

Thursday, 25 February 2010

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(10.00 am)

THE CHAIRMAN: Do sit down for a second.

Yes, Mr Elias.

MR ELIAS: Sir, the witness this morning will be known publicly and on transcript and in documents that may be published as witness "S009", but he will be known as [redacted] within this room.

THE CHAIRMAN: Very well. If you would be kind enough to stand up, please, Colonel, I am going to ask that you take the oath.

S009 (sworn)

THE CHAIRMAN: Thank you. Do sit down.

If you would be kind enough to get as close as you reasonably can to that microphone, then we will all be able to hear you. Thank you.

Yes, Mr Elias.

Questions by MR ELIAS

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

A. My name is S009.

Q. You are no longer in the army?

A. That's correct.

Q. When you left the army, what was your rank?

A. I was a colonel.

1 Q. Would you prefer that I call you "Colonel S009" or
2 "Mr S009"?

3 A. Mr S009 would be fine.

4 THE CHAIRMAN: I am going to ask you, please, to get even
5 closer if you can. It is very difficult, I know, but if
6 you can shout into that, that will be fine.

7 MR ELIAS: Would you have a look, please, in a folder which
8 should be just to your right-hand side and find there
9 a copy of your statement to this Inquiry? If you go to
10 the last page, which is our BMI03534, do you find, above
11 the date of 17 August of last year, your signature?

12 A. I do.

13 Q. When you signed that statement, Mr S009, were you
14 attesting to the Inquiry that the contents of it were
15 true to the best of your knowledge and belief?

16 A. I do.

17 Q. Thank you.

18 If you put it aside, please. The chairman and
19 I think most of the Inquiry will have read your
20 statement. I don't, therefore, propose to take you to
21 every part of the evidence that is covered in it, but
22 you do understand that your statement stands as part of
23 the evidence to this Inquiry?

24 A. I do.

25 Q. I am going to take you, if I may, then to, as I say,

1 certain aspects that you address in the statement.

2 May I begin, please, by looking very briefly at your
3 army history. You tells in your statement that you were
4 commissioned in 1981. You were attached to the Queen's
5 Dragoon Guards immediately.

6 A. Yes.

7 Q. Subsequently and over the years, you have served in
8 Northern Ireland and in Bosnia?

9 A. Yes.

10 Q. Also in Kosovo, and you have had experience in Hong Kong
11 and, within Europe, in Belgium and Germany?

12 A. Yes.

13 Q. Do you recall when you were appointed lieutenant
14 colonel?

15 A. Precisely, no, but I am sure I can work it out if it is
16 necessary.

17 Q. You took over as the commanding officer of the Queen's
18 Dragoon Guards. Do you recall when that was?

19 A. Is it in the statement?

20 Q. I think it's not, the actual --

21 A. All right. If you like, I am quite happy to sit down
22 and work out a detailed chronology for you. I think
23 I was 37.

24 MR ELIAS: I doubt it will be necessary, but you think it
25 was in 1997?

1 A. No, I was 37.

2 Q. You were 37, thank you.

3 A. So that would have been 1997, correct.

4 Q. Thank you.

5 A. I am sorry, I was not prepared to give you detailed
6 dates like that, but if you need them, I can certainly
7 fetch them.

8 THE CHAIRMAN: I think we will manage.

9 A. Thank you, Sir.

10 MR ELIAS: It is just to understand when you had reached
11 that level of seniority, if I can put it that way.
12 I think you do tell us that in March 2003 you were
13 promoted acting colonel.

14 A. Yes.

15 Q. You left the army in April of 2006, since when you have
16 been working in the private sector; is that right?

17 A. That is correct.

18 Q. Your role in Iraq, when deployed there, can you just
19 deal with that in a nutshell please?

20 A. It was various. It was initially to deploy my squadrons
21 with the various brigades and, secondly, to -- as my
22 main role -- to built a theatre of war internment
23 facility.

24 Q. To build and to run what I think we know as the "TIF"?

25 A. Yes, the theatre of war internment facility.

1 Q. I want to ask you a little, before coming back to that
2 aspect, about perhaps not so much your training, but
3 your understanding from training and maybe other sources
4 of certain techniques, hooding and matters of that kind.
5 Through your training and army experience, had you
6 received instruction in the use of hoods on prisoners?

7 A. Not that I recollect.

8 Q. By the time of your deployment to Iraq, do you recall
9 whether you knew whether hoods were or were not
10 permitted to be used?

11 A. My understanding was that they were not permitted to be
12 used, but you also have to remember that I have
13 a slightly eclectic background in that, having served in
14 Bosnia, I had also come across the human rights
15 legislation, people -- UNHCR and so forth. So I have
16 a slightly wider understanding of ECHR and so forth than
17 perhaps many of my contemporaries.

18 Q. So was your position, if I can put it that way, on
19 deployment to Iraq that hoods should not be used on
20 prisoners in any circumstances?

21 A. No, I don't think that was my point. My understanding
22 is that blindfolding prisoners of war was acceptable for
23 transit and that was an entirely security-related matter
24 in the sense that people who might not wish to be
25 detained or deprived of their liberty, if they were able

1 to see what was going on, see where weapons were and so
2 forth, might cause harm not just to the arresting or the
3 detaining authorities, but also to themselves.

4 So, in transit, my understanding is depriving
5 somebody of their sight, and if that meant some form of
6 loose hood, that was acceptable. I also understood that
7 to be the ruling back from London. What I was equally
8 quite clear of was using hooding as a technique for
9 interrogation was not all right.

10 Q. I follow. You say in your statement to this Inquiry --
11 I think it needn't be turned up, but at paragraph 12 --
12 that you believe it was acceptable to blindfold
13 prisoners and now, in your evidence, you are saying that
14 that, if necessary, might have included hooding?

15 A. Yes, I think so. I mean, as I say, if one thinks about
16 the reality of the situation, putting somebody in the
17 back of a military vehicle with access to weapons,
18 either taking them off soldiers or otherwise, is
19 probably a foolhardy way to go about things.

20 Q. So what I think we have been referring to in this
21 Inquiry with other witnesses was hooding -- putting it
22 in shorthand -- for security reasons you understood was
23 acceptable?

24 A. Yes.

25 Q. Can you help us with where your understanding came from?

1 Was it training or some other source?

2 A. The answer is no, I don't think I can actually.

3 Q. Because you can't remember?

4 A. I am afraid so.

5 Q. Some witnesses have told the Inquiry that it was, as it

6 were, almost ingrained in their training over years that

7 hoods were used in this way and it was, as it were,

8 accepted.

9 A. I mean I couldn't comment on that, to be honest.

10 Q. That's not your position, is it --

11 A. No.

12 Q. -- that you can't tell us where you got it from or

13 whether you were specifically trained or taught that it

14 was acceptable in these circumstances that you outline?

15 A. No, and I also I think there is an element of pragmatism

16 in all this.

17 Q. Meaning ...?

18 A. Meaning that we'd just invaded a country with

19 insufficient resources, with insufficient manpower,

20 insufficient people, when the legal and due process

21 system of the country had collapsed --

22 Q. You are just dropping your voice ever so slightly.

23 Forgive me.

24 A. I can't get any closer than this, I am afraid.

25 Therefore, how else were you to deprive somebody of

1 their sight for those security purposes?

2 Q. I understand the point that you make. Before leaving
3 it, can I simply put this to you? You received,
4 presumably over the years, the law of armed conflict
5 training?

6 A. Yes, in the form that it was delivered.

7 Q. Did you take from that and perhaps from other training
8 the fundamental message that prisoners should be treated
9 humanely?

10 A. Yes, I did.

11 Q. Using hoods in the way that you describe, even for
12 security reasons, did that raise in your mind any
13 question as to whether these prisoners would then be
14 treated humanely?

15 A. No. I think -- forgive me, but perhaps your line of
16 questioning is trying to lead me down a path that I am
17 not really prepared to go. I think there is a very
18 practical reason in that, with large numbers of people
19 being moved around, it would have been equally erroneous
20 and immoral to allow the prisoners the opportunity to
21 either hurt themselves, by diving out of a moving
22 vehicle, for instance, if they thought they could
23 escape, or doing damage to the detaining forces by
24 grabbing weapons and all that sort of thing. So when
25 you are trying make a moral judgment, I think this is

1 the wrong place to do it. I would suggest that if the
2 hoods were used as part of a coercive methodology(?)
3 that would be entirely inappropriate and incorrect.

4 Q. Let me say it once, Mr S009, I am not trying to lead you
5 down any particular line. It is for you to answer the
6 questions as you see fit.

7 There were good reasons, you say, for hooding: not
8 only security, but also potentially for the welfare of
9 the individual hooded?

10 A. No, I don't think I said that. I said it was to avoid
11 injury --

12 Q. Yes.

13 A. Is that your definition of "welfare"?

14 Q. Yes.

15 A. Okay, well, under that definition, yes.

16 Q. Stress positions -- what did you understand by the use
17 of stress positions?

18 A. What is a stress position?

19 Q. Yes.

20 A. I think it's any position that causes physical duress.

21 Q. Were you given any training or, if you like, what was
22 your understanding of the rights and wrongs of the use
23 of stress positions at the time you deployed to Iraq?

24 A. At the time I deployed to Iraq, no.

25 Q. Sorry, forgive me.

1 A. No.

2 Q. What does that mean, "no"?

3 A. Sorry you said, "At the time you deployed to Iraq,
4 were you given any training on the use of stress
5 positions?" --

6 Q. Yes.

7 A. -- and I have answered "no". I was not given any
8 training on the use of stress positions at the time
9 I deployed to Iraq.

10 Q. What was your understanding about the rights and wrongs
11 of their being used with prisoners?

12 A. My understanding was that was illegal. It was not to be
13 done.

14 Q. You tell us in your statement at paragraph 11 -- again
15 it need not be put up -- your experience in Northern
16 Ireland. I think your first tour of Northern Ireland
17 covered conditioning techniques, including the use of
18 stress positions.

19 A. Mm-hmm.

20 Q. Were you taught there that these techniques were banned?

21 A. I was told they were banned.

22 Q. Did you, in fact, know of the Heath Government ruling in
23 1972 in relation to these techniques?

24 A. I would dearly love to be able to tell you "Yes, of
25 course" because I am extremely well read and so forth.

1 The answer is no, I did not. As a young 21-year-old, it
2 was beyond my ken.

3 Q. I understand. Perhaps what the Inquiry may want to know
4 about that is whether, in that training that you
5 received that these were banned, there was any reference
6 to the Government having --

7 A. Not that I recollect.

8 Q. Thank you. Do you recall the source of the training or
9 where it took place?

10 A. Bizarrely I do. I was on the Quick Reaction Force and
11 I think one of my superior officers came in and told us
12 about it.

13 Q. So at any stage subsequent to that first tour to
14 Northern Ireland, when you were given that instruction
15 and training, have you been taught anything differently
16 in relation to conditioning techniques and the use of
17 stress positions?

18 A. No.

19 Q. Has it, in fact, been a subject that has been revisited
20 with you over the years?

21 A. No.

22 Q. You say in your statement -- just before leaving stress
23 positions -- in paragraph 13 that you would consider
24 being made to kneel in the sun wearing a hood, if I read
25 your statement correctly, in itself as being a stress

1 position.

2 A. Yes.

3 Q. Because ...?

4 A. I don't know about you, but -- I don't know when you
5 last spent hours kneeling on your haunches. I find it
6 a particularly uncomfortable position personally and
7 therefore, by definition, would be stressful. If you
8 then add the fact you have a sandbag over your head and
9 it is hot, my guess is that would be even more
10 stressful.

11 Q. Can I move on, please, to shock of capture?

12 A. Mm-hm.

13 Q. Your understanding of that?

14 A. Mm-hm.

15 Q. What was it?

16 A. My understanding of "shock of capture" is that feeling
17 of dislocation, of -- I think it is a spiritual thing
18 more than anything else. You have just been captured by
19 the enemy, you feel profoundly uncomfortable, you feel
20 dislocated from your normal systems and hierarchies and
21 processes and, as a result, my understanding is that
22 produces a vulnerability in you. I mean a bit like me
23 sitting here today, I wish you to like me to remove some
24 of the stress. I would put it in those terms.

25 Q. Were you given any training prior to your deployment to

1 Iraq in relation to the maintenance of the shock of
2 capture, for example?

3 A. No. My understanding of the maintenance of shock of
4 capture is really all about speed. You know, there is
5 a window when the human psyche wishes to be loved and
6 wanted and cosseted and, after a while, most people get
7 used to new circumstances reasonably quickly. So the
8 point of maintenance of shock of capture is to get the
9 person that you have detained to the person who is going
10 to question them as fast as possible -- no more than
11 that.

12 Q. So speed of delivery. But you didn't understand that
13 there were any other techniques that might be used to
14 maintain the shock of capture?

15 A. No, and indeed if you are referring to things like sleep
16 deprivation and all that, I would say that those would
17 be inappropriate.

