 put to this Inquiry -- that actually that sentence was
17 borne out in reality. I have not seen any evidence to
18 suggest that there was advice from one of the staff
19 sergeants that these prisoners should be hooded.
20 Therefore that is why I think it is important that the
21 SIB's inquiries should be allowed to continue and to
22 conclude before I made any judgments about what action
23 should be taken.

24 Q. That is not quite the point of my question to you. What
25 I am really putting to you, Mr Hoon, is that on

1 18 September the issue had been raised, hadn't it,
2 through that paragraph, that perhaps a prisoner, who it
3 happens had subsequently died, had been hooded in the
4 tactical questioning process. It raised that question,
5 didn't it?

6 A. I repeat, that was written three days after Baha Mousa's
7 death. It led to a detailed investigation. This was
8 not the result of any kind of an investigation at all,
9 other than a very preliminary one. That detailed
10 investigation took many months to report and it seems to
11 me right and proper that the SIB should have had that
12 opportunity before I made any judgments about what had
13 or had not occurred.

14 Q. That is the point I am putting to you, you see. In that
15 letter we just looked at that you were writing in June
16 of 2004, you confidently asserted that hooding had not
17 played a part in any questioning of detainees in Iraq.

18 A. And that remains my understanding and I have not seen
19 any evidence of this Inquiry or elsewhere that there was
20 either tactical questioning or interrogation -- given
21 the difference in the way in which those two words are
22 used by the army -- to suggest otherwise.

23 Q. You are not aware, are you, that out of the Baha Mousa
24 detainees a number of them were hooded prior to and
25 following tactical questioning?

1 A. I am aware of that, of course, but I am not aware of any
2 suggestion that they were hooded in the course of either
3 tactical questioning or interrogation, which I think is
4 the point that you were making.

5 Q. No, no, I thought we had clarified that. "In the course
6 of" includes, doesn't it, "in preparation for"?

7 A. I am sorry to go over the same ground again, but when
8 you put that to me before, I made clear that if the
9 intention was to hood someone for the purpose of
10 questioning, that would be wrong. I am not aware that
11 there is specific evidence to say that prisoners were
12 hooded specifically to prepare them for questioning.

13 Q. I shall not take the matter further. The Inquiry has
14 heard your evidence on that.

15 Just two other matters, then, please. It is quite
16 a separate matter. There was, wasn't there,
17 a suggestion that there should be an independent review
18 or independent reviewer, if you like, appointed to look
19 at the cases of those who were interned? I don't want
20 to go into the detail of that, but was the end result of
21 that matter, when put to you, that you thought it would
22 be a good idea to have an independent reviewer?

23 A. Well, I think I thought that probably from the
24 beginning, not just at the end.

25 Q. But that was your final decision, although, in fact,

1 I think it was never brought into practice, was it?
2 A. Well, I saw a submission which gave various options.
3 The one that seemed to me to be right, both legally and
4 in terms of what was necessary, was one that involved
5 a significant independent judicial element and
6 I supported that.

7 The submission was not put into practice
8 straightaway because of advice that I received from
9 other colleagues in Government, that this was not the
10 right time to take that decision, but it was put into
11 effect shortly after.

12 Q. It was put into effect shortly after?

13 A. Well, as far as I was concerned, my decision was put
14 into effect shortly after. It was then communicated to
15 other members of the Government.

16 Q. Finally I just want to ask you questions about two
17 pieces of video film footage. The Inquiry is aware of
18 the Sky News footage showing hooded prisoners in Iraq
19 dating from 5 April 2003, apparently broadcast then.
20 Were you aware of that at the time?

21 A. No.

22 Q. Wasn't that matter brought to your attention?

23 A. No.

24 Q. Does it surprise you, if there were, as it were, in the
25 public domain, film of that kind, that it was not

1 brought to your attention and you didn't see it
2 yourself?

3 A. No, because until the death of Baha Mousa it was not
4 an issue.

5 Q. So it would not have been a matter to have concerned you
6 even if you had seen it?

7 A. I have seen the film since in preparation for the work
8 of this Inquiry. I can't say anyone who viewed that
9 film would particularly like what they saw. I think,
10 having seen it, I might have taken the same view that
11 I think General Brim probably took when he saw groups of
12 prisoners, that this was not something that -- unless it
13 could be strongly justified for operational security
14 reasons -- was acceptable.

