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Friday, 8 October 2010

(10.00 am)

Opening remarks

THE CHAIRMAN: Yes.

MR MOSS: Sir, good morning. The witnesses this morning are first of all a naval captain, Captain Adams, who is with us in the normal witness-box. He is assisted by -- and we welcome back to the Inquiry -- S004, who, for reasons that you know, is sat elsewhere in the room. S004 of course gave evidence to the Inquiry on Day 87. He is a witness in respect of whom there is an anonymity order and also screening. May I take the opportunity to remind any of those who are listening to the evidence this morning that the orders in respect of S004 are available on our website.

THE CHAIRMAN: Yes.

MR MOSS: But the important aspect is that no reporting may reveal his name nor his image nor any information that may lead to the discovery of his name.

THE CHAIRMAN: Yes.

PETER ADAMS and S004 (called)

Questions of CAPTAIN ADAMS by MR MOSS

MR MOSS: Captain Adams, if I may start with you, can you start by giving your full name, please?

A. I'm Captain Peter Adams.

1 Q. You have helpfully provided two statements to the  
2 Inquiry. Could we have a look at the first of those,  
3 please? It is MIV006123. If we go to the final page,  
4 at MIV006138, I think we see that that is a statement  
5 that you provided to this Inquiry on 20 August 2010; is  
6 that right?

7 A. It is.

8 Q. It is right, isn't it, that you were given some feedback  
9 and some further questions arising out of that first  
10 statement and that certain clarifications and in some  
11 cases corrections were made in your second statement,  
12 but subject to what is said in your second statement,  
13 are the contents of that first statement true to the  
14 best of your knowledge and belief?

15 A. Yes.

16 Q. Thank you. Your second statement I don't think is  
17 dated, but if we can go to the first page of it at  
18 MIV012251, we see the beginning of your second statement  
19 there. At the final page, MIV012258, certainly from the  
20 Inquiry's records, we received that as authorised by you  
21 on, I think, 1 October; is that right?

22 A. Yes.

23 Q. It is not signed, but can you assure us that the  
24 contents of that second statement are true to the best  
25 of your knowledge and belief?

1 A. Yes, and I have signed it now.

2 Q. Thank you. I'm very grateful.

3 S004, as you understand, there is no need for you to  
4 be sworn. You know essentially the proceedings of this  
5 Inquiry from when you were last with us. Can I simply  
6 encourage you, sir, whenever you feel that you can  
7 contribute, simply to speak into your microphone,  
8 obviously not at the same time, but you are very welcome  
9 to contribute.

10 I think it will be apparent to everybody, S004, that  
11 as the OC of the branch with which we are principally  
12 concerned on points of detail of what is the teaching,  
13 it may well be that you have quite a lot to contribute  
14 this morning on the points of detail, so could  
15 I encourage you to speak up whenever you feel that it  
16 would help our discussion this morning.

17 S004: Yes, I will do. Thank you.

18 THE CHAIRMAN: Could you turn your microphone on, though,  
19 before you do speak up?

20 S004: Is that better?

21 THE CHAIRMAN: That's much better. Thank you very much.

22 MR MOSS: Captain Adams, just very briefly as far as your  
23 background is concerned, you explain in your statement  
24 that you are the director of training at the Defence,  
25 Intelligence and Security Centre at Chicksands; is that

1 right?

2 CAPTAIN ADAMS: That is correct.

3 Q. Can we look very briefly at MIV006139?

4 A. Yes.

5 Q. We see there a diagram which you helpfully provided  
6 showing your post, the director of training. Just in  
7 terms of the breadth of your responsibilities, we see  
8 that you oversee at least four schools of which  
9 intelligence is only one. Is that right?

10 A. Yes, that is correct.

11 Q. Then, within intelligence, we are most interested in the  
12 HUMINT wing, but without going into what the others are,  
13 presumably there are other wings within intelligence as  
14 well?

15 A. There are six in total.

16 Q. Then, within HUMINT, we are looking obviously at the  
17 Interrogation Branch, the I Branch, of which S004 is the  
18 OC. But presumably there are other branches as well.

19 A. Yes.

20 Q. It perhaps therefore stands to reason that within your  
21 overall responsibilities as director of training that  
22 the interrogation branch is but one small part. Would  
23 that be fair?