18 Q. They were, you were told, off the menu anyway, as it
19 were.

20 A. Correct.

21 Q. Were you ever told, for example, that hooding could
22 appropriately be used to maintain the shock of capture?

23 A. No, not that I recollect.

24 Q. Now you were being sent to Iraq -- we will look at some
25 of the documents that you generated at the time of

1 preparation for your task in Iraq -- with the task that
2 you have outlined very briefly. Did you receive
3 pre-deployment training?
4 A. Personally, no, I don't think I did.
5 Q. You did go to Kuwait, did you, before transfer to Iraq?
6 A. Yes, absolutely.
7 Q. Had you received, before deployment, any training in the
8 task that you were to perform?
9 A. No.
10 Q. I will come back just to one or two aspects of training,
11 if I may. May we move on, please, to consider, now,
12 some of the preparations for the role that you were to
13 undertake? You say in your statement to the Inquiry
14 that Queen's Dragoon Guards was not, as it were, first
15 choice to take up the prisoner-handling role.
16 A. No.
17 Q. Can we have a look, please, at a document that we find
18 at MOD042967? Do you see it on the screen, S009?
19 A. Yes.
20 Q. It is not dated -- at least as far as I can see -- on
21 that page. If we go through to an annex at MOD042971
22 and to the top of the page, we can see the date of
23 February 2003. If we go back a page to MOD042970, you
24 see, at the foot of the page, under the name of
25 "DPB Roberts, Captain ..." -- was he your adjutant?

1 A. Yes, he was.

2 Q. "... For CO", you.

3 A. Yes.

4 Q. Can we go back to the first page of the document,
5 please? Can you tell us what this document was and its
6 purpose?

7 A. I don't recollect it precisely, but, looking at it, it
8 seems to be an initial piece of analysis as to how many
9 prisoners of war we might have to deal with.

10 Q. It is part of the preparation, is it, and giving an
11 indication to those who needed to know what QDG might
12 face?

13 A. Yes.

14 Q. Can I just take you to certain parts of it?
15 Paragraph 3, please:

16 "Prisoner of War Handling Organisation (PWHO). QDG
17 ... have been identified as the PWHO [Prisoner of War
18 Handling Organisation] and as such will be responsible
19 for the collection of PW [prisoners of war] from
20 brigade XPs, their processing, registration and
21 detention at the Div collection point and their
22 subsequent move to the corps holding area once open.
23 The aim of the PWHO is to efficiently and humanely
24 process the PW and whilst relieving combat power from
25 the burden of PW."

1 So it was the efficient and humane process that you
2 were concerned with?

3 A. Yes.

4 Q. If we go on, please, to paragraph 6, "PW handling at the
5 point of capture". This was, was it, the instruction as
6 to what was to be done?

7 A. Yes.

8 Q. "The key to PW handling at the POC [point of capture] is
9 simplicity; troops in combat must be as unhindered by
10 the processing needs of PW [prisoners of war]. To
11 ameliorate this a simple wristband tag has been produced
12 and must be issued to the lowest level notwithstanding
13 logistical constraints."

14 Then:

15 "The following is to happen at the point of
16 capture."

17 We see (a) to (g):

18 "(a) Disarm.

19 "(b) Search.

20 "(c) Administer first aid [no doubt if appropriate].

21 "(d) Segregate officers [from others] ...", and

22 so on.

23 "(e) Capture cards ..."

24 At (f):

25 "Tagging ..."

1 At (g):

2 "Escort to sub-unit or unit HQ as directed."

3 What may be of interest in 6, "Prisoner-handling at
4 the point of capture", it was not envisaged, was it,
5 that there would be any hooding at the point of capture
6 since that is not referred to?

7 A. No.

8 Q. So that's correct, is it?

9 A. Yes, and I think under the circumstances of the first
10 Gulf War, it would have been impossible. But there
11 again, the first Gulf War was resourced rather better
12 than the second.

13 Q. Can we move on, please, to look at a document we find at
14 MOD029065? This does have a date at the top of the page
15 of 3 February. Over the page, we can see it is issued
16 by you. I read from the beginning of the document,
17 please:

18 "As you are aware, although QDG has been tasked with
19 pulling this piece together, it is at present unsuited
20 and under resourced to undertake this operation
21 efficiently. I make this point not because the task
22 cannot be done, for it can be. But in the wider
23 audience, the way we treat and look after our PW will
24 have an impact on the operation as a whole and how we
25 were perceived in the longer term by the global audience

1 and the Iraqi population."

2 I think, if I may just pause there, Mr S009, we see
3 that reflected in other documents at the time of
4 preparation and subsequently, don't we?

5 A. Yes.

6 Q. That was obviously a strongly held view by you.

7 A. It remains so.

8 Q. I read on:

9 "In addition, no matter the willingness of my BG
10 staff, there will inevitably be a tension between the PW
11 responsibilities and those to the regiment,
12 notwithstanding their initial fragmentation which will
13 need some form of direction and support."

14 Can I go to the foot of the next paragraph, please,
15 just the last line of the next paragraph where you said
16 this:

17 "I believe the UK is taking undue risk in this area
18 for the following reasons:

19 "The UK's legal obligation to provide a dedicated
20 and appropriately trained PW Handling Organisation."

21 Then the second bullet point:

22 "The scale of the problem."

23 Can you just indicate in a nutshell what you meant
24 by the taking of an undue risk and why?

25 A. Yes. You will see from other documentations that the

1 operational analysis showed that we could take anything
2 up to about 13,500 prisoners. Under the military
3 doctrinal template, that would indicate -- off the top
4 of my head, I think it was something like one company's
5 worth of infantry to guard every 500 prisoners. That
6 sort of indicates that you would need -- is it nine
7 battalions? Something like that. Clearly we didn't
8 have nine battalions, therefore you were taking an undue
9 risk with your legal obligations to do this properly.

10 In addition, a lack of manpower also runs the risk
11 that prisoners could either harm themselves or cause
12 riots and harm the detaining forces, all of which would
13 have played into the public perception and the global
14 audience, and for all those reasons I felt the UK was
15 taking undue risk.

16 Q. And you were expressing these concerns at this time and
17 in this document in order, can I put it shortly, to
18 persuade the powers that be that steps needed to be
19 taken?

20 A. Yes, and the documents were addressed to the powers that
21 be.

22 Q. Over the page, please, and under the heading "Solution
23 for thought", you said:

24 "The gold plated solution is to replicate the Granby
25 organisation."

1 That was the organisation, was it, in Gulf War 1?

2 A. Yes.

3 Q. "But, I am not convinced we have the resources available
4 or that we can get them here in the requisite
5 timescale."

6 You go on to say:

7 "At the least we need to ensure QDG battlegroup HQ
8 gets here in time or we will have to take a battalion
9 out of the line to act as the coordinating HQ."

10 I think you then go on to deal with essentially
11 matters of resources and I don't trouble you with that.
12 Can we go to the conclusion at the foot of the page,
13 please, in which you say:

14 "I regret being the bearer of bad news. But I think
15 it important to raise the issue before we are held up as
16 the bad men for not looking after our PW. We have
17 international, legal and moral obligations to get this
18 right. And whilst we may wish defeated Iraqis to go
19 home or declare a ceasefire to obviate the need to
20 resource the problem, I do not think we should base our
21 plans on hope. I think we must address the issue of the
22 HQ staff now and identify a minimum of one new unit
23 capable of carrying out these tasks. We should also be
24 prepared to use up to another 2-3 from within the
25 division if the US leave us holding the baby."

1 So you were spelling out there, weren't you, what
2 you thought was required at least to rectify the problem
3 to some extent?

4 A. Yes.

5 THE CHAIRMAN: Before you go on, can I ask to whom was that
6 sent?

7 A. Yes. If you could scroll up, then perhaps I could
8 identify who it was sent to. It was sent to the chief
9 of staff of the 1st Armoured Division.

10 MR ELIAS: This was Marriott, wasn't it?

11 A. Yes, it was.

12 THE CHAIRMAN: Yes, "COS".

13 MR ELIAS: To Chief of Staff Marriott you were expressing
14 those concerns and providing what you hoped would be
15 a solution. I think you say in your statement that you
16 got no reply to that, but you did get results.

17 A. Yes. I do not recollect getting a reply, but it may
18 well have come up in conversation.

19 Q. And the result was what?

20 A. My recollection was that the Air Defence Regiment was
21 taken out of the line, there being no air defence threat
22 conveniently, and they had at least got vehicles so,
23 therefore, could act as escorts to go and collect the
24 prisoners, and then, at the last minute, the battalion
25 of the Duke of Wellington's Regiment was flown out,

1 minus their equipment table, because that couldn't be
2 got there in time, but at least there were bodies who
3 could then guard prisoners. So still fairly light in
4 terms of resources for what we were expecting.

5 Q. Something but not enough, as you thought?

6 A. Yes.

7 Q. Can we look next, please, at paragraph 24, then, of your
8 statement to this Inquiry at BMI03520, in which you
9 refer to:

10 "The Duke of Wellington's Regiment were flown out at
11 short notice to be the PW guard force and arrived with
12 limited equipment and no vehicles ...", as you have just
13 told us.

14 "None of these units assigned to me had previously
15 undertaken prisoner of war handling training or duties."

16 You go on to say this:

17 "There was an army manual on prisoner of war
18 handling organisation entitled JWP 1-10, which provided
19 some basic instructions on the treatment of prisoners
20 and the building of a camp, but it was insufficiently
21 detailed to give an idea of all the challenges we would
22 face."

23 How much help was it to you in reality?

24 A. Very little -- no, that is unfair. In terms of how you
25 build a compound and stick barbed wire in the ground,

1 how deep your latrine should be, it was fine. In terms
2 of dealing with human beings who did not necessarily
3 want to have their liberty deprived, it was of limited
4 help.

5 Q. You go on in this paragraph 24 to say that you
6 therefore -- having taken the step of sending the memo
7 to Marriott, you then took the second action, as you
8 describe it in paragraph 24, of seeking out the advice
9 and counsel of the ICRC in Kuwait.

10 A. Yes.

11 Q. I don't want to ask you about the detail of that
12 discussion you may have had with them, but did you gain
13 useful information from them in the task that you were
14 to perform?

15 A. Entirely. They were extremely helpful and very
16 pragmatic and very practical in their support.

17 Q. Can we look next then, please, at the document that we
18 find at MOD043153? Is this an operation directive 10 of
19 4 March?

20 A. It would appear so.

21 Q. Under "PWHO" on that first page, we see it is recorded
22 that the Queen's Dragoon Guards have been tasked. Can
23 I take you over the page, please, just to the training
24 requirements at paragraph 6:

25 "Brigades are directed that all sub-unit commanders

1 and above receive a 40-minute briefing on the handling
2 of PWs conducted by the PWHO and booked through the
3 field training group. These briefings are to be
4 conducted by [12 March].

5 "7. In addition to the div mandated training ...
6 allocated to the PWHO are to conduct the following
7 training in order to ensure they arrive ready to execute
8 without any training bill. The training will be four
9 days in duration."

10 And it seems to indicate that training will start on
11 8 March. And at (a):

12 "Advanced PW handling training. The PWHO is to
13 receive advance PW handling training by the MPS,
14 tailored to their specific role. For example the PWEF
15 will receive instruction on the movement of PW by
16 vehicles and restraint techniques."

17 Do you recall, Mr S009, whether those training
18 requirements there set out were actually carried out?

19 A. To my recollection, yes.

20 Q. They were?

21 A. Yes.

22 Q. And in 7(a), the advanced prisoner handling training,
23 was that carried out, as you recall?

24 A. As I recall, yes.

25 Q. Can we look, please, at what you said to this Inquiry in

1 paragraph 66 at BMI03533?

2 "The training requirements listed on [that document
3 that I have just shown you] ... state that the PWHO is
4 to receive advanced prisoner of war handling training
5 from MPS; however other than the training listed above,
6 this training was never provided."

7 Do you remember?

8 A. I don't, and I think we are muddling two things up.

9 I think there is a wider training requirement which --
10 you know, there was a battalion back in the
11 United Kingdom, I seem to recall, that had trained for
12 this purpose but was not brought and there was the very
13 limited training that we were able to provide just
14 before the invasion that included the MPS training. For
15 clarification, the MPS came from the Colchester facility
16 so, therefore, had experience of how you deal with
17 handling of prisoners. Nonetheless, that's pretty
18 limited training in my view. That's as best as you can
19 do type stuff.

20 Q. So can we just look at paragraph 24 of your statement to
21 this Inquiry at BMI03521, please, the second part of
22 paragraph 24 at the top of the page. You refer to a dog
23 handling unit and riot control equipment and so on. We
24 will come back to that in a moment.

25 "... a small number of experienced NCOs (I believe

1 four in total) from ... Colchester, run by the Military
2 Police. These NCOs gave some lectures to the troops on
3 the handling of prisoners."

4 That is what you were referring to, is it?

5 A. Correct.

6 Q. And the nature of the training that they gave, was that,
7 if you like, in the physical handling, restraint and
8 so on of prisoners?

9 A. It was more to do with the management of large numbers
10 of people; in other words how to keep people calm, how
11 to avoid problems, how to make certain you have that air
12 of quiet efficiency, and I am sure they would have
13 included some form of restraint handling in that, in
14 accordance with the law.

15 Q. May we move on, please, to look at MOD042987, the
16 operation order dated, it would seem, 13 February. Is
17 that right?

18 A. So it would appear.

19 Q. Can I take you, please, to paragraph 3, the right-hand
20 column? Can that be enlarged under "Concept of
21 operations" at the top, please? Under "Intent":

22 "The intent is to remove the burden of PW [prisoners
23 of war] from the brigades as swiftly as possible to
24 allow them to conserve combat power for their primary
25 warfighting mission. This is to be done in accordance

1 with the Geneva Convention and in light of the UK's
2 position as a leading human rights advocate and
3 permanent member of the UN Security Council."

4 Over the page, in the left-hand column we can just
5 see "Coordinating instruction". I want, please, to move
6 to the right and to (5) under "Security". There is
7 reference there to a "war dog section".

8 "The PWGF augmented by a war dog section and MPS
9 will be responsible for the IS of the Div CP."