15 Q. Finally, I am going to ask you, please, to look just at
16 a short passage of video, taken by someone unknown, on
17 14 September 2003, from within the TDF, within the
18 temporary detention facility, involving Mr Payne, who
19 subsequently went to court martial, and the detainees
20 who were arrested as a result of Operation Salerno. May
21 I ask you just to have a look at that, please, on the
22 screen? It will be played for you now and lasts for
23 about a minute.

24 (Video played)

25 MR ELIAS: Mr Hoon, as you are probably aware, that film, it

1 is thought by the Inquiry, was taken at about 12 noon on
2 the Sunday, within three or four hours of the arrest of
3 these detainees, including Baha Mousa, and therefore is
4 a film taken --

5 A. If you will forgive me, I had not seen that film before.

6 THE CHAIRMAN: You hadn't seen it?

7 A. No.

8 MR ELIAS: And you have never seen it --

9 A. I have not seen any reference to it before.

10 Q. -- broadcast unaware?

11 A. Not to the best of my knowledge, no.

12 Q. Having seen it, may I ask you this? You were Secretary
13 of State at the time and I just want to give you the
14 opportunity to give your reaction to what you see there
15 happening to detainees, which included Baha Mousa.

16 A. Well, it looks -- if it is what it appears to be, it
17 looks pretty appalling. Clearly, if British soldiers
18 are engaged in that, it is reprehensible. I have to
19 say, though, that there have been occasions in Iraq
20 where pictures were faked in order to create certain
21 impressions and, without knowing more detail about the
22 provenance of that particular piece of film, I am not
23 sure entirely that it would be particularly wise of me
24 to comment further. If it is what it appears to be --

25 Q. Can I simply interrupt you to say this -- I don't think

1 there is any issue about it and nobody has taken it --
2 that the persons depicted in that film are not only the
3 detainees, as identified essentially by themselves, the
4 soldier who is involved in the treatment is
5 Donald Payne, who has given evidence to this Inquiry and
6 indicates that that is himself, and it would therefore
7 appear without doubt, we would submit, to be evidence of
8 the detainees in questions as treated by Mr Payne on
9 that Sunday.

10 MR GARNHAM: I rise only to say this. Counsel to the
11 Inquiry have been scrupulous thus far in not providing
12 material to witnesses of which they have had no notice.
13 I doubt that Mr Hoon will have great difficulty in
14 dealing with this, but it should be made clear that he
15 has had no previous notice and we, for example, have not
16 shown him this video.

17 THE CHAIRMAN: No, I see.

18 MR GARNHAM: This comes to him entirely afresh.

19 THE CHAIRMAN: I had not appreciated that he had not seen
20 it. Indeed, this is the first time I have known that he
21 has not seen it. But I obviously take into account the
22 fact that it is the first time that he has seen it.

23 MR GARNHAM: Sir, I do not for one moment suggest that
24 questions should not be asked of Mr Hoon in his
25 position, even though he has not had forewarning of it.

1 But it is right, Sir, that you should know that, unlike
2 every other document and piece of film, we had no notice
3 that this was going to be put to Mr Hoon.

4 THE CHAIRMAN: All right. Thank you.

5 MR ELIAS: Sir, if an apology is necessary, I make it, but
6 we made an assumption -- obviously it was erroneous --
7 but I put it to him not to ask questions, but to simply
8 ask, "What is your reaction, having seen it, you having
9 been Secretary of State at the time?" It was simply for
10 that purpose.

11 A. I make clear that if that does show British soldiers
12 engaged in abusing Iraqi prisoners, that is wrong and
13 unacceptable.

14 MR ELIAS: Thank you very much.

15 THE CHAIRMAN: Yes. There may be questions from other
16 counsel, Mr Hoon.

17 Mr Singh?

18 Questions by MR SINGH

19 MR SINGH: Sir, thank you.

20 Mr Hoon, can I ask to you look at a document with me
21 which begins at MOD012243? Do you see that is the cover
22 page of the ICR's report dated February 2004?

23 A. Yes.

24 Q. When did you first see that report?

25 A. I think I first heard about it when it was leaked in the

1 press, I think early in May 2004.

2 Q. Did you read it?

3 A. I certainly was well aware of its contents. I am not
4 sure that I read every single word of it.

5 Q. I understand. But you were well aware of its contents?

6 A. I was aware that there was a report.

7 Q. Can we look, please, at MOD012257 and, in particular,
8 the top of that page, paragraph 32. The report states
9 that:

10 "On 1st April [that is 2003 as the Inquiry knows]
11 the ICRC informed orally the political adviser [and that
12 is the person you and I know as 'S034'] of the commander
13 of British Armed Forces at the coalition forces central
14 command in Doha [that is Air Chief Marshal Burridge at
15 the time] about methods of ill-treatment used by
16 military intelligence personnel to interrogate persons
17 deprived of their liberty at the internment camp at
18 Umm Qasr. This intervention had the immediate effect to
19 stop the systematic use of hoods and flexi-cuffs in the
20 interrogation section of Umm Qasr."?