24 A. Yes, that is correct. It is one of 201 courses that we  
25 run.

1 Q. So that we have a feel for it, within that broad range  
2 of responsibilities, how often, if at all, are you able  
3 to actually sort of sit in on what is taught by S004 and  
4 his colleague instructors in the I Branch or is that  
5 a level of detail into which you simply don't go?

6 A. That is a level of detail into which I don't go.  
7 I don't sit in in lessons.

8 Q. As you have heard me say to S004, so far as our  
9 proceedings are concerned this morning, please do defer  
10 to the expertise of S004 when you feel it is most  
11 appropriate. I will ask questions I think principally  
12 to you, but encourage S004 to come in when you think it  
13 will be most appropriate, bearing in mind your own level  
14 of knowledge of the matters that I'm going to ask you  
15 about, if you would.

16 Can I start then, please, so far as substantive  
17 matters are concerned, with the topic of processes and  
18 administration and, I am afraid, if only to get it out  
19 of the way, the difficulties over some of the disclosure  
20 that the Inquiry has experienced.

21 Could we look first at paragraph 2, Captain, of your  
22 supplementary statement at MIV012251? You set out there  
23 an apology for the confusion and difficulties that were  
24 caused by the late disclosure. The phrase that was used  
25 by the chairman the other day was "water under the

1 bridge". We are not interested in fault-finding or  
2 individual fault or anything like that, but I do want to  
3 explore with you what it may indicate about the  
4 processes within the training.

5 Now it is right, isn't it, that the Inquiry's  
6 request for disclosure and witness statements was made  
7 in December of last year. Are you aware of that?

8 A. Yes.

9 Q. Again I think it's a matter of record that at the very  
10 end of May or the beginning of June a large volume of  
11 material helpfully was disclosed by Chicksands as being  
12 the current training material, and when feedback was  
13 given in relation to your statement, I think on  
14 22 September, the Inquiry was then provided with  
15 a further voluminous set of materials which were said to  
16 be, in fact, the up-to-date materials that were being  
17 used. Is that right?

18 A. Yes.

19 Q. Now in some cases -- I think it's fair to say in a large  
20 number of cases -- there was very little difference  
21 between the two. That's right, isn't it?

22 A. Yes.

23 Q. But in terms of some of the difficulties, some of the  
24 presentations that were provided to the Inquiry in the  
25 May/June disclosure were simply presentations with

1 nothing else showing on them, whereas, in fact, those  
2 presentations had speaking notes which weren't disclosed  
3 in May/June of this year. That's right, isn't it?

4 A. I should point out that I assumed my mantel as  
5 witness -- whilst I know that documents were disclosed  
6 around about May/June-time, it is only around about  
7 June-time that I was put forward as the witness --

8 Q. I follow.

9 A. -- and then entered fully into the case.

10 Q. Can I just assure you, I'm not looking at this from the  
11 point of personal blame at all.

12 A. No.

13 Q. We just want to understand the process.

14 A. Absolutely, and I'm assured by that.

15 Q. From what you now know, do you understand what I put to  
16 you to be correct?

17 A. Yes.

18 Q. Then I think it's right -- again not necessarily in many  
19 cases, but in some cases -- that the May/June disclosure  
20 contained presentations or handouts which were out of  
21 date and which had already been changed so that the  
22 up-to-date versions weren't disclosed in May/June of  
23 this year; is that right?

24 A. Yes.

25 Q. Then in some other cases, again few in number, but the

1 May/June disclosure was correct in the sense that the  
2 right versions were disclosed, but they contained some  
3 teaching points of concern -- we will come back to it,  
4 but walking around the CPERS while blindfolded is an  
5 example of it -- which in fact were only edited out of  
6 the handouts and changed for the better later on, in  
7 fact, last month. Again that's right, isn't it?

8 A. Correct.

9 Q. Now in terms of that, again I emphasise without  
10 criticism of individuals, is there, in fact, a version  
11 control system in place now so that old versions of the  
12 teaching materials are securely archived but are in no  
13 sense liable to be put forward, whether in litigation or  
14 indeed in training, as being the current materials when  
15 they are in fact out of date? Is that now something  
16 which has been sorted out?