10 What was the relevance of the war dog section?

11 A. This to a certain extent came about ... [redacted] ...
12 if a riot occurs, given your limited manpower, what is
13 your final recourse other than just letting everyone go?
14 Of course, ultimately, it is to do what the Americans
15 did in particular, which is to shoot somebody. They
16 pointed out -- and I agreed entirely -- that to go from
17 a standing start to shooting somebody because there is
18 a riot seems both inappropriate, immoral and highly
19 inefficient. That's a failure, in my view.

20 So what they suggested was that you had a range of
21 escalating measures, and you start by producing soldiers
22 in soft hats and then you escalate that to putting riot
23 control gear on, a very clear signaling to those that
24 are rioting that this is unacceptable behaviour. Then
25 you put your shields down and take your truncheons out

1 as another escalation and a signal that their behaviour
2 is inappropriate. Then the war dogs -- and I think we
3 only used them twice. I think I said so in the
4 statement and I will come back to that in a moment --
5 were the next step of escalation, which was to go and
6 quell rioting people, which I have to say, having stood
7 there in front of a couple of them, were extremely
8 frightening.

9 Q. So crowd control?

10 A. Yes.

11 Q. Just staying with this document if we may, just to take
12 you to two other parts. Over the page, please,
13 subparagraph 9, under the heading of "Segregation",
14 I don't take you to the detail of this but just to note
15 it, Mr S009:

16 "The following prisoners of war are to be segregated
17 ..."

18 Then there is reference to officers, high
19 intelligence value targets and things of that kind. So
20 the concept, if you like, of segregation was set out
21 here.

22 Just to note, please, 12, 13 and 14, towards the
23 foot of the page, "Media":

24 "Numbers of [prisoners of war] and the circumstances
25 under which they are captured and detained will be

1 a matter of legitimate public interest. However the GC
2 demands that [prisoner of war] be protected against
3 'public curiosity'."

4 Again, that's another aspect, isn't it, of the
5 concern that you had from an early stage that this whole
6 operation, as it were, was going to be conducted under
7 a spotlight?

8 A. I was certain of it.

9 Q. At 13, reference to the ICRC:

10 "... the principal authority for monitoring
11 compliance ... As such they are to be afforded all
12 assistance. [Their] representatives have the right to
13 interview [prisoners of war] without PWHO
14 representation."

15 Then just at 14 to note:

16 "[Prisoners of war] are to be permitted to practise
17 their religious beliefs ..."

18 If we go across the column, please, to the
19 right-hand column and the middle section under (f) --
20 again just to note this for the moment because we will
21 come back to it -- there is a reference here to "JFIT",
22 isn't there?

23 A. Yes.

24 Q. "Initial deployment will consist of 1 x JFIT ... This
25 will increase over time ..."

1 So at this early stage it follows, does it, that you
2 would have been aware that a JFIT was to be established,
3 as it were, within your boundaries?

4 A. Yes.

5 Q. Can we move on, then, please, to look at a document we
6 find at MOD042997, which, as we see at the top of the
7 left-hand column, is entitled "[Prisoner of war handling
8 organisation] plan ... clarification of requirement".
9 And it would appear -- but you correct me if I am wrong,
10 S009 -- that this was, as it were, some expansion of the
11 order that we have just looked at in terms of what may
12 have been required?

13 A. It would appear so.

14 Q. If we go to the second page, please, at MOD042998 to the
15 top left-hand column, thank you, down to about halfway.
16 Thank you very much.

17 Under (e), there is the reference to the dogs:

18 "It is requested that a [military] dog section be
19 attached TACOM IOT to continue the shock of capture and
20 the pacification of PWs in the Div CP."

21 Can we have a little help about that? "... to be
22 attached TACOM IOT"?

23 A. That's the state of command that they were giving to me
24 and I think the Inquiry has heard how the states of
25 command work. I can detail them if you want.

1 Q. What was the effect here in relation to the military
2 dog section and your control or command of it?

3 A. They were sent to do a job and, within that, I could ask
4 them to do that job whenever was required.

5 Q. There's reference here, as you see, to maintaining the
6 shock of capture. You would have seen this document?

7 A. This one, yes.

8 Q. And what would that have meant to you?

9 A. Well, I think I have described my understanding of shock
10 of capture. It's the swift and rapid movement of people
11 from one place to another. I don't actually recollect
12 these dogs being used for that purpose ever. We never
13 had any problems in terms of riots or unrest as
14 prisoners were arriving so, therefore, they were never
15 used in that sense.

16 Q. But when this clarification was received, the use of
17 dogs to continue the shock of capture, how did you
18 envisage that that might be done?

19 A. Imagine 2,000 or 3,000 people turning up; imagine that
20 you only have a limited number of troops; imagine that
21 that set of people starts to become unruly. Go back to
22 my statement ... [redacted] ... how do you keep that
23 under control and, therefore, how do you continue that
24 process of swiftly, rapidly and efficiently moving large
25 bodies of people around? I also repeat what I said

1 earlier. They were never used for that purpose because
2 it was unnecessary.

3 I also think, to a certain extent, we can read quite
4 a lot into statements that were written before the war
5 ever kicked off. So if you will forgive me for saying
6 so -- and I am probably acting very inappropriately --
7 but I would not read too much into that statement.

8 I think it is just the way it is written, to be honest.

9 Q. So this may not have been, as it were, thought through.
10 Is that really what you are saying?

11 A. No, I wouldn't say that at all. I think it would be
12 thought through very hard and detailed --

13 Q. Forgive me, but the shock of capture, Mr S009, does not
14 apply until capture, does it?

15 A. No.

16 Q. And continuing the shock of capture with dogs is perhaps
17 something that it is difficult to understand how that
18 might have been achieved, unless, of course, the dogs
19 were being used, for example, as some sort of threat.

20 A. No, I don't think it was used as a threat. I mean,
21 ultimately, when in riot situations, they were used as
22 a threat. That was part of the escalation thing. I'm
23 sorry, I have failed to -- I am failing to describe to
24 you in a way that you seem to be able to accept that
25 maintaining shock of capture was about rapid movement

1 whilst somebody feels spiritually dislocated and
2 uncomfortable.

3 If you have large numbers of people and you run the
4 risk of them getting out of hand and you do not have
5 escalation measures to hand, whether they be riot
6 control equipment or anything else like that, then you
7 run the risk of going straight from "Would you like to
8 stop rioting please?" to shooting somebody, and I think
9 that that is a morally objectionable way of doing that.

10 Q. Forgive me. I understand the point that you make about
11 the need for the dogs for riot control. What I am
12 asking you -- and it is all I am asking you -- is what
13 is meant by the use of military dogs to continue the
14 shock of capture presumably after a prisoner has been
15 captured, if you can help us.

16 A. In that case, I regret I can't help you because I have
17 tried. There were, I think, only four dogs, so --

18 THE CHAIRMAN: If I may interrupt you for a moment. The
19 practicalities I completely understand, as to how they
20 eventually worked out, but I think what I, at any rate,
21 would like to know is it could be read at (e) that the
22 dogs were going to be used in some way as a method of
23 forcing someone to continue to be more frightened than
24 they had been before. Do you see that?

25 A. I do see that --

1 THE CHAIRMAN: I understand you don't mean that. You mean,
2 in fact, that the dogs were to be used if you had
3 a problem getting them from A to B.

4 A. Mm-hm.

5 THE CHAIRMAN: That is not necessarily how that reads.

6 A. No, I understand, and I am quite happy to apologise for
7 poor English being used --

8 THE CHAIRMAN: Don't apologise. I just want to know the
9 truth of the whole thing, of what --

10 A. I understand, Sir. The truth of the matter was that
11 they were never intended to be used in that way,
12 irrespective of how one might or might not read that
13 statement.

14 THE CHAIRMAN: All right. Well I understand that now.

15 MR ELIAS: Thank you. Can I move, then, down to letter (k),
16 please, and ask for your help on this. The reference to
17 "JFIT ... are to be attached TACON PWHO", again, that's
18 a reference, is it, to the nature of command that you
19 would have over the JFIT?

20 A. Yes.

21 Q. Can you explain what that nature was from this order?

22 A. Yes, that is the lowest form of command that one has.
23 In essence, it means that I had no authority to tell the
24 individuals within the JFIT what to do, how to do their
25 business or anything else. Their command chain ran into

1 the divisional -- I think it was the S02 GX or something
2 like that, and thence up to the national component
3 command based offshore. My job, under that status of
4 command, was to provide them with logistical support and
5 make certain that they were protected, and that was it.

6 Q. So did it follow from this order, do you say, that you
7 had no control, if you like, over what happened within
8 the JFIT?

9 A. No.

10 Q. You agree?

11 A. What happened inside the JFIT was commanded and
12 controlled by their chain of command which, as I stated,
13 ran to division and then to the national component
14 command.

15 Q. I move on then, please, to another document, which we
16 find appended to your statement, at BMI02485. This is
17 your directive, number 2, "Prisoner of war handling
18 organisation", issued under your name and dated
19 March 2003.

20 A. Yes.

21 Q. I just want to take you through parts of this, please.

22 Under "Introduction":

23 "We are a disparate group of peoples and units
24 pulled together at the last minute to execute a task of
25 considerable size and complexity."

1 To whom was this being addressed?

2 A. The people under my command.

3 Q. All of them?

4 A. Yes, but -- I suspect I can see where you are going with

5 this. I will come back to the point that the JFIT was

6 not under my command. It was billeted with me.

7 Q. I understand that.

8 THE CHAIRMAN: Can I make an observation?

9 A. Yes, Sir.

10 THE CHAIRMAN: Do not try and look where people are going.

11 I am trying to find the truth. That is why the

12 questions are being asked for you. It doesn't

13 altogether help if you are trying to see something where

14 people are going. All right? That may have sounded

15 a little school-masterly, but that's the way it works.

16 A. Very good, Sir.

17 MR ELIAS: I read on:

18 "We do so against a background of uncertainty both

19 in the international arena, but more importantly within

20 the theatre of operations. In addition, we do not yet

21 have knowledge of the final shape of our organisation,

22 our resources or the security environment in which we

23 will operate."

24 The aim of this directive, you say, is:

25 "... to give shape to your efforts and guide you

1 through the continuing uncertainties of our mission."

2 Then, under the heading "Command "at paragraph 3,
3 references to your place in the UK force structure.

4 I do not need to trouble you with that. Can we go on to
5 "Purpose" at 4, please?

6 "Within the PWHO every person, irrespective of
7 capbadge, service or speciality is to understand we have
8 one common goal. In any case there is doubt, it is to

9 "Build and maintain a PW collection, processing and
10 detention system in accordance with the law and to the
11 highest moral and humanitarian standards."

12 That was the message that you were giving to those
13 under you?

14 A. Yes.

15 Q. And that was the standard that you sought to achieve
16 throughout your time of operations?

17 A. Yes.

18 Q. Over the page under "Professionalism":

19 "I demand of every soldier the highest professional
20 standards. In this task we represent our service and
21 nation. We will be in the public eye [and there it is
22 again] very shortly and should conduct ourselves with
23 pride in our competence. Nonetheless you are to pay
24 particular attention to two areas."

25 And under (a) "Military standards", can I just drop

1 down to three or four lines from the bottom of that
2 paragraph because perhaps this summaries your approach,
3 as it were:

4 "An atmosphere of quiet efficiency is to prevail."

5 Then under (b) "Perception":

6 "Ensure your personnel understand the camera lens of
7 the world will focus on us within a very short time. No
8 action we undertake, no matter how trivial will be
9 missed. Therefore, at all times ensure the deportment
10 of the force is professional and business-like."

11 We then go into dress and I don't need to trouble
12 you with that.

13 "Personnel engaged in PW handling are to be firm and
14 fair but detached from the subject."

15 Again, was that a message that you underlined?

16 A. Yes.

17 Q. By "detached from the subject", you meant ...?

18 A. Emotional attachment, fraternisation, making friends
19 with -- anything that would induce bias.

20 Q. You go on to refer to:

21 "Under no circumstances are personnel to fraternise
22 with prisoners."

23 Then can I take you to "Conclusions" at the foot of
24 the page, please?

25 "We have been given a difficult and somewhat

1 unglamorous task. Many, I have no doubt, would rather
2 be out in front doing acts of extreme valor.
3 Nonetheless, our task is of strategic importance in
4 a way individual heroism is not. We, the coalition
5 forces, will not be judged on how we fought; a win is
6 a win despite of the way it was done. In the end we
7 will be judged on how we treated the Iraqi people. The
8 way we deal with our PW will be the first prolonged
9 exposure of Iraqi people will have of us. And every one
10 of those PW will return home in time. They can do so
11 knowing that they were treated decently and with
12 dignity, or not. In the end the whole force will be
13 judged by our efforts. I ask for your absolute and
14 unswerving loyalty to this cause."

15 A. Yes.

16 Q. So were those working under you -- perhaps not only from
17 this directive, but from other things that you may have
18 done or said -- in any doubt as to your approach and
19 attitude to this task?

20 A. I don't believe so.

21 Q. May I move on, then, please, to look at the early stages
22 of the TIF following the invasion. I think the Inquiry
23 is aware of the fact that there was an early proposal,
24 perhaps, for prisoners to be held in Kuwait, but that
25 was found to impossible.

1 A. Correct.

2 Q. You were therefore deployed and located outside Um Qasr,
3 is that right?

4 A. Yes.

5 Q. From your statement to the Inquiry, you indicate that,
6 if I have understood it correctly, the camp at Um Qasr
7 was being set up or had been set up by 22 March.