21 Can we then look, please, Mr Hoon, at
22 a Parliamentary answer at MOD050349? This is from the
23 top of Hansard, do you see, on 12 October 2004? Do you
24 see that, sir? We can blow it up if it is not clear on
25 the screen. I appreciate it is small. The very top in

1 the centre of the page, 12 October 2004.

2 A. We seem to have a question about the Eurofighter
3 Typhoon.

4 Q. If we can have magnified the very top of that page where
5 the date appears in the middle. Do you see that?

6 THE CHAIRMAN: 12 October?

7 A. Still the same question.

8 MR SINGH: The date is 12 October 2004. I just want to
9 confirm that you can see the date.

10 A. I can see the date of 12 October 2004, yes.

11 Q. Thank you. If we can then look, please, in the
12 right-hand column under the heading "UN operations" --
13 can we have that magnified please? The question from
14 Mr Harry Cohen MP:

15 "To ask the Secretary of State for Defence ...
16 whether the routine hooding of prisoners in UK
17 facilities in Iraq was contrary to instructions ..."

18 And then you can read, Mr Hoon, the rest of the
19 question. Your answer, Mr Hoon, was:

20 "Prisoners held in UK detention facilities in Iraq
21 have not, at any time, been routinely hooded."

22 Was that true?

23 A. Yes.

24 Q. Even if the light of the ICRC report?

25 A. Yes.

1 Q. Why do you say that?

2 A. Because first of all I was not aware of that 2003 ICRC
3 report, I think, actually, until preparing for this
4 Inquiry. But leaving that aside, as I understand that
5 report, it was concerned about a small number of
6 prisoners who were hooded; it was not the generality of
7 prisoners who were hooded and therefore prisoners were
8 not hooded routinely. There were specific security
9 reasons for hooding particular prisoners, as
10 I understand it.

11 Q. Mr Hoon, I am going to ask you to think very carefully
12 about your answers because I asked you a moment ago when
13 you had seen the report of the ICRC.

14 A. Sorry, the report you showed me was the 2004 report.

15 Q. Yes.

16 A. You are now referring to the 2003 report.

17 Q. No, no, forgive me, Mr Hoon --

18 THE CHAIRMAN: Just a minute. We are now getting into
19 an argument about the whole thing. Let's be clear
20 about it, Mr Singh. You are putting to him the report
21 that he said was leaked; is that right?

22 MR SINGH: Yes, Sir, that is right. That is right. It is
23 dated 2004. You saw it, you told us, in May 2004, or at
24 least were aware of its contents; is that correct, sir?

25 A. I was aware of content of the 2004 report.

1 Q. Yes. Although the report is dated February 2004, the
2 period to which it relates, Mr Hoon, is 1 April 2003.
3 That is the date that it is talking about. So it is not
4 a 2003 report. Forgive me if I did not make that clear
5 to you a moment ago. I see you nodding. Do you
6 understand now --

7 A. I see what you are getting at, yes.

8 Q. -- it is the same report. In the light of what you knew
9 about the content of that report, do you maintain,
10 Mr Hoon, that when you told a Member of Parliament in
11 the House that prisoners held in detention facilities in
12 Iraq have not at any time been routinely hooded, that
13 that was true?

14 A. Yes. My understanding of the 2004 report was that it
15 was concerned with, in particular, the death of
16 Baha Mousa, it was concerned with another incident and
17 a third, I think to do with a car, and that was what
18 I understood the 2004 report to have dealt with.

19 Both in relation to each of those issues contained
20 in the 2004 report and the reference back to 2003, my
21 understanding was that the Ministry of Defence in
22 particular judged that these were matters that were
23 either resolved to the satisfaction of the ICRC or had
24 been dealt with satisfactorily in the processes that
25 were by then underway. So I still maintain that that

1 answer was wholly consistent with both my understanding
2 at the time and indeed the practice of the Ministry of
3 Defence.