17 A. That is something that we are progressing and has been  
18 brought to light by the Inquiry. What I would say is  
19 you are talking about some detail that I do not have  
20 a level -- I don't have first-hand information on. The  
21 way the system works is that we have a thing called  
22 "six-part documentation". We have an operation  
23 performance statement where the sponsor is telling us,  
24 "This is what the training is to achieve". Then from  
25 that we derive a formal training statement, we have an

1 assessment strategy, assessment specifications and we  
2 have training objectives and instruction specifications.  
3 All of those are held by my department so that they  
4 cannot be changed by the deliverer.

5 Q. Can I just pause you there? When one looks at the  
6 detail -- and it is perhaps not necessary for us to go  
7 through the exercise -- what seems to have happened is  
8 that these difficulties have arisen not in respect of  
9 the high level training statements and matters of that  
10 kind, but in the teaching materials that are actually  
11 used.

12 A. Yes, I understand that.

13 Q. Perhaps I can bring S004 in here. Are you able to give  
14 us any assurance about how old versions of the teaching  
15 material are now being handled so that they are not put  
16 forward, whether in litigation or training, mistakenly  
17 as being the current teaching materials.

18 S004: Yes, in the past we have had no version control.  
19 Presentations, handouts, have evolved and changed as  
20 change has been necessary, but we haven't archived  
21 specifically. What now happens is if a presentation is  
22 to be changed in any way, the date of that change is  
23 added to the title of the document. So you can look at  
24 the documents that you received in September and you  
25 will see they are dated 9, 14 and 17 September, which is

1 the latest iteration.

2 If I'm to make any changes to those, then I will  
3 archive, let's say, the 17 September document and the  
4 new one will be dated as of the date that I've made the  
5 change. What we haven't yet is developed a system  
6 whereby I'll have a file which says why that change was  
7 made, but I can go from the presentation or handout  
8 dated the 17th and compare that to the documents now  
9 dated today's date, for example, and you would be able  
10 to then see, by comparison, where the changes were.

11 Q. It may be me -- and correct me if I'm wrong about  
12 this -- but it might be of interest to the Inquiry that  
13 when you're giving us that information, S004, you say  
14 "I do". Is it the case that as the captain who is the  
15 OC of this branch, you are having to do all of this  
16 yourself personally without clerical support?

17 S004: Yes, you are right. I really should have a higher  
18 rank!

19 It may be that I institute the change by getting my  
20 sergeant major or one of the other staff to do it, but  
21 that's the process. Usually the change has been made by  
22 me in the last few months because of the sensitivity,  
23 and changes have been made. One of the reasons for the  
24 June discrepancy, part of that, was that we had made  
25 changes subsequent to feedback from theatre, feedback

1 from this Inquiry and scrutiny by LEGAD, by others, and  
2 we have made changes.

3 What we have now done is identified changes that  
4 should be made or perhaps we would like to make at the  
5 lower level without impacting on the training  
6 objectives, but we are not. We are holding fire so that  
7 if this Inquiry says to me, "Are those are the latest  
8 training?", yes, they are, even though, at a point when  
9 allowed to do so, there are changes we would like to  
10 make.

11 Q. Resources and more resources are not obviously always  
12 the answer, but do you feel that your branch is  
13 sufficiently resourced for the high-risk high-profile  
14 work that you have to do, whether in terms of  
15 instruction numbers or clerical support?

16 S004: Without pleading a case, the HUMINT wing itself is  
17 very, very short of administrative support, hence it  
18 comes down us to make the changes ourselves.

19 I think rather than more resource, a more robust  
20 system drilled into the behaviours in the branch would  
21 probably assist so that becomes automatic. We have not  
22 had that in the past. We are working towards it now and  
23 we are taking advice now from Captain Adams as to the  
24 best way to have a version control put in place.  
25 Subject to that, we have put our own in place.

1 Q. It may be that we will come back to it when we look at  
2 the question of walking around blindfolded CPERS, but to  
3 take the question shortly at the outset, when one looks  
4 at Captain Adams' second statement, S004, what seems to  
5 have happened -- correct me if I'm wrong about this --  
6 in May or June of this year, around that time, a change  
7 was made so that that aspect of walking around the CPERS  
8 while still blindfolded, the 45-second maximum  
9 assessment done while still blindfolded, there was  
10 a teaching change in May so that that was no longer  
11 taught. Is that right?