8 A. I believe so, yes.

9 Q. It had been set up by then?

10 A. I think that's an euphemistic term.

11 Q. You say in paragraph 29, in case it matters, S009:
12 "I believe that we established the TIF on or around
13 22 March"

14 Does that mean that is when you would have arrived
15 there, do you recall?

16 A. I don't recall, but it is worth, for clarification
17 purposes, pointing out that the building of the TIF was
18 an ongoing process.

19 Q. Of course.

20 A. So whilst we might have detention facilities and some
21 tents, the improvement of sanitation, water, showers and
22 so forth, would have been a forever task.

23 Q. We should understand that there would have been
24 something in place by 22 March --

25 A. I would guess so, yes, sir.

1 Q. -- from what you are saying in your statement?

2 A. Mm-hm.

3 Q. I don't want to take time, if it is a pointless
4 exercise, S009, but the Inquiry has -- and I think you
5 will have seen them -- a large number of photographs of
6 what may or may not be the TIF that was built in your
7 time. You have seen those photographs?

8 A. I did. I saw them this morning.

9 Q. Do they in fact assist -- or any of them -- in showing
10 us what was the TIF?

11 A. I regret to tell you that I don't recognise any of them,
12 so I'm sorry not to be of more help there.

13 THE CHAIRMAN: That deals with that one.

14 MR ELIAS: Well, I shan't take you to it.

15 At first, at least, the TIF, if I may call it that,
16 was something of a tented village, was it?

17 A. At first it was merely a small hut with an old radio --
18 a long-wave radio mast in it in a desert, and it was in
19 that state that we accepted our first prisoners.

20 Q. And the camp, as you say, was expanded over time.

21 A. Yes, it was built from scratch over time.

22 Q. In carrying out this task, to whom were you answerable
23 directly?

24 A. I think initially I was directly responsible to the
25 deputy chief of staff for the 1st Armoured Division and

1 at some stage thereafter I was then placed under the
2 Logistics Brigade.

3 Q. Did you participate in O Group meetings?

4 A. Yes, I did.

5 Q. Were they brigade?

6 A. No, I think initially they were with division and then,
7 when I got put to the Logistics Brigade based in
8 Um Qasr, I would go and participate down there.

9 Q. I think you say in your statement that your
10 participation at those meetings would normally be by
11 telephone.

12 A. Mixed, but given the distances people were based over,
13 it was easier done on a conference call.

14 Q. You speak in your statement of the early prisoners being
15 brought and of some difficulties in relation to them.
16 First of all, the numbers that you were receiving --

17 A. Yes.

18 Q. -- were larger than you were, as it were, ready to cope
19 with.

20 A. I think in an ideal world we would not have opened for
21 business for a number of days. We would have usefully
22 built the thing first before you started accepting
23 prisoners.

24 Q. But you also refer to a difficulty of, if you like,
25 identifying or differentiating between soldiers and

1 civilians.

2 A. Yes. I refer you to the document that laid out the
3 standard operating instructions of how they were to be
4 tagged with evidence of who, where and so forth. That
5 didn't materialise.

6 Secondly, there were difficulties with identifying
7 who were combatants and who were not because everyone
8 took their uniforms off.

9 Thirdly, I think people, soldiers, arresting units,
10 from Americans to the UK, were over-zealous in who they
11 swept off the so-called battlefield and transported to
12 us.

13 Q. So you had a mix, as it were, of detainees, and you had
14 the task of determining what their real status was?

15 A. No, because that would apply an article 5 tribunal and
16 I never did that, but we did have difficulties in
17 identifying who were demonstrably not combatants.
18 One-legged 80-year-old men are unlikely to be
19 combatants, for instance; women and children who were
20 brought to us, unlikely to be combatants.

21 Q. You speak in your statement at paragraph 39 -- and
22 I don't think it need be turned up -- of the need for
23 a filtering mechanism to deal with the individuals who
24 were brought to you --

25 A. Yes.

1 Q. -- to separate them out into the categories that you are
2 describing.

3 A. Yes.

4 Q. I don't think I need go with you, Mr S009, into the
5 detail of that mechanism, but did you set up some
6 procedure --

7 A. Yes.

8 Q. -- whereby, doing the best that could be done, prisoners
9 were separated into their respective categories, as it
10 were?

11 A. Yes.

12 Q. As far as you were aware -- and, as I say, I don't want
13 to go to the detail of it -- was that a filtering system
14 that operated satisfactorily?

15 A. That is a matter of judgment, really, isn't it? Having
16 discussed it with large organisations and, in
17 particular, an individual who had been responsible for
18 doing this in East Timor, it seemed like a reasonable
19 process to set up in the absence of any other judicial
20 system in the country ... [redacted]. So when you ask,
21 "Did it work perfectly?", no, I am certain it didn't --

22 Q. I wasn't asking if it worked perfectly. I was asking if
23 you were essentially satisfied with the way it worked.

24 A. Yes, ultimately I think it achieved its purpose.

25 Q. Now, of course, you left this particular post in early

1 April 2003, didn't you?

2 A. Yes.

3 Q. So -- can you assist us -- was it then just over
4 a matter of weeks that you were involved with the
5 receipt of prisoners?

6 A. Yes.

7 Q. Were you aware from your own personal knowledge, what
8 you saw, of any detainees arriving at the TIF who had
9 been apparently injured?

10 A. There were prisoners who came in injured, yes.

11 Q. Was that a rarity or reasonably common or what?

12 A. I think it was a rarity. I mean, to my recollection,
13 I can only remember one individual having to be
14 casevac'd up to the medical hospital ship. But the rest
15 of them were able to be dealt with on site by the
16 medical unit.

17 Q. Can I ask you, please, just to look at a post
18 operational tour report? We find it at MOD041849. It
19 is a draft. We can see it is the "Land Command
20 Component Joint Forward Interrogation Team". I want to
21 take you, please, to paragraph 20 -- we find it at
22 MOD041855 -- in which they say this -- and of course
23 I preface drawing your attention to this by the fact
24 that you were only there for weeks and this was, no
25 doubt, reflecting what happened over months. At

1 paragraph 20:

2 "There were occasions when prisoners turned up with
3 injuries which they claimed were received after capture
4 or at the point of capture. On one occasion we could
5 not interrogate a prisoner due to him being so badly
6 beaten at the point of capture. It was unknown if these
7 injuries were due to him resisting or from overzealous
8 capturing troops."

9 Were you ever aware, as you recall, Mr S009, of
10 prisoners arriving who, can I put it in inverted commas,
11 "had obviously been beaten"?

12 A. No, I wasn't, and furthermore I don't recollect any of
13 the medical staff ever appraising me of that sort of
14 conclusion.

15 Q. Were you aware, from seeing prisoners arrive, that they
16 had been or may have been subjected to rough handling or
17 harsh treatment?

18 A. No, I don't think so, but, remember, this is week one of
19 a war and so bruises could easily be put down to
20 injuries they had received in battle.

21 Q. Or indeed at the time of a violent arrest, presumably.

22 A. Maybe so, but it would have been difficult to make that
23 determination at the time.

24 Q. I follow.

25 May I move on, please, then, to consider the JFIT

1 and where it stood in the scheme of things at the end of
2 March/beginning of April. Your camp, the TIF, was
3 expanding --

4 A. Yes.

5 Q. -- and dealing with greater numbers. Was the JFIT, if
6 you like, a compound within your camp?

7 A. Yes, it was entirely separate from -- my recollection
8 is, as you came down the road to go to the concrete
9 building that I described earlier, it was on the
10 immediate inside of the outer perimeter of the camp on
11 the left. On the right-hand side of that road was the
12 normal prisoner of war processing, being the medical
13 units, the registration and so forth, and then the rest
14 of the camp was then beyond the concrete building and
15 the far side of the hill, so the two were entirely
16 separate.

17 Q. I think you said a little earlier that you remained
18 responsible for their security.

19 A. Yes.

20 Q. But the unit itself was quite a separate unit, was it?

21 A. Yes.

22 Q. Can you remember -- please don't guess at it if you
23 can't -- how long after 22 March, when it seems you were
24 saying the TIF was up and running in a way, was the
25 JFIT, as it were, incorporated into the scheme of

1 things?

2 A. I can't remember, I am afraid.

3 Q. Your responsibilities for the JFIT -- you told us of the
4 command structure a little earlier. Did you supply
5 guards for the JFIT?

6 A. Yes, I believe we did.

7 Q. Do you know whether guards supplied for the JFIT were
8 given any additional training to that which they may
9 have had to undertake the task that you had?

10 A. I have read the statements so I presume they are
11 accurate. I don't recollect personally.

12 Q. What was your understanding as to the nature of
13 prisoners or detainees who were being referred to the
14 JFIT, as opposed to being brought to you?

15 A. My understanding was that they were people who might
16 have intelligence that would have been of value to the
17 war.

18 Q. "High value targets", they might be called.

19 A. Yes.

20 Q. Was that a phrase that you understood?

21 A. I suspect so.

22 Q. I don't know, Mr S009, whether it matters, but can we
23 have a look, please, at your statement to this Inquiry,
24 at paragraph 43? It is BMI03525. You say that:
25 "Shortly after our arrival ... JFIT was billeted in

1 a separate, self-contained prisoner facility within the
2 TIF. My understanding was that they were part of the
3 defence intelligence security centre ... from Chicksands
4 and were a divisional asset, but I cannot be sure.
5 I understood that they answered directly to division in
6 the chain of command, although I cannot remember how
7 I became aware of this. I do not recall receiving
8 a formal order about their establishment in the TIF;
9 they simply turned up."

10 In fact we have now seen, haven't we, in those
11 earlier orders, that you, as it were, would have been
12 aware of the fact that JFIT were coming?

13 A. Yes.

14 Q. You go on:

15 "I have seen the orders in the documents where it
16 clearly states that the JFIT was to be placed under
17 tactical control of the PWHO and therefore making the
18 assumption that my staff would have made the necessary
19 arrangements both to aid their arrival and to help set
20 up their compound."

21 You don't actually have any recollection of doing
22 that or your staff doing it, do you?

23 A. No.

24 Q. "... given that I was unable to exercise any form of
25 command over their activity or their tasks, I suspect

1 that in the initial phases of the operation I did not
2 give much consideration to the unit given that I had
3 more pressing concerns regarding the scale of the task
4 that I had been asked to undertake."

5 That's the position as you recall it, is it?

6 A. Yes.

7 Q. So they appeared, as it were, and got on with their
8 business?

9 A. I have no doubt that they liaised with my quartermaster,
10 with the person who was laying out the overall size and
11 organisation of geography -- space allocation, but
12 I didn't need to be involved in that, so I -- I would
13 stand by what I said in my statement.

14 Q. Thank you. You have been given a list of names and
15 ciphers, Mr S009, and it is important that where
16 a person is ciphered, that we use the cipher and not the
17 name, as I am sure you will appreciate.

18 In your statement to the Inquiry, you refer, at
19 paragraph 45, to the command structure of the JFIT and
20 you say that you recall there was a captain in charge
21 but you can't remember his name.

22 A. Mm-hm.

23 Q. Obviously, don't give a name, but does that remain the
24 position?

25 A. I regret to say.

1 Q. You still can't remember the name?

2 A. Mm-hm.

3 Q. I think you were given, were you, names of S014 and
4 S040, as we know the ciphers of the soldier to be.

5 A. Mm-hmm.

6 Q. And those names mean, what, nothing to you?

7 A. No, nothing, I am afraid.

8 Q. Your recollection is that there was a captain in
9 charge -- is that right?

10 A. Yes, I believe so.

11 Q. -- at the JFIT. Could he have been the 2IC?

12 A. I am afraid I don't recollect.

13 Q. Should the Inquiry understand that your dealings -- if
14 that doesn't put it too high -- with the JFIT were
15 through the captain that you refer to for the most part?

16 A. Whoever I believed to be in charge and, if that was the
17 captain, then, yes.

18 Q. Was it the same person that you dealt with, as you
19 recall, or were there different people in charge during
20 the brief period that you were involved?

21 A. I don't recall, I am afraid.

22 Q. What you do go on to say in paragraph 45 -- may I take
23 you to it so we can understand what you meant by it --
24 paragraph 45 and over the page, please. Forgive me, can
25 we just have the bottom of that page to put the context?

1 You say at the foot of this page, Mr S009:

2 "As I have said, I understood that the JFIT
3 reporting chain was to the intelligence unit in
4 division, not least because their command status (TACON)
5 was delegated to me by division (which therefore
6 presumes that division 'owned' the unit at a higher
7 command status and was therefore able to delegate them
8 to me at a lower status). This was a bone of
9 contention, and a couple of times the captain in charge
10 of the JFIT tried to prevent me from entering the
11 facility. However, I did not agree and nevertheless
12 entered it from time to time."

13 A. Yes.

14 Q. What was the bone of contention, do you recall?

15 A. I believed that I should have more direct control over
16 their activities, given they were on my camp.

17 Q. Did you discuss that with the captain?

18 A. I suspect so, yes.

19 Q. What was the nature of the control that you sought?

20 A. How they went about their interrogation.

21 Q. Was that because of something that you had seen or
22 witnessed?

23 A. Yes.

24 Q. The nature of how they did the task?

25 A. Yes.

1 Q. So, from your answers, should we understand you don't
2 recall the terms of any specific conversation with the
3 captain, if it were he?

4 A. In detail, no.

5 Q. I am not talking about your concerns, which we will
6 perhaps come to in a few moments, as to what was going
7 on there, but did you take your concerns about lack of
8 control, if you like, to any higher authority?

9 A. Yes, I would have done so.

10 Q. To whom?

11 A. First of all, I would have insisted it went up through
12 his own chain of command and I'm certain I would have
13 mentioned it at some stage within the divisional
14 context.