4 MR SINGH: Well, sir, you have seen what the report says and
5 I will come back to this in submission.

6 THE CHAIRMAN: Yes.

7 MR SINGH: Can I ask you, please, to look at another
8 Parliamentary answer given by the Minister for the Armed
9 Forces at MOD050379. We can just see the date is 28
10 June 2004. In the middle of right-hand column under
11 a heading "Interrogation techniques", Mr McNamara MP
12 asks the Secretary of State for Defence when he was
13 first informed that UK forces in Iraq were practising
14 the banned interrogation technique of hooding prisoners.

15 I appreciate, Mr Hoon, that it was not you who gave
16 the answer, but on your behalf the answer was given by
17 the Minister of State, Mr Ingram, and the answer he gave
18 was:

19 "We are not aware of any incidents in which
20 United Kingdom interrogators are alleged to have used
21 hooding as an interrogation technique."

22 Was Mr Ingram wrong about that?

23 A. That was my understanding at the time and it remains my
24 understanding today.

25 Q. And that remains your understanding, does it, Mr Hoon,

1 in spite of the fact that Mr Elias has taken you to
2 a number of documents -- particularly on 18 September
3 2003 -- which we can go back to if you wish to be
4 reminded of it --

5 A. I am familiar with it.

6 Q. You are familiar with it. And your answer remains the
7 same, does it?

8 A. My answer is that that document was written within
9 72 hours of the death of Baha Mousa. It was
10 a preliminary account of what could only have been
11 a preliminary investigation and that, when that
12 investigation concluded, I am not aware that there was
13 a specific suggestion that interrogators or questioners
14 had used hooding as a technique in part of their
15 questions and interrogation and that remains my
16 understanding today.

17 Q. Your evidence is, Mr Hoon, is it, that you were not
18 aware and are not aware even today of that even being
19 alleged?

20 A. Well, I have seen some inevitable speculation from time
21 to time in the press, but there is nothing to suggest
22 that those responsible for either questioning or
23 interrogation used hooding as an interrogation
24 technique.

25 Q. The final topic, Mr Hoon, I would like to ask you about:

1 Mr Elias asked you a few questions about the procedure
2 for having an independent review of the internees and
3 you helpfully set out in summary your view as it was in
4 2003. I will be as brief about this as I can, Sir.

5 THE CHAIRMAN: Yes, that is all right.

6 MR SINGH: Just to put the issue in context, in the summer
7 of 2003 -- it may help, Mr Hoon, if I can remind you of
8 a document which is at MOD054914. This is dated 15 July
9 2003. If we go three pages on to MOD054916, we see that
10 your name appears at the end of the document. Do you
11 see that? Thank you.

12 Without going through this document in detail,
13 Mr Hoon, would it be a fair summary of it to say that
14 you were suggesting for consideration by your colleagues
15 in Government that the Government should pursue the
16 option of establishing an independent board of specially
17 appointed lawyers, judges and lay members and that it
18 might be very similar to the way in which the Special
19 Immigration Appeals Commission operated?

20 A. That's right, yes.

21 Q. There is an email which the Inquiry has seen at
22 MOD053331, which bears the date of 15 August 2003. The
23 person who signs it off as "Vivien" the Inquiry knows to
24 be Vivien Rose. She is talking about having spoken to
25 Jon Chorley. I am sure you remember Jon Chorley.

1 A. Yes.

2 Q. She states that:

3 "He confirmed that the Secretary of State had
4 rejected the submission on this on the grounds that
5 taking the steps proposed might prejudice our delicate
6 negotiations with the US over the British G bay ..."

7 That the Inquiry understands is a reference to
8 Guantanamo Bay detainees.

9 "John discussed this very informally with
10 Cathy Adams of the Law Officers Secretariat in the
11 fringes of a meeting and she said she did not think that
12 the [Attorney General] would agree with that analysis --
13 on the contrary it would help our case with the US if we
14 were able to point to the fact that we were devoting
15 time and effort to setting up a fairer system for our
16 detainees."

17 Mr Hoon, was that, in fact, an accurate recording of
18 your views as Secretary of State, that you were opposed
19 to the idea of the new independent system or were you in
20 fact in favour of it?

21 A. On the contrary, I was very strongly in favour of it.
22 The reason for the delay was, as I think I explained to
23 Counsel for the Inquiry, that there was some concerns
24 expressed by colleagues -- senior colleagues in
25 Government -- about the possible impact of such

1 a decision in July on delicate negotiations in relation
2 to Guantanamo Bay. Nevertheless, at the first
3 opportunity, once that delicacy had passed, I sent out
4 the letter to my Cabinet colleagues, I think probably
5 early in September.