15 Q. Can you remember to whom you would have addressed this
16 concern?

17 A. I cannot.

18 Q. Forgive me, but I am just looking for any help you can
19 give the Inquiry on this. Why do you say that you would
20 have addressed it to division?

21 A. Because that was my chain of command --

22 Q. And this was what -- forgive me, please.

23 A. -- and therefore issues that were -- things that were
24 going, so-called, on my patch, I would have
25 automatically raised those issues up my own chain of

1 command.

2 THE CHAIRMAN: If I can just pause there. In the normal
3 course of events, who was the person you would approach
4 when you wanted to have some communication with your
5 immediate chain of command?

6 A. The normal person would have been -- I think it would
7 have been the S02, so a major -- I think the terminology
8 is "G3 ops". So the primary staff officer at division
9 was where you went first and that then escalated to his
10 boss, the chief of staff, and thence to the general and
11 so forth.

12 Q. And an issue such as this -- I am leaving aside what was
13 going on, you understand. We will come to that in
14 a moment --

15 A. Mm-hm.

16 Q. -- but an issue such as your belief that you should have
17 greater control would be something that, what, you would
18 naturally refer?

19 A. Yes. It's also worth stating, though, that these type
20 of intelligence assets -- and this is a military
21 hierarchy thing -- operate direct -- sort of straight to
22 the Ministry of Defence. It's a bit like special
23 forces. They ring the general in the Ministry of
24 Defence and they bypass all us normal mortals.

25 So although I would have raised it -- these concerns

1 and these issues, there is almost a doctrinal reluctance
2 to allow me to be involved; in other words that
3 information, if it is of critical importance to the
4 conduct of the war, needs to go to the appropriate
5 decision-maker as fast as possible. So there is always
6 a resistance. I raise it up the normal chain of command
7 but their chain of command goes differently, if that
8 makes any sense. I hope that clarifies things a little
9 for you.

10 Q. Can I just ask you this, please, then, about your
11 raising this issue with division? Do you recall whether
12 you received any response and, if so, what?

13 A. I don't recall receiving any response. I mean, I do
14 recall the general gist that came back down the
15 intelligence line, which was, "It's not your
16 responsibility, we have checked whatever it is going on
17 that you are concerned about and we are content that
18 that is all right". Remember, also, that that
19 intelligence chain of command also sat in the same tent
20 as the general and his staff, so they could have had
21 those conversations up there and I have no doubt did so
22 as well.

23 Q. So down what you call the "intelligence line" you
24 gathered, what, that the powers that be were satisfied
25 with the arrangement --

1 A. Yes.

2 Q. -- that effectively gave the JFIT its own --

3 A. Yes.

4 Q. -- independence from you, putting it in shorthand?

5 A. Yes.

6 Q. Again, can you recall from whom you received that

7 information?

8 A. With absolute certainty, no, but my recollection is it

9 was the person in charge of the JFIT.

10 Q. So the same captain or whatever to whom you have already

11 referred?

12 A. Yes.

13 Q. I was to ask you about that too. You say you raised the

14 issue with him and invited him to put it up through his

15 own chain of command.

16 A. I did.

17 Q. So was the response that you have just told us about,

18 coming down, as you say, through the intelligence

19 line --

20 A. Yes.

21 Q. -- what he was, as it were, repeating to you was the

22 result of his putting it up to his chain of command?

23 A. That's my understanding, yes.

24 Q. I am going to move on, Sir, to matters relating to what

25 was going on in the JFIT. I do not know whether this

1 might be an appropriate moment.

2 THE CHAIRMAN: Yes. All right. We have a break about now,
3 Colonel. Ten minutes. Please don't talk to anybody
4 about your evidence in the course of that break and I am
5 sure you will be ready to start promptly.

6 Before we go, can I just ask one question? Could
7 you physically see into the JFIT compound from outside
8 or did you have to go in to see anything that was going
9 on?

10 A. From within the camp you had to go in. Interestingly,
11 if you drove past, on the outside of the camp, on the
12 road, you could see it.

13 THE CHAIRMAN: But not when you were inside the camp?

14 A. But not when you were inside the camp.

15 THE CHAIRMAN: So you could always go out the gate and look
16 in from the outside, but it was not necessarily
17 a sensible or practical thing to do.

18 Ten minutes' time please.

19 (11.23 am)

20 (A short break)

21 (11.23 am)

22 THE CHAIRMAN: Do sit down. You are still under oath, of
23 course. I am sure you appreciate that.

24 MR ELIAS: Mr S009, may I move on, please, to your concerns
25 about what was going on in the JFIT. First of all, in

1 general terms, can you tell us briefly what it was that
2 you saw or experienced which concerned you?

3 A. Yes. I witnessed a number of prisoners of war, kneeling
4 in the sun with what I believed to be plastic hoods over
5 their heads and with their hands handcuffed behind their
6 backs, in two rows, facing each other.

7 Q. You considered that treatment to be wrong?

8 A. Yes.

9 Q. Unlawful?

10 A. Yes.

11 Q. Just before going into the detail of that and what you
12 did about it and the conversations you may have had
13 about it, was that the extent -- the full extent -- of
14 what you saw that concerned you in the JFIT?

15 A. Yes, pretty much. I mean I felt that the organisation
16 was not running well, so I had concerns about the
17 general efficiency of that unit and its effectiveness as
18 well.

19 Q. You said before the break, when answering my question
20 about the nature of the control which you sought, you
21 answered how they went about their interrogation.

22 A. Yes.

23 Q. Did you understand what you have now told us you
24 witnessed to be part of, if you like, the
25 pre-interrogation or interrogation process?

1 A. Yes.

2 Q. You didn't mean any wider concerns which actually
3 involved interrogation?

4 A. Not that I witnessed.

5 Q. Not that you witnessed.

6 So as a result of what you saw -- forgive me,
7 perhaps I should ask you this: how did you come to see
8 this? Were you in the JFIT?

9 A. Yes, because I walked in there.

10 Q. Had you by this stage, as it were, resolved the
11 differences as to whether you could have entry or no?

12 A. Along the lines of I -- how were they to stop me gaining
13 entry.

14 THE CHAIRMAN: I imagine that, from what you are saying, you
15 just walked in; is that right?

16 A. I did, yes.

17 MR ELIAS: Can we have paragraph 46 of your statement on the
18 screen, please, at BMI03527? You refer there to the
19 matter you just told us about, two rows of prisoners,
20 perhaps 12 to 20 men, kneeling on the ground in the sun.
21 You say:

22 "I recall they were hooded with plastic sandbags
23 ..."

24 A. Yes.

25 Q. Are you clear they were plastic sandbags?

1 A. Pretty much.

2 Q. "... and their hands were cuffed behind them."

3 You say that they were guarded by a couple of

4 soldiers. They were given water from time to time, you

5 say.

6 A. Mm-hm.

7 Q. Did you raise it with the captain, as you go on to say

8 in the next paragraph, there and then?

9 A. Yes.

10 Q. And what was his response?

11 A. A detailed response I can't remember, but I do recollect

12 that he felt that this was an entirely appropriate

13 technique.

14 Q. Did you tell him why you thought it was not?

15 A. I'm certain to have done.

16 Q. You say in paragraph 47 -- just look at that, please:

17 "... I made it clear that it was unacceptable to

18 place plastic hoods upon the prisoners and leave them

19 kneeling in the sun because it was not in keeping with

20 UK law and was morally objectionable. I also pointed

21 out it would reflect badly on British troops."

22 You then go on to give his response as being this:

23 "... these methods (hooding and kneeling in the sun

24 with cuffs) were being used to 'isolate' the prisoners."

25 Did he tell you that, as you recall?

1 A. As I recall.

2 Q. What, that the purpose was to isolate them?

3 A. Yes.

4 Q. What did you understand he meant by that in the
5 circumstances of what you had just witnessed?

6 A. My understanding of the use of isolation is so that
7 prisoners cannot draw support or succour from others in
8 the same situation.

9 Q. You go on to say that he told you they were a legal
10 interrogation tactic.

11 A. Isolation, I think he was referring to.

12 Q. Your statement may be read in perhaps a different way,
13 but that's what you understood him to say, was it, that
14 isolation was a legal interrogation tactic or that
15 hooding and kneeling in the sun with cuffs was also
16 a legal interrogation tactic?

17 A. I think there's a -- I am probably about to be told off
18 again, but I think there is an element of semantics in
19 this. I think his view was that isolation was a legal
20 tactic in order to aid the interrogation process. In
21 the absence of building materials and, frankly,
22 imagination, they were using this technique to do so,
23 therefore he believed that to be legitimate.

24 Q. As you go on to say, I think, in the paragraph, that in
25 another world they might have built separate huts --

1 A. Yes.

2 Q. -- or they might have used other methods to isolate as
3 well is what you are saying.

4 A. I agree.

5 Q. You go on in this paragraph to say:
6 "... in broad terms his response was that it was
7 none of my business."

8 A. Yes.

9 Q. Did he make that clear to you?

10 A. Yes.

11 Q. "He said, though, that he would raise the issue with
12 1st Division."

13 A. Yes.

14 Q. And it was in relation to raising that issue with 1 Div
15 that he came back to say that it was known of and
16 approved, as it were?

17 A. Yes.

18 Q. So when you said a little before the break -- it may
19 just have been the way in which I was asking you the
20 questions -- that it was on the control issue that he
21 came back to say that, it may have been all bound up as
22 one, might it?

23 A. Yes.

24 Q. Do you think you were speaking to the same captain as
25 you think it might be --

1 A. Yes.

2 Q. -- about this issue? Do you recall the names of any
3 other soldiers who were present at the time that you
4 witnessed this --

5 A. No.

6 Q. -- working in the JFIT? Would there have been soldiers,
7 involved in this operation that you were witnessing, who
8 were part of your organisation directly?

9 A. I'm sorry, can you repeat the question?

10 Q. Yes. Would there have been soldiers from your force
11 undertaking the guard duties, enforcing, for example,
12 what you had seen in the JFIT?

13 A. Yes. They would have been a guard force from the Duke
14 of Wellington's Regiment.

15 Q. Now you knew that what you were witnessing, you say, was
16 unlawful.

17 A. I believed so.

18 Q. What did you do about it?

19 A. I think I described my concerns that I raised or would
20 have raised up through the division. Remember also my
21 point about the intelligence structures versus the
22 normal thing. Therefore I believed that the
23 intelligence structures had had primacy in this matter
24 and had made a determination that this was an acceptable
25 way of doing things. I therefore -- I'm sorry.

1 Q. Just forgive me. I am interrupting only for this
2 purpose, so that we understand it and take it in
3 sequence. Did you relate your concerns about this,
4 independently to the question of control --
5 A. Yes, I believe so.
6 Q. -- to division? And you would have raised these matters
7 through the same chain, would you?
8 A. Yes, I believe so.
9 Q. And to the same personnel, therefore?
10 A. Yes.
11 Q. And what response did you get from division, quite apart
12 from what you may have been told by the captain?
13 A. I don't recollect.
14 Q. Do you recollect whether you received any response at
15 all?
16 A. No, but one came down, I recollect, through the
17 intelligence chain.
18 Q. At paragraph 49 of your statement to this Inquiry, at
19 BMI03528, you say this, which would seem to contradict
20 what you have now said to the Inquiry in evidence:
21 "I have been asked by the Inquiry by what means
22 I sought advice from division and my point of contact
23 there. I did not seek advice from division on this
24 occasion because, as mentioned above, the JFIT captain
25 did so."

1 Do you recall whether you did take this matter to
2 division or not?

3 A. I don't recall.

4 Q. Certainly your recollection, then, at the time of making
5 your statement, was that you didn't; is that right?

6 A. I don't recall, but if you read the next sentence,
7 perhaps that helps clarify.

8 Q. Well, that's what you would do --

9 A. Yes.

10 Q. -- but in relation to this particular matter you don't
11 recall whether you did or not.

12 A. No.

13 Q. The S02 G3 is named there in paragraph 49. Is that the
14 man that you dealt with?

15 A. Yes.

16 Q. Maciejewski?

17 A. Yes.

18 Q. So you received -- may I go on calling him "the
19 captain"; the head of the JFIT as you understood it --
20 from him an indication that it was regarded as proper
21 that what you had seen should continue?

22 A. Yes.

23 Q. Were you told who had provided that advice or at what
24 level?

25 A. I don't recollect.

1 Q. Can we look at paragraph 48 of your statement where you
2 refer, I think, to this:
3 "I was later informed (although I cannot recall by
4 whom) that division regarded hooding as legitimate in
5 this context."
6 That's to say hooding of prisoners prior to
7 questioning. Is that right?
8 A. Yes. I guess.
9 Q. You go on to say this:
10 "I cannot remember who provided this advice at
11 divisional level, but my assumption was that it had been
12 given by Lieutenant Colonel Mercer, the legal staff
13 officer."
14 First of all, you still don't remember, do you, from
15 whom you were informed that division regarded hooding in
16 this context as legitimate?
17 A. No.
18 Q. Could it be that that information came to you from the
19 captain at the JFIT --
20 A. Yes.
21 Q. -- and not from any other source?
22 A. It could have been, but I do not recollect.
23 Q. Can you help as to why it was your assumption that that
24 advice -- that hooding was legitimate in that context --
25 would have been given by Lieutenant Colonel Mercer?

1 A. My assumption was that people spoke to each other in the
2 divisional tent and, therefore, an issue like this that
3 was raised up the intelligence chain would have been
4 discussed with commander legal and indeed would have
5 been discussed with the chief of staff as well.