6 Q. Yes. The Inquiry has documents before it, which I hope
7 it is not going to be necessary to go to, that suggest
8 that the views certainly of the Home Secretary at the
9 time, Mr Blunkett, the Lord Chancellor and Secretary of
10 State for Justice, who was Lord Faulkner, and the
11 Foreign Secretary, who was Jack Straw, all basically
12 sided with you, if I can put it that way, Mr Hoon. So
13 can you tell the Inquiry who the colleagues were who
14 were opposed to this?

15 THE CHAIRMAN: Is that really a relevant consideration for
16 me?

17 MR SINGH: Well, Sir, it is entirely a matter for you.

18 THE CHAIRMAN: Well, I can't at the moment see any relevance
19 to it.

20 MR SINGH: I will move on, Sir, then.

21 Finally on this topic, Mr Hoon, there was, later in
22 the year, as the Inquiry understands it from a document
23 that we have now seen from Lord Faulkner in about
24 October of that year, 2003, a slightly different
25 suggestion that there would no longer be something based

1 on the Special Immigration Appeals Commission, but
2 rather a board which would be paper-based and sit in
3 London. Do you remember that proposal?

4 A. I don't think I have an independent recollection of it,
5 but I have certainly seen some of that documentation
6 since, yes.

7 Q. The Inquiry's understanding is that even that idea of
8 having a board was not in fact implemented. You said to
9 Mr Elias, I think, that in fact your idea of having an
10 independent review system was implemented at some stage.
11 Is that in fact accurate, do you recall now?

12 A. Well, we are now getting towards the end of 2004.
13 I left the Ministry of Defence, in practical terms, in
14 April 2005, so I am afraid my knowledge expires at that
15 point.

16 Q. Forgive me for interrupting you, Mr Hoon. The period we
17 are talking about is late 2003, not 2004. Does that
18 help you? It seems never to have been implemented, so
19 far as we know, but are you saying that it was
20 implemented?

21 A. My recollection is that it was, but, as I say, I am
22 perfectly willing to accept from you that it may not
23 have been.

24 MR SINGH: Sir, those are my questions.

25 THE CHAIRMAN: Thank you.

1 Ms Dobbin?

2 Questions by MS DOBBIN

3 MS DOBBIN: Mr Hoon, did you come to understand what
4 security concerns may have led to the re-emergence of
5 hooding during Operation Telic 2?

6 A. To the best of my understanding, it was not a question
7 of security concerns re-emerging. It was simply that --
8 I think the word that has been used is that the order
9 was lost, so I don't -- I don't think there was any
10 particular change in circumstances. I am afraid I think
11 it was simply an administrative failure.

12 MS DOBBIN: Thank you.

13 Thank you, Sir.

14 THE CHAIRMAN: Mr Garnham?

15 Questions by MR GARNHAM

16 MR GARNHAM: Mr Hoon, did you understand, in 2003 and 2004,
17 interrogation and tactical questioning to be distinct
18 procedures?

19 A. Yes, I did.

20 Q. Were they used as separate things in army speak?

21 A. They certainly were in army speak, although I think
22 for -- if I can put it this way, for the general public,
23 for those who are used to hearing the words
24 "questioning" and "interrogation", the army's
25 distinction doesn't always fit with most people's

1 understanding of the use of the words, in the sense that
2 "tactical questioning" is a process conducted
3 essentially by a unit who have arrested a suspect and
4 then taken him for preliminary questioning, whereas
5 "interrogation", which in everyday language I think
6 probably has connotations of something rather more
7 sinister, is actually a rather more formal process
8 conducted by trained interrogators.

9 Q. Did you understand hooding to be a technique being used
10 as a matter of generality in Iraq to soften up those who
11 would be questioned?

12 A. No, I do not.

13 Q. Did you understand it to be suggested that Baha Mousa
14 was being interrogated at the time of his death?

15 A. No, I don't. He was clearly being subject to an
16 appalling attack that resulted in him receiving
17 93 separate injuries.

18 Q. Did you understand that Baha Mousa and those he was
19 detained with were being hooded as a preparation for
20 tactical questioning?

21 A. Again, my understanding was that this man was subject to
22 the most appalling attack and, as I have said, I think
23 repeatedly, I regarded the fact that he was hooded as
24 part of the abuse that he was subjected to.

25 Q. You received a briefing before appearing before the

1 Defence Committee in May 2003. I think that is right.

2 A. Yes.

3 Q. And you then appeared before that committee.

4 A. Yes.

5 Q. Do you recall whether hooding arose as an issue for the
6 Defence Committee in 2003?

7 A. It did not, and, indeed, the chairman of the Select
8 Committee apologised to members of the committee for not
9 having time to deal with these questions, I think
10 clearly indicating that this was not an issue that they
11 were concerned about because no issue relating to
12 hooding had by then arisen.

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

14 THE CHAIRMAN: Mr Elias?

15 Further questions by MR ELIAS

16 MR ELIAS: Just this by way of clarification, Mr Hoon: you
17 said unequivocally and a number of times that your
18 understanding was that hooding for the purpose of
19 interrogation or during interrogation was proscribed.

20 A. Yes.

21 Q. Does the same apply to hooding during or for the
22 purposes of tactical questioning?

23 A. Sorry, I mis-heard you.

24 Q. Does the same apply --

25 A. Yes, it does.

1 Q. So hooding for those purposes, whether it is tactical
2 questioning or interrogation -- being two different
3 processes, as you have agreed -- in either case your
4 understanding was that hooding should not be used?

5 A. They are both equally wrong.

6 MR ELIAS: Thank you.

7 Questions by THE CHAIRMAN

8 THE CHAIRMAN: Before you go, Mr Hoon, can I ask you,
9 please, to look back for a moment at the letter that you
10 wrote to Mr Nicholas Soames on 18 May 2004 and the
11 second page? You have been asked about it before, but
12 I want to just see that I understand.

13 Can we put it on the screen? It is at MOD051010,
14 perhaps the bottom paragraph -- that is it.

15 Now, the passage I want to ask you about is:

16 "However there are some circumstances in which
17 hooding prisoners can legitimately be used during their
18 capture to conceal sensitive information such as the
19 disposition of friendly forces."

20 As I understand it, that was your understanding
21 about it at some stage?

22 A. Yes.

23 THE CHAIRMAN: It is the next sentence that I want your help
24 on:

25 "We always recognised that it was desirable to cease

1 the practice as quickly as possible and commanders on
2 ground judged that we could safely do so by May last
3 year."

4 Now I understand you are speaking there, as you say,
5 for the Ministry of Defence. Did you by chance --
6 I imagine not -- have time to read what General Brims
7 said this morning and what was in his evidence?

8 A. I am sorry, I have not, no.

9 THE CHAIRMAN: You haven't. Have you looked at what anybody
10 else has said about that, for instance Colonel Mercer
11 and others?

12 A. I haven't, no. I am not seen sure that I have ever
13 discussed it with General Brims. I would have discussed
14 it with General Reith in September/October 2003, but
15 I don't recall ever having had a direct conversation
16 with General Brims about it.

17 THE CHAIRMAN: No. Did you ever seek to get to the bottom
18 of why he made his order?

19 A. Well, I -- as I have understood it, but obviously in
20 retrospect it was because he saw some prisoners hooded,
21 he did not like what he saw --

22 THE CHAIRMAN: Yes.

23 A. -- and felt that it was no longer operationally
24 necessary for reasons of security and hence banned it.

25 THE CHAIRMAN: That is not quite the impression that

1 sentence gives, is it?

2 "We always recognised that it was desirable to cease
3 the practice as quickly as possible ..."

4 I do not know where you got that from, but you would
5 not have got that from General Brims, would you, or
6 anything he said?

7 A. I would have got it from whoever drafted the letter.

8 THE CHAIRMAN: Drafted the letter --

9 A. I am not in any way avoiding my responsibility for
10 sending it out.

11 THE CHAIRMAN: No, no, I am not suggesting that.

12 A. My view of that, subjecting it to as much close textual
13 analysis as I can, is that what I am saying is that the
14 law requires the commanding officer on the ground to
15 make a judgment to end hooding as soon as it is no
16 longer operationally necessary. So, therefore, it is
17 desirable to cease the practice as quickly as possible
18 because, otherwise, once the operational security
19 reasons have gone, then it follows that hooding would be
20 unlawful.

21 THE CHAIRMAN: But why would there not be operational
22 reasons -- if there had been in the first place, why
23 would there not be operational reasons throughout
24 Op Telic 1 and Op Telic 2?

25 A. Because essentially, as the frontline moves from

1 Umm Qasr north past Basra and beyond, the intelligence
2 that might be useful to the enemy necessarily diminishes
3 and, therefore, in the early phase of an operation,
4 clearly how many British troops there are, where they
5 are located, what kind of security arrangements exist,
6 is valuable intelligence potentially for the enemy.
7 Once the frontline has gone, once the resistance has
8 been overcome, once enemy forces are dispersed and
9 defeated, that is no longer an issue.