6 Q. So does it really come to this, that you assumed that if
7 the information you were being given -- namely that this
8 had been approved at divisional level, was true -- you
9 assumed that the legal staff officer must have been
10 involved in making that decision or giving that
11 approval?

12 A. Yes.

13 Q. Your assumption doesn't come from, for example, anything
14 else that you were told as to sources?

15 A. I'm sorry, can you clarify the question?

16 Q. Yes. You didn't make the assumption that you refer to
17 in paragraph 48 upon the basis of anything that you were
18 told, as it were, directly about Colonel Mercer's
19 involvement in approval or otherwise?

20 A. The answer is I don't think I can answer that question
21 because in detail I don't recollect. But in making that
22 assumption, I am certain there were conversations around
23 that subject and who would have been involved in that
24 decision. But you are asking me the detail and I can't
25 recollect.

1 Q. No. I understand. Conversations about who would have
2 been involved or should have been involved, but you
3 weren't told -- I think this is really the point I am
4 seeking to understand from you -- that the decision had
5 come from a particular individual or through
6 a particular individual?

7 A. I don't recollect.

8 Q. These were assumptions that you were making?

9 A. I simply don't remember.

10 Q. You go on in paragraph 48 to say:

11 "Someone ..."

12 Again you can't remember who at the time of writing
13 the statement:

14 "... quoted General Brims as being appraised of the
15 matter."

16 Again, was that merely talk?

17 A. My assumption is yes. It happened in conversation.

18 Q. Again don't guess. If you can't help us, please say so,
19 Mr S009. Having witnessed this, having taken it up with
20 the head of JFIT, having received the understanding that
21 you tell us you did, you go on to say that you therefore
22 took two steps outside the chain of command. That is
23 how you put it in your statement to this Inquiry.

24 A. Yes.

25 Q. How long a period of time had elapsed for all of these

1 things to happen, from seeing what you saw to deciding
2 to take two steps outside the chain of command?

3 A. I don't recollect, but it would have been days -- less
4 maybe.

5 Q. What you had seen that was wrong, if we were to seek to
6 categorise it: hooding, correct?

7 A. Yes, my assumption was that it was wrong -- my belief it
8 was wrong.

9 Q. Your belief that it was wrong. Had you also seen what
10 you would categorise as the use of stress positions?

11 A. Well, other than kneeling on your haunches in the sun,
12 no, but I assumed that to be a stress position.

13 Q. You did. You say you therefore took two steps outside
14 the chain of command. You contacted Colonel Vernon.

15 A. Yes.

16 Q. Why did you contact Colonel Vernon?

17 A. Because I knew him and he was a trusted confidant, and,
18 thirdly, he also ran all the press and that side of life
19 and would have understood the point in its entirety
20 that, in my view, for the perception of how we were
21 conducting ourselves, not only was this illegal and
22 immoral, but would do us significant damage. It was
23 a point of leverage, I guess.

24 Q. Again, trying to put it into shorthand -- I hope not
25 inaccurately -- were you recruiting him effectively in

1 order to gain his help --

2 A. Yes.

3 Q. -- in indicating what negative publicity may arise as

4 a result of the sort of thing --

5 A. Yes.

6 Q. -- that you were seeing?

7 A. Yes.

8 Q. Where did you think that he could bring his influence to

9 bear?

10 A. He could bring his influence to bear both at the

11 national component command level and also directly into

12 General Brims.

13 Q. As you say in your statement, did you also contact the

14 International Red Cross?

15 A. I did, yes.

16 Q. Why did you contact the International Red Cross at this

17 stage?

18 A. I sought guidance and advice as to whether the ruling

19 that I believed to have been made down the intelligence

20 chain was in fact accurate.

21 Q. Did Colonel Vernon in fact come to visit the TIF and the

22 JFIT?

23 A. Yes.

24 Q. Do you recall, when he visited, was he alone?

25 A. I think the initial time, yes, but I can't be certain.

1 Q. Does it follow from your answer that he therefore made
2 a number of visits?
3 A. At least two, if not more.
4 Q. On any of his visits, were things of the kind that you
5 have described in the JFIT occurring for him to see?
6 A. I think so, but I can't be certain.
7 Q. That is to say, in particular, prisoners hooded.
8 A. Mm-hm.
9 Q. Did he see that, to your knowledge?
10 A. Again, I think so, but I can't be certain.
11 Q. You have the name -- I think you have the list of
12 ciphers alongside you, do you?
13 A. I do.
14 Q. S034, do you know who I mean?
15 A. Yes.
16 Q. Did S034 visit?
17 A. Yes.
18 Q. Did she visit once or more than once?
19 A. I don't recollect. Certainly once.
20 Q. Do you know whether, on her visit, the sort of things
21 that you had seen were still being employed in the JFIT?
22 A. I don't, I am afraid.
23 Q. Did representatives of the ICRC, the International Red
24 Cross, attend?
25 A. Yes.

1 Q. Did they go into the JFIT?

2 A. Yes.

3 Q. The same question: did they see to your knowledge --

4 A. I don't recollect.

5 Q. You don't recall whether it was going on or not.

6 You say at paragraph 54 of your statement to this

7 Inquiry, at BMI03529, having dealt in the statement with

8 the visits of Colonel Vernon, how you contacted the ICRC

9 and asked them to visit the facility. You say this:

10 "When they examined the TIF ... they were

11 disappointed that hooding was ongoing."

12 Taking your point about the use of words -- I am

13 holding you to nothing, S009. I just do want to

14 understand what you meant by that -- that would seem to

15 imply that the ICRC had seen hooding on an earlier

16 occasion or earlier occasions.

17 A. Yes.

18 Q. Did you know that to be the case?

19 A. As far as I recollect, yes. This organisation came at

20 my behest quite how often to give us advice and support.

21 Q. I understand. In relation to the visit resulting from

22 your concerns as to what you had seen, it would seem

23 that you are saying at paragraph 54 not only that they

24 had visited before and seen what you had seen -- or

25 something like it -- hooding, at least, but

1 "disappointed that the hooding was ongoing", does that
2 also imply that on the visit they made hooding was still
3 taking place?
4 A. It may well imply that.
5 Q. You just don't remember now, do you?
6 A. No, I remember the person from that organisation who
7 visited being very disappointed.
8 THE CHAIRMAN: Just so that I have it clear in my mind,
9 disappointed as a result of what you told that person --
10 A. No, I --
11 THE CHAIRMAN: -- or disappointed about what that person
12 saw?
13 A. My recollection is at what that person had seen.
14 THE CHAIRMAN: Yes. Thank you.
15 MR ELIAS: Did you see prisoners hooded within the JFIT
16 after that first occasion that you have told us about?
17 A. I don't recollect.
18 Q. So that that answer is not misunderstood, do you mean by
19 that that you may have done but you don't remember or
20 you don't recollect any occasion when they were hooded?
21 A. No, I may have done, but I don't remember.
22 Q. Did Colonel Mercer himself visit the TIF?
23 A. Yes.
24 Q. He made several visits, didn't he?
25 A. A number, yes.

1 Q. And would they have been, perhaps, within days of the
2 TIF having been set up?

3 A. Yes.

4 Q. Can we have a look, as it were, just to get rid of the
5 point, at MOD019885? You will have the document on
6 screen. Saturday 29 March, part of a diary, as the
7 Inquiry will hear, kept by Colonel Mercer:

8 "Another exceptional day. I flew to the PWHO
9 organisation in Um Qasr and intervened, yet again, in
10 the PW process. I had a massive row with the CO ...
11 about Article 5 tribunals. You need a very thick skin
12 for this job. Anyhow, my view prevailed and I spent the
13 rest of the day at the PWHO."

14 The massive row -- do you recall a massive row
15 with Mercer?

16 A. I do.

17 Q. Was this, can I put it broadly, concerning what I have
18 been calling the "filtration process"?

19 A. Yes.

20 Q. I don't want to go into any of the detail. But apart
21 from that massive row, on other visits that
22 Colonel Mercer made, do you recall at any stage that he
23 would have witnessed prisoners hooded?

24 A. Not that I recollect.

25 Q. If we look at another document, please, again authored

1 by Colonel Mercer. We find it at MOD019799. I want
2 just to take you please to the last paragraph,
3 paragraph 6. It is a document which you can see dated
4 29 March at the foot of the page. It is under the hand
5 of Colonel Mercer. He says this:

6 "Finally I visited the JFIT and witnessed a number
7 of PW who were hooded and in various stress positions.
8 I am informed that this is in accordance with the
9 British Army doctrine on tactical questioning. Whereas
10 it may be in accordance with British Army doctrine, in
11 my opinion, it violates international law."

12 To that extent it mirrors your opinion too, doesn't
13 it?

14 A. Yes.

15 Q. "Prisoners of war must at all times be protected against
16 acts of violence or intimidation and must have respect
17 for their persons and their honour [referring to Geneva
18 Convention III]. I accept that tactical questioning may
19 be permitted but this behaviour clearly violates the
20 Convention."

21 As I say, that would mirror, wouldn't it, entirely
22 your view of matters?

23 A. Yes.

24 Q. But he is there saying that by 29 March -- that is
25 within the first week of your operations being up and

1 running, as it were -- he had, within the JFIT,
2 witnessed a number of prisoners of war hooded and in
3 various stress positions. Did Colonel Mercer discuss
4 that with you at any stage that you recall?

5 A. I am certain he would have done and indeed I would have
6 raised it with him, but I don't recollect the
7 conversation and therefore I can't give it in evidence.

8 Q. Can you help us to put this in context, 29th March? You
9 are saying on the one hand Mercer -- forgive me just
10 using the surname -- would have seen what he there
11 demonstrates in that last paragraph and would have
12 raised it with you, you feel, as a certainty; and on the
13 other you are saying that when the message came back via
14 the captain that division was saying this was okay, that
15 you assumed Mercer would have had some part in okaying
16 it. That's the picture that we have seen, isn't it,
17 from the documents and indeed the evidence you have
18 given to us?

19 A. I think that memo would corroborate that view, wouldn't
20 it? I'm sorry. I am not certain what you are asking.

21 Q. Forgive me. It is my fault entirely. It is rather the
22 assumption that you have told us that you came to that
23 it would have been through Mercer's hand that, if you
24 like, approval for what was going on in the JFIT would
25 have been given via division. You say you assumed it

1 would have gone to legal, that Mercer would have
2 approved it, and, yet, on the other hand, on 29 March,
3 when this is said by Mercer, you say that he no doubt
4 would have discussed it with you --

5 A. Mm-hm.

6 Q. -- and it would have mirrored your view exactly.

7 A. Mm-hm.

8 Q. Why then would you have assumed, if that is right, that
9 any approval was coming from Colonel Mercer?

10 A. Because he was the lowest level of legal authority with
11 whom I had contact, so I make the presumption that if he
12 had concerns about it, he would have raised it all the
13 way up to the MoD and indeed to counsel in London.
14 There would have been a determination, that would have
15 come down and he would have abided by that.

16 Q. So you would have assumed -- can I put it this way --
17 that it would have gone to the top, would you, an issue
18 such as this?

19 A. Having now seen that statement, if that was his belief,
20 I would have assumed that he would have raised that
21 further up the chain of command. Indeed, he has clearly
22 raised it with the general and therefore it would have
23 gone further, I would assume.

24 Q. That's what you would have expected to happen, is it?

25 A. I would have expected that to happen, yes.

1 Q. Just coming back, then, to his visit when he saw these
2 things and you say would have discussed it with you, you
3 have no recollection, do you, of any conversation?

4 A. No, but I make the assumption we would have had that
5 conversation merely because it was my camp. So the
6 first port of call for somebody like Colonel Mercer
7 would have been to come to me and we would have
8 discussed what was going on in camp. Therefore I made
9 the assumption that I would have raised this with him.
10 However, to answer your specific question, "Do
11 I recollect the conversation?", no, I do not.

12 Q. You can't even be certain that there was a conversation?

13 A. No.

14 Q. Do you recall any visit to the TIF from General Brims?

15 A. Yes.

16 Q. You describe it in your statement as a "meet and greet
17 visit".

18 A. That's my recollection, yes.

19 Q. What, something of a formality, therefore?

20 A. I think a general visiting the troops.

21 Q. To your knowledge, did he witness anything of the kind
22 that you had witnessed going on in JFIT, the hooding?

23 A. Not to my knowledge.

24 Q. To your recollection, did he, General Brims, raise any
25 concerns with you about what was going on in the JFIT or

1 any practices there?

2 A. I don't recall.

3 Q. You say that the Red Cross visited on a number of

4 occasions, frequently called for, as it were, by you.

5 A. I think the words "called for" are inappropriate.

6 I asked for their support and guidance.

7 Q. And they gave you that support and guidance, as you have

8 indicated?

9 A. Yes.

10 Q. Do you recall specific meetings with the Red Cross?

11 A. Yes.

12 Q. Do you recall any specific meeting with the Red Cross at

13 which Colonel Mercer was present?

14 A. No, but I am sure he would have been there at some

15 stage.

16 Q. Do you recall specifically any meeting with the

17 Red Cross at which Colonel Mercer was present and from

18 which he walked out -- my words -- in perhaps high

19 dudgeon?

20 A. No, I don't.

21 Q. I don't want to know, Mr S009, about any differences

22 there may have been between personalities at the

23 meetings, but can you assist, for the moment anyway, in

24 indicating at meetings which the Red Cross attended the

25 issues and concerns that were expressed, if any, at

1 those meetings?

2 A. With regard to what they had witnessed or their actions

3 that they were going to take?

4 Q. Can we deal with matters generally? What were the

5 concerns at the meetings focused on? Were they concerns

6 of hooding or use of stress positions or something

7 entirely different?

8 A. No, they were to do with that -- well, I'm sorry, could

9 I clarify that?

10 Q. Please.

11 A. Some meetings were about that. Others were entirely

12 advisory, to help me build and run the theatre of war

13 internment facility. So it wasn't -- they didn't come

14 solely because of the hooding. That became an issue

15 when it was discovered.

16 Q. You used, if you like, their expertise in helping you to

17 expand --

18 A. Expand, run it, build it, control it.

19 Q. I follow. So the concerns were hooding and the use of

20 stress positions at the meetings that did deal with

21 these matters. Were there any other wider concerns that

22 you can recall?

23 A. Not that I can recall.

24 Q. I move on, please, then, to look at another document.

25 We find it at MOD022122. Can we go over the page,

1 please? It is a document sent from Major Gavin Davies,
2 NCHQ S02 Legal.

3 If we go back to the first page and if we go to the
4 fifth paragraph down, there is a reference to the length
5 of time spent hooded. This, as we can see from the
6 context a little later on -- the last line now on the
7 screen -- is referring to what is going on in the JFIT.
8 Do you follow?

9 A. Yes.

10 Q. Reading just from the top and parts of it:

11 "The length of time spent hooded depends on the
12 numbers to be vetted and their place in the order of
13 those to be assessed. Those assessed first will only be
14 hooded for an hour or so, but if there are large numbers
15 of potential [high value intelligence] HVI prisoners
16 those assessed last have on occasion been hooded for
17 a considerable period of time. Those assessed as HVI
18 prisoners remain hooded for a further period prior to
19 interrogation ... S002 assesses that during particularly
20 busy periods a total of about ten HVI prisoners of war
21 have been held in hoods for up to 24 hours."

22 Then missing the next paragraph, please, but just
23 noting its reference to the JFIT, can we go to the
24 paragraph after that?

25 "Throughout these periods all PW [prisoners of war]

1 are fed and watered and provided with shelter from the
2 sun in tents (open sided) within the J2X compound. No
3 stress positions are implemented while PW are waiting to
4 be interviewed. The decision on which physical
5 positions they adopt and how often they change ... is
6 a matter for them. The only restriction is that they
7 may not sleep."

8 That is what Major Davies was reporting. Were you
9 aware that hoods on prisoners within the JFIT might be
10 maintained for up to 24 hours?

11 A. No.

12 Q. Did you have any idea as to how long hoods were being
13 kept on some prisoners?

14 A. No, and I didn't -- frankly, I don't think that's
15 material. It was the use of the hoods that I objected
16 to full stop, whether it was for five minutes or
17 24 hours.

18 Q. Did you know, if that report from Major Davies be right,
19 that the restriction on prisoners or some of them
20 anyway -- the high value intelligence prisoners, it
21 seems -- was that they may not sleep?

22 A. No, I did not.

23 Q. Given the level of command and/or control that you had
24 over the JFIT, is that something that you should have
25 known about?

1 A. No, not necessarily.

2 Q. Was it your responsibility to know?

3 A. No, because, as I stated before, the command structure
4 was up through the J2 -- whatever it was in division.
5 So the person who was responsible for the activities and
6 the way things were done in that camp was that person in
7 the division. So I could only act on what I saw. So if
8 I saw something going on that I didn't think was right,
9 I felt it was my duty to do something about it.

10 Q. If you had known that prisoners were being deprived of
11 sleep, you would have known that was unlawful?

12 A. I would have done.

13 Q. It follows, does it, from answers you have already given
14 us, that your own guards -- that is guards at the
15 PWHO -- were being used, if these things were happening,
16 no doubt to enforce what was going on; that is the use
17 of stress positions, deprivation of sleep --

18 A. It would follow.

19 Q. -- hoods and so on?

20 A. Mm-hm.

21 Q. Given that it was men under your command, as it were,
22 who were administering these things, isn't that
23 something that you ought to have known about?

24 A. No. When they were given to the JFIT, they were placed
25 under command of the JFIT, and I think some of the

1 evidence states that they had to train them and all that
2 sort of stuff.

3 The states of command issue is clearly complex, but
4 I think for the -- for this point, once a body of men
5 have been given away, then the responsibility lies with
6 the commanding officer of that thing that you have given
7 them to. So in the broadest possible terms, you could
8 say that anyone that I had any responsibility for were
9 under my command, but actually what was required in
10 order for me to be able to tell somebody what to do
11 rests in those states of command and I think we have
12 covered that.

13 Q. So your position is that you effectively reported and,
14 as you felt, dealt with those matters that you saw which
15 you knew to contravene the law?

16 A. Which I believed to contravene the law, yes.

17 Q. Those who were carrying out the guard duty and who
18 were -- if these accounts be correct -- for example,
19 enforcing no sleep, these matters were never relayed
20 back to you?

21 A. I'm sorry, can you repeat the question?

22 Q. Yes. These matters were never relayed back to you?

23 A. No.

24 Q. Would you have expected that to have been relayed back
25 to you if conditioning techniques were being applied by

1 men directly under your control, notwithstanding, as you
2 have said, that they were hived off for purposes to the
3 JFIT?

4 A. Not necessarily. Soldiers are soldiers. If an officer
5 tells them that something is legal, then by and large
6 they tend to trust their officers under those
7 circumstances, so -- and so it would have been unusual
8 for them to then go to their platoon commander, for that
9 platoon commander to go to the company commander to go
10 to the battalion commander, for the battalion commander
11 to then come to me and say "By the way, Joe has
12 a concern" when they were under the command of the JFIT,
13 if that makes sense.

14 Q. It does, perhaps save for this: I suppose if, even at
15 a very level, there had been a report from a soldier to
16 a platoon commander or whatever that international law
17 was being breached, you would expect that to come to
18 you, wouldn't you?

19 A. Eventually, yes.

20 THE CHAIRMAN: Can I ask this? Did they go with their own
21 platoon commander and sergeants and corporals or did
22 they go as a body of soldiers and put under some command
23 of the JFIT?

24 A. I think they went -- I don't recollect how many there
25 were, but I think, Sir, they were sent as a body.

1 I don't recollect whether there was a platoon commander.
2 I think it was at the corporal level that they got
3 detached.

4 THE CHAIRMAN: Yes, I see.

5 MR ELIAS: Can I move on, then, please, to paragraph 61 of
6 your statement to this Inquiry at BMI03531, in which you
7 say that you have no knowledge of an interrogator being
8 removed from theatre as a result of harsh treatment of
9 prisoners.

10 Can we have a look, please, at BMI07013,
11 paragraph 111. This is the statement of S040, in which
12 he says this:

13 "I am not aware of any interrogators being removed
14 from theatre owing to allegations of mistreatment. The
15 only interrogators I knew of who were removed from the
16 JFIT were for medical reasons as outlined in
17 paragraph 79 above."

18 It then goes on to say this:

19 "The only instance of kicking that I am aware of was
20 a 1 DWR [Duke of Wellington's Regiment] private on the
21 first day of their providing the JFIT guard force who
22 I was informed had kicked a PW once. I do not know his
23 name and never did ..."

24 If we go over the page, please:

25 "... but immediately told his sergeant to get rid of

1 him and never let him return to the JFIT. This he did."
2 Were you aware of that incident, if it occurred?
3 A. No.
4 Q. Your handover at the TIF in the first week or at the end
5 of the first week of April or thereabouts?
6 A. Thereabouts.
7 Q. You say in your statement that it became
8 a US establishment; is that right?
9 A. Yes.
10 Q. And you moved on to work elsewhere in Iraq?
11 A. Yes.
12 Q. Did you continue to see hoods being used on prisoners in
13 the other areas of Iraq that you operated in?
14 A. Not that I recollect.
15 Q. Can we have a look, please, at MOD017061? It is FRAGO
16 152. I know that you have seen this because you refer
17 to it in your statement. You don't recall seeing it, as
18 it were, at the time. You say at paragraph 69 of your
19 statement -- can we have that on the screen, please --
20 the phrase that we know is used in this FRAGO:
21 "... under no circumstances should their faces be
22 covered as this may impair breathing."
23 Were you ever made aware of such an order when you
24 were in Iraq?
25 A. I may have been, but I don't recollect it.

1 Q. If you had been, what does that mean to you?

2 A. What does what mean?

3 Q. "... under no circumstances should their faces be
4 covered as this may impair breathing."

5 A. I think it is an irrelevant statement. I think that
6 hooding, other than for security purposes, is incorrect.

7 Q. Does that mean that you would have understood this to
8 mean something other than a ban on hooding?

9 A. No, I think it's a ban on hooding, but I think it's --
10 you can have a ban on hooding for other reasons than
11 impairing breathing.

12 Q. May I then move on, please, to one or two other
13 miscellaneous points? You were interviewed by The Daily
14 Mail in April 2003; do you recall?

15 A. I don't, but I am sure if there is a copy then --

16 Q. Can we just put up on the screen -- I don't think we
17 have to read it on screen, but MOD053238. Do you
18 remember The Mail article, if you see -- it is a poor
19 copy.

20 A. I vaguely recollect something along those lines.

21 Q. I am not going to seek to read all of it by any means
22 from that copy, but do you recall you are quoted as
23 saying that what happened, in part anyway, was that
24 there were rules for interrogation, "... questioning is
25 to be probing but fair"?

1 A. Yes.

2 Q. Is that a comment that you might have made in describing
3 the nature of interrogation, as you understood it,
4 "probing but fair"?

5 A. That would have been consistent with what I believe,
6 yes.

7 Q. Yes. That can be taken from the screen, please.

8 Finally this, Mr S009. By the time that you left
9 the TIF and moved on in Iraq, as you did, had the
10 practices about which you took exception -- had they
11 ceased?

12 A. They did whilst I was there, yes. I don't know beyond
13 that.

14 Q. They stopped at a point while you were there?

15 A. Yes.

16 MR ELIAS: Thank you.

17 THE CHAIRMAN: You will be asked questions by one or two
18 other counsel, Colonel.

19 Yes, Mr Friedman.

20 Questions by MR FRIEDMAN

21 MR FRIEDMAN: Thank you Mr S009. Can I start with LOAC?

22 A. I'm sorry?

23 Q. I will start with LOAC, the law of armed conflict,
24 please, and a word that you or people working with you
25 seem to have chosen on a number of occasions, which is

1 "dignity". It is in your BMI statement at paragraph 9.
2 We needn't go to it. But when you personally conceive
3 of the law of armed conflict, human dignity seems to
4 play a important part for you; is that correct?

5 A. Yes.

6 Q. The chairman has heard different definitions and
7 different understandings of the requirement for humane
8 treatment, but do you see the maintenance of human
9 dignity as an important part of humane treatment?

10 A. Yes.

11 Q. Just very briefly on hooding for security reasons in
12 transit, can I understand it in this way? The Air
13 Defence Regiment, who were posted into your group of
14 soldiers, they ran the taxi service, as you have
15 described it, to pick up people detained from collection
16 points; is that correct?

17 A. Yes.

18 Q. Would they have been using hooding for the security in
19 transit purpose?

20 A. I don't recollect, but I don't think so. It's
21 a practical point.

22 Q. Yes.

23 A. So we were collecting prisoners of war in civilian buses
24 as we had no others. My guess is that you would not
25 need to hood people in those buses -- I don't recollect

1 them ever seeing -- because the safety and security
2 issue was contained within the bus and therefore you
3 could put somebody with a gun at the front end and the
4 chances of prisoners being able to get hold of it would
5 have been slight or throw themselves off the coach would
6 have been negligible. Put them in the back of
7 a Land Rover with access to dangerous equipment and
8 firearms and so forth, that might be a different issue.

9 Q. Well, we understand the evidence that you have given,
10 but as far as that analysis played out in terms of your
11 dealings with detainees, it didn't --

12 A. I don't --

13 Q. -- because your taxi-ing did not involve, as far as you
14 know, the use of hooding?

15 A. Not that I'm aware of.

16 Q. Just on shock of capture, we well understand the answers
17 you have given, that you understood it was about speed
18 of delivery from A to B. But can I check this? The
19 term "shock of capture", is it something that you had
20 come across before the approximate time that it started
21 to be put in orders for Operation Telic?

22 A. Yes.

23 Q. In terms of moving on from the orders that we have
24 looked at, are you aware of an approach of how soldiers
25 under you were trained about what was meant, as far as

1 you were concerned, about "shock of capture"?

2 A. I'm sorry, can you clarify the question for me?

3 Q. Yes. It is really this: if "shock of capture" is in the

4 orders --

5 A. Yes.

6 Q. -- how is the meaning intended by you and others of what

7 shock of capture is to entail in those orders

8 communicated to the group of soldiers that get brought

9 into your unit?

10 A. My guess is it would have been disseminated in any other

11 way, in that they would have been told that that's what

12 was expected, that it was the speedy movement of high

13 value targets from A to a point of interrogation.

14 Q. So you can be confident, can you, that not just your own

15 personal understanding of it, but that understanding

16 would have been cascaded down and only that

17 understanding, speed of delivery?

18 A. Well, it's interesting because one of the documents that

19 came to light recently that you showed on screen --

20 Q. Yes.

21 A. -- was, I think, an SOI, so that would have been

22 a standing operating instruction issued to the division,

23 and I seem to recollect that in that it describes that

24 you have to get person from A to B --

25 Q. At speed?

1 A. Yes. So I guess that most people in the division should
2 have known that.

3 Q. Yes. I am really only concerned, though, at this
4 moment, about how it was cascaded down to your group --

5 A. Well --

6 Q. -- if at all. Maybe it wasn't --

7 A. The answer is yes, it would have been, but it is also
8 irrelevant because we weren't capturing prisoners.

9 Q. I understand.

10 A. We were guarding them and people were bringing them in
11 to us.

12 Q. So other than the matter about riot control that you
13 have explained and I don't go back to --

14 A. Yes.

15 Q. -- shock of capture really did not come into your client
16 group?

17 A. Other than for the five minutes that they came in
18 through the front gate and went to the --

19 THE CHAIRMAN: I suspect you are talking largely at
20 cross-purposes because we have heard rather different
21 definitions about "shock of capture", but in your terms,
22 as you say, it is irrelevant.