10 Similarly, in relation to the point about protecting
11 the identity of potential informers, in the confused
12 early period of particularly this kind of operation
13 where there are people who are loyal to the regime, but
14 who wear civilian clothes and who mix in with the
15 civilian population, in the early period there will be
16 operational security considerations that will diminish
17 with time and really that is what that sentence says.

18 THE CHAIRMAN: So you are making a distinction between the
19 combat phase and the so-called peace-keeping phase,
20 where civilians or others who are insurgents may be
21 picked up and they, therefore, in those circumstances,
22 would not be hooded at all for security reasons?

23 A. I don't think, particularly in Iraq, for the reasons
24 I mentioned, that there were elements of Saddam's
25 security system that remained in place, even after the

1 frontline had moved through a particular area. I don't
2 think modern operations -- and I think to some extent
3 this is seen in Afghanistan as well -- are quite so
4 neatly delineated between the war-fighting stage and the
5 peace-keeping stage.

6 THE CHAIRMAN: Quite so.

7 A. I think modern experience demonstrates that there is
8 a significant overlap and, therefore, the operational
9 security justifications may continue for slightly
10 longer, but nevertheless there will come a point --
11 which is what I think I am saying in that letter --
12 where those security reasons no longer permit hooding to
13 continue.

14 THE CHAIRMAN: And that is what you thought with that
15 paragraph you read, that somebody else had put it in?

16 A. Yes, yes.

17 THE CHAIRMAN: All right. Thank you very much and thank you
18 for taking the time to come to the Inquiry and also for
19 preparing your witness statement and reading the
20 documents. I am very grateful to you for your evidence
21 and, so far as the Inquiry is concerned -- that is me --
22 you are free to go now.

23 A. Thank you very much indeed.

24 THE CHAIRMAN: We have not quite finished, have we? We need
25 to deal with some housekeeping matters. Stay if you

1 wish, but you are quite free to go.

2 Discussion re housekeeping

3 MR ELIAS: Sir, may I deal with some housekeeping and
4 timetabling matters?

5 THE CHAIRMAN: Please do.

6 MR ELIAS: Recording with unconcealed delight that I think
7 we have now completed Module 3 oral evidence.

8 Firstly, Sir, may I say this: although the oral
9 hearings on Module 3 have come to a close, it does not
10 mean, of course, that the Inquiry will be stopping
11 entirely the investigative side of its work in those
12 areas. There is at least, as is known currently to the
13 Inquiry, one further witness statement which will be
14 sought arising out of evidence given to the Inquiry very
15 recently.

16 There remains some document requests where the
17 Inquiry is not yet satisfied that the end of the line,
18 as it were, has been reached. To the extent that more
19 documents may be found, they will be relevance- and
20 redaction-checked, as has happened to all other
21 documents, of course, in the usual way, and disclosed to
22 core participants as soon as possible after receipt by
23 us.

24 But in our assessment of that material, none of
25 these areas are so significant that they could justify

1 putting off closing submissions. But no doubt, Sir, you
2 will agree that if relevant documents or indeed
3 statements emerge after closing submissions, core
4 participants may be given the opportunity to comment
5 further if that appears to be appropriate.

6 THE CHAIRMAN: Quite so.

7 MR ELIAS: Secondly, Sir, may I say this? Core participants
8 should expect to receive, I hope towards the end of next
9 week, a witness statement from the Deputy Solicitor to
10 the Inquiry, Ms Eloquin. That will be similar in form
11 and content to the statement provided by Ms Carnegie at
12 the end of Module 2, in that it will set out some of the
13 investigative steps taken by the Inquiry and will
14 include, for example, reference to certain logs that
15 have been checked and found to contain no relevant
16 entries and certain potential witnesses who have been
17 approached, from whom it was decided that no useful
18 witness statement could be taken and therefore it was
19 not appropriate to take one.

20 We want that information to be available to core
21 participants before the deadline for submissions and we
22 will endeavour to get the letter out as soon as
23 possible. That letter will also exhibit the witness
24 statement of Mr O'Brien, a witness who failed to attend,
25 but in respect of whom the Inquiry understands there are

1 longstanding mental health issues.

2 Thirdly, may I take the opportunity -- and forgive
3 me for doing so -- to state publicly and underline the
4 timetable for closing submissions on Modules 1 to 3.
5 Core participants need to provide the Inquiry with any
6 closing submissions on Module 1 to 3 by no later than
7 4 pm on Friday 20 [sic] June, and, Sir, that date
8 cannot -- if the timetable is to be adhered to -- be
9 extended.