23 A. I think so, yes.

24 MR FRIEDMAN: Thank you, Sir.

25 Just, then, on the relationship with JFIT. Before

1 we get to the actual concern that arose, firstly this:
2 we understand that part of your role was to provide
3 security for them. There is a phrase in some of the
4 papers which is "life support".

5 A. Yes.

6 Q. Was it your role to provide life support to the JFIT?

7 A. Yes.

8 Q. Did that involve, for instance, providing them with
9 fencing and barbed wire and the like or was that
10 beyond --

11 A. Yes.

12 Q. It did.

13 In terms of the numbers of guards that you made
14 available to them, did the OC of JFIT or anyone working
15 under him say, "Is it possible to have more guards
16 because we need more guards"?

17 A. I don't recollect.

18 Q. No.

19 A. But again, to a certain extent, that was an irrelevant
20 question too because euphemistically it was a bit like
21 one of those Anneka Rice challenges of save an orphanage
22 in two minutes on no resources, same deal. So everyone
23 had to pitch in and do the very best they could on an
24 insufficient resource base.

25 Q. Can I put it this way directly? One account that has

1 been given -- it will be a matter for the chairman -- is
2 that what you saw and you were concerned about was
3 a security decision made by the members of JFIT because
4 they didn't have enough guards and they regarded it as
5 a pragmatic approach to security. I summarise, but that
6 is an explanation. Were you ever told, "Look, we have
7 a security problem because we don't have enough guards,
8 can you give us more guards or this is why we have to
9 hood and have people kneeling in the way that we do
10 because we don't have enough guards"?

11 A. I don't recollect.

12 Q. Escape -- obviously from a generic point of view, escape
13 is always an issue, but were you ever told by the JFIT
14 that they were specifically concerned about escape?

15 A. I don't recollect, but prisoners did escape.

16 Q. Yes. Did they escape from the JFIT?

17 A. Not that I am aware of.

18 Q. Were you ever made aware of any serious security
19 incident that had arisen in the JFIT?

20 A. Not that I am aware of.

21 Q. Now the confrontation or your expression of concern, if
22 we put it that way -- first of all this: you were asked
23 whether you had witnessed anything else to give you
24 greater concern about what was going on and you said
25 that no, you didn't witness. Did you hear, Mr S009,

1 from sources that would you judge reliable, any matters
2 that would give you cause for further concern?

3 A. Not that I recall.

4 Q. In terms of the OC of JFIT effectively telling you it
5 was none of your business, he may have been polite
6 about it, but did you regard your communications with
7 him as a reflection of this higher wider chain of
8 command culture that the HUMINT worked under?

9 A. I'm sorry, can you clarify that question?

10 Q. Yes, I am sorry. You have talked about us mere mortals
11 and the higher chain of command that HUMINT or the
12 intelligence people of this kind worked under. In your
13 direct dealings with the officer commanding JFIT, did he
14 reflect that kind of cultural attitude?

15 A. Yes.

16 Q. You mentioned -- I hope I understood it correctly --
17 that a degree of imagination might have achieved the aim
18 of isolation without these onerous techniques being
19 used.

20 A. Yes.

21 Q. I know it was an Anneka Rice situation -- perhaps that
22 is actually downplaying how serious the test on everyone
23 was -- but did you maintain strongly, at that time, even
24 with all the pressures, that a degree of imagination and
25 materials could have done the job?

1 A. Yes.

2 Q. Lastly on the confrontation, did anyone at any time say
3 to you, when you were expressing your concerns to JFIT,
4 that there was an issue about maintaining anonymity
5 because prisoners wanted it that way?

6 A. They may well have done.

7 Q. Did you regard what you saw as an appropriate way to
8 maintain anonymity?

9 A. No.

10 Q. I may have asked already, but just to underscore, there
11 is no sense in which it was put to you that this was
12 merely a pragmatic security matter, rather like the
13 pragmatic security matter of a different ilk that you
14 explained to Mr Elias when you first started giving
15 evidence?

16 A. Not that I recollect.

17 Q. Just, then, on going two steps outside of chain of
18 command -- I am nearly finished -- first of all, did you
19 get any repercussions from doing that?

20 A. No.

21 Q. On S034, the POLAD from the national command component,
22 are you clear that she took the personal view that what
23 was going on was wrong?

24 A. Yes.

25 Q. On one of the days when Colonel Vernon -- forgive me if

1 I get the rank wrong -- was there, the suggestion that
2 another Colonel Mason, also of the NCC, who had
3 a particular role in relation to prisoners of war came
4 to the site and there was something of a heated
5 discussion about the rights and wrongs of what was going
6 on -- first of all, do you remember Colonel Mason from
7 NCC?

8 A. I don't.

9 Q. The next thing was going to be: do you remember another
10 colonel, someone from NCC of any kind, then --

11 A. There may well have been, but I do not recollect the
12 exact --

13 Q. This is the last matter --

14 THE CHAIRMAN: Question or matter?

15 MR FRIEDMAN: It may be that it can be done in two
16 questions.

17 You said there were a number of meetings with the
18 ICRC. The Inquiry has a particular description of
19 a meeting with the ICRC on 6 April, with the POLAD S034
20 in attendance, a number of lawyers -- military
21 lawyers -- there, where effectively the aim was to
22 assure the ICRC that what had gone on was going to stop.
23 Is that a meeting that you can recall being at?

24 A. In specific, no, but there were a number of those sort
25 of meetings.

1 Q. Did you feel that there was an element from the NCC of
2 trying to manage the issue and to effectively contain it
3 so that the ICRC wouldn't take the matters further on?

4 A. That would be a judgment and I don't feel qualified to
5 do that because I wasn't privy to what the NCC
6 conversations were.

7 MR FRIEDMAN: I understand. Thank you, Sir.

8 THE CHAIRMAN: Thank you. Ms Edington?

9 Questions by MS EDINGTON

10 MS EDINGTON: Thank you, Sir. Mr S009, going back to the
11 assumptions that you made about Colonel Mercer approving
12 the hooding -- and obviously Mr Elias and you have gone
13 into this in quite a lot of detail. I wonder if I can
14 go a bit further perhaps.

15 You say that you spoke to the captain from JFIT and
16 that he went up his chain of command and then you got
17 a reply back from him saying that it was all okay and
18 you assumed that Colonel Mercer had approved it. Is
19 that still the case?

20 A. Yes, I believe so.

21 Q. Could you not have picked the telephone or some
22 communication up and spoken to Colonel Mercer yourself
23 direct?

24 A. I could have done and I may well have done, but you are
25 asking me what I can recollect specifically and I cannot

1 recollect doing that.

2 Q. But you don't recollect speaking to Colonel Mercer or

3 hearing from Colonel Mercer at all the comments that you

4 then saw in the memo he wrote to the general officer

5 commanding on 29 March?

6 A. No, I don't, but I repeat that this is long time ago and

7 my memory is faulty, so it may well have happened.

8 Q. Just before you left the TIF and moved on, you said to

9 Mr Elias that you were aware that the conditions that

10 you had been seeing, the treatment that you had been

11 seeing, had ceased; is that right?

12 A. Sorry, who is Mr Elias?

13 Q. Counsel to the Inquiry.

14 THE CHAIRMAN: Counsel who originally asked you questions.

15 A. Now I am getting very confused.

16 MS EDINGTON: I do apologise. You said to him, just towards

17 the end of his questions, that the conditions that you

18 had seen and the treatment you had seen in the JFIT had

19 ceased by the time you moved on.

20 A. Yes, I believe so.

21 Q. Do you recall an oral order coming from Colonel Marriott

22 banning hooding --

23 A. In the specific, no, but I am certain there was an order

24 that came down banning hooding.

25 Q. You just said to Mr Friedman that you could not

1 remember -- that is the gentleman just before me --

2 A. Thank you.

3 Q. -- a meeting where the International Red Cross and

4 several military lawyers were present on 6 --

5 A. In the specific, no.

6 Q. You actually left the TIF at about 7/8 April; is that

7 right?

8 A. I believe so.

9 Q. You have been asked about the wording of FRAGO 152,

10 which was the FRAGO dated 20 May, which you said you had

11 not seen when you were in charge of the TIF because of

12 course you had moved on. You said that the wording was

13 irrelevant. Would you get the impression from that that

14 actually it was backing up something that had already

15 orally been given, an oral order that had already been

16 given?

17 A. It might have done, but again that's a judgment that

18 I don't recollect making at the time.

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

20 THE CHAIRMAN: Mr Garnham?

21 Questions by MR GARNHAM

22 MR GARNHAM: Thank you, Sir. Just these. You have been

23 asked about the events at the end of March/beginning of

24 April at the JFIT when there was a controversy in

25 relation to hooding. Can you give us any idea of the

1 period of time that each of the steps took -- say if you
2 can't -- from your first seeing the hooding to raising
3 it with the captain? Was that the same day? The same
4 hour? The same week?

5 A. It would have been the same minute.

6 Q. From the time that you raised it with him to the time
7 when he came back to you and said it was approved from
8 higher up his chain of command?

9 A. My guess -- and it is only a guess -- is it would have
10 been no more than about 12 hours, enough time for it to
11 go up, be considered and come back.

12 Q. From that point until there was a visit from the ICRC?

13 A. Within a day, I would guess.

14 Q. And from that point when you were informed that division
15 had banned hooding?

16 A. Within two days, I guess.

17 Q. Thank you.

18 It might be suggested that it was surprising that
19 you took the JFIT captain's word for it on the two
20 occasions when you said you did, firstly as to his chain
21 of command and, secondly, as to whether hooding was
22 acceptable. Is it right that you took his word for it
23 on each of those occasions?

24 A. Yes.

25 Q. Why was it that you took his word for it?

1 A. Well, I think there are a number of reasons. One is as
2 officers you are brought up to tell the truth and be
3 honest and decent, so when a fellow officer tells you
4 that he has done something, then you make an assumption
5 that he or she has.

6 The second issue is that business of intelligence
7 primacy in the sense that that was the command chain,
8 you are taught that the reason you have these HUMINT
9 intelligence teams is to find the strategic information
10 of where Saddam Hussein is and that goes straight to
11 command in the stratosphere and the special forces are
12 deployed instantly and so forth. So when you are
13 confronted with evidence that that particular very
14 special chain has made a determination and it is given
15 to you by a brother officer, rightly or wrongly you make
16 an assumption that that is correct.

17 Q. Thank you.

18 THE CHAIRMAN: Is the position this, that it all fits with
19 what you knew about the operations of that particular
20 arm?

21 A. Yes.

22 MR GARNHAM: Lastly this, I think probably just an error of
23 transcription of what you said. Would you or would you
24 not need hoods if you were transporting prisoners in the
25 bus?

1 A. You would not need hoods in the bus.

2 THE CHAIRMAN: I have certainly understood you to say you
3 didn't need them.

4 A. No, not in those circumstances.

5 MR GARNHAM: I am grateful, Sir. Thank you.

6 THE CHAIRMAN: Mr Elias?

7 MR ELIAS: I have no questions, Sir.

8 Questions by THE CHAIRMAN

9 THE CHAIRMAN: It may be of no great importance, but I would
10 just like to know, the JFIT compound and those there,
11 how many officers were involved in the JFIT compound?

12 A. Sir, I can't recollect accurately. I don't think it was
13 very many. It was two or three I think --

14 THE CHAIRMAN: I wondered. A comparatively small operation.

15 A. Yes, very.

16 THE CHAIRMAN: And how many of their soldiers were there?

17 A. Again, I don't recollect, but I don't recall more than
18 about seven to ten, I would guess. It was a very small
19 operation.

20 THE CHAIRMAN: Yes. All right.

21 The only other thing I want to know -- I had not
22 appreciated until you were asked questions by Mr Garnham
23 that the order came down to ban hooding really quite
24 swiftly after you had first raised the matter with the
25 captain -- is that right?

1 A. Yes.

2 Q. -- within, as I think you said, two days or perhaps
3 three days.

4 A. Yes.

5 THE CHAIRMAN: All right. Thank you.

6 That is all the questions you are going to be asked.
7 Thank you very much for coming. I am very grateful to
8 you for giving evidence to the Inquiry. You are now
9 free to go. You may, of course, come back at any time
10 if you want to, but we wouldn't require you to, at least
11 I don't think we will anyway. Thank you very much.

12 A. Thank you, Sir.

13 THE CHAIRMAN: Yes.

14 I do not know whether we have any more business to
15 transact this morning, but you certainly don't need to
16 wait.

17 MR ELIAS: Sir, we have none.

18 THE CHAIRMAN: We have none?

19 MR ELIAS: We have none, Sir.

20 THE CHAIRMAN: That means we now have a two-week gap,
21 doesn't it, until we start again?

22 MR ELIAS: Sir, we are reconvening on 15 March. I think you
23 propose to call witnesses S014 and S040.

24 THE CHAIRMAN: Thank you. I dare say you will all find
25 things to do in that break. Thank you very much.

1 (12.45 pm)

2 (The Inquiry adjourned until 10.00 am, Monday 15 March 2010)

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