10 Following redaction checks by the Inquiry and MoD
11 over that weekend after their receipt, they will be
12 circulated to other core participants, but not yet
13 published more widely, at the close of play on Monday
14 28 June. Core participants will then have until 4 pm on
15 Friday 9 July to serve any further closing submissions
16 in reply.

17 As I say, Sir, I am afraid that those deadlines,
18 notwithstanding the heavy burdens that undoubtedly they
19 will put on core participants, are, as it were,
20 non-negotiable. Detailed guidance to ensure consistency
21 of referencing has already been provided and core
22 participants are requested, please, to adhere to these
23 and to contact the Inquiry team in case of any doubts.
24 Core participants should also expect to receive, later
25 in June, finalised schedules addressing the various

1 redactions that have been made to the Inquiry's
2 documentary evidence.

3 I am told by Mr Moss that I may have said Friday
4 20 June. If I did, it is Friday 25 June. I am not
5 cutting back five days on the date for submissions.
6 Forgive me.

7 Sir, you have indicated that you propose to sit from
8 Monday 19 July to Thursday 22 July to hear oral closing
9 submissions and, as everyone knows, I think a timetable
10 allocating timings to core participants has been
11 circulated. The timetable, as was said when it was sent
12 out, is necessarily provisional. We do not currently
13 think it will be necessary to sit on Friday the 23rd or
14 indeed in the week that follows, 26 to 29 July, but
15 those days remain held in reserve should they be needed.
16 By the end of those closing submissions, Sir, we expect
17 to announce more details about the Inquiry's Module 4
18 timings listed for October.

19 I know, Sir, that you wish to say a few words about
20 the progress of the Inquiry, but would you permit me to
21 say this on behalf of counsel and indeed the whole of
22 the Inquiry team, both front of house, as I sometimes
23 call it, and those who work very hard in the background?

24 We would all wish to underline again our gratitude
25 to core participants, to their legal teams, and indeed

1 to the witnesses who have attended, for the cooperation
2 and particularly for the courtesy that we have all been
3 shown in helping the Inquiry to keep to its stringent
4 timetable.

5 THE CHAIRMAN: Thank you very much. I echo all those
6 remarks about the progress of the Inquiry and the
7 cooperation that we have had and I will say a bit more
8 about that in a moment.

9 First, for those who are interested, a few
10 statistics. We have had 103 sitting days since we
11 started, of which eight were in the opening, so that is
12 95 days for hearing witnesses. The number of witnesses
13 who have been called in the Inquiry to give evidence is
14 247 at present and I hope that it at least does not get
15 above 250, although that would give us a nice round
16 figure.

17 The number of witnesses whose statements have been
18 read is 101. The number of pages referred to in
19 evidence but excluding witness statements at the last
20 count, which was before the last two witnesses gave
21 evidence -- maybe even before the last four witnesses
22 gave evidence -- is 8,698 pages. The number of
23 documents or pages on the Concordance database is
24 10,675, and 66,024 pages on the Inquiry database.

25 There are 9,869 documents and 62,313 pages on the

1 core participants' database. The witness statements
2 received to date are some 402.

3 I think that gives you some idea of the amount of
4 ground that all of you -- and I don't just say the
5 Inquiry team, but the whole lot of you -- have been
6 concerned in. And I am, if I may say so, extremely
7 grateful to everybody for the cooperation which they
8 have shown and also for the patience. And I know well,
9 from having seen just a modest number of the emails that
10 come through, that a lot of the work has gone up into
11 the night hours and I am extremely grateful to everybody
12 for working so hard.

13 Without that hard work, without that cooperation, we
14 would not have got to where we are at the moment. And
15 I was thinking back on it, I think there is only one day
16 that we overran, and that was one of the detainees who,
17 for obvious reasons, took longer and we were more
18 concerned in some senses about the evidence.

19 I would also like, if I may, to pay a special
20 tribute to my team, that is to say Counsel to the
21 Inquiry, to the, as Mr Elias calls it, the front of
22 house and also the rear of house, if that is the right
23 way of expressing it. Everybody has worked extremely
24 hard and the hard work, I think, has paid off in
25 producing a result of getting through evidence rather

1 more quickly than anybody might have understood it would
2 take when first we started.

3 So with those notes of thanks, I look forward to
4 receiving submissions on time.

5 MR ELIAS: Thank you, Sir.

6 THE CHAIRMAN: Thank you all very much.

7 (4.40 pm)

8 (The Inquiry adjourned until 10.00 am on Monday,
9 19 July 2010)

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