12 S004: That is correct.

13 Q. But the handout was not amended at that stage when the  
14 teaching changed and it was only last month that the  
15 handout was brought into line with the change in  
16 teaching which had been done some five months or so  
17 earlier; is that right?

18 S004: That's correct. I think it goes to the weakness of  
19 the version control systems or lack of them that we had.

20 Q. Are you able to offer the Inquiry any assurance that  
21 real effort is being put in to counter those sort of  
22 problems. It might be said that it ought to be rigorous  
23 and automatic that if the teaching in an area is  
24 changed, the handouts that are given to your students,  
25 for want of a better word, those attending the course,

1 change at the same time to be consistent.

2 S004: It's an ongoing process and, as best as I can, I can  
3 assure you that complete effort is going in to ensure  
4 that handouts match speaking notes match the PowerPoint  
5 presentations which then match what instructors say in  
6 an anecdotal fashion to students.

7 THE CHAIRMAN: Do you mind if I ask a question which may  
8 seem slightly irrelevant? Do either of you know the  
9 cipher name of S046?

10 S004: I think S046 was one of my COs.

11 THE CHAIRMAN: Possibly. What I want to know from you is  
12 where do you stand in the organisation today in relation  
13 to whoever was in S046's position?

14 S004: In terms of structure, Sir?

15 THE CHAIRMAN: Yes.

16 S004: As you saw from the wiring diagram, as an OC of  
17 a branch I'm quite low in the structure. I will have an  
18 officer command, I will have a commanding officer above  
19 him and on up to the director of training.

20 THE CHAIRMAN: Yes, I follow. I think I have the picture  
21 now.

22 MR MOSS: Thank you, Sir. Thank you.

23 Thank you, S004.

24 Can we come on, then, please, to broad questions  
25 about the teaching to the policy, because I think,

1 Captain Adams, your starting point really in terms of  
2 what is taught on the courses is that the courses  
3 understandably seek to teach to the 2008, as it was,  
4 TQ&I policy; is that right?

5 CAPTAIN ADAMS: Correct.

6 Q. As you both know, obviously that has now been replaced  
7 by two 2010 policies, the tactical questioning policy  
8 and the interrogation policy signed off, we are told,  
9 just in recent days.

10 A. Yes.

11 Q. Could we look just briefly, though, at one of the  
12 aspects that arose from the 2008 policy? It is at  
13 MOD042396, please. I picked this out because it may be  
14 said that it is the most clear example of what might be  
15 said to be difficulties with the 2008 policy. Do you  
16 see serial 8 on the left-hand side, "Deprivation of  
17 vision"? In the middle column, which was described as  
18 "notes" at this stage:

19 "CPERS must not be deprived of vision or hearing as  
20 an aid to interrogation."

21 Then in the right-hand column, what was called  
22 "Recommendations". Without reading it all out, if one  
23 reads through (a), (b) and (c), if you could just look  
24 at those and if you can perhaps just go over the page in  
25 terms of (c), would you agree that, in terms of whether

1 CPERS could actually be deprived of their sight during  
2 the interrogation session itself, there's some rather  
3 obvious inconsistencies between sub-paragraphs (a), (b)  
4 and (c) in the "Recommendations" column?

5 A. I pass this to S004.

6 S004: Forgive me, what is your point?

7 Q. Can you see that there are inconsistencies between (a),  
8 (b) and (c)? If it helps, (a) is saying:

9 "During an interrogation session a CPERS can only be  
10 deprived of vision/hearing in the following  
11 circumstances:

12 "For force protection ...", and so on.

13 So it seems to suggest that CPERS can be deprived  
14 their sight during an interrogation session.

15 S004: Yes.

16 Q. Then (b) says:

17 "CPERS must not be deprived of vision or hearing  
18 during either a TQ or interrogation session."

19 "Then (c) says:

20 "During an interrogation session only  
21 blacked-out sunglasses/goggles or purpose-made masks are  
22 to be used ..."

23 So each of them seem to be saying somewhat  
24 inconsistent things.

25 S004: Yes, and I think maybe it is the phrase

1 "interrogation session". For us, now, the interrogation  
2 session starts once the captured person is brought into  
3 the booth for questioning and, if blindfolded, the  
4 blindfold, goggles or sunglasses are removed and then  
5 the interrogation session starts. It ends at the point  
6 when the captured person would be required to put, if  
7 needed, goggles, blindfolds or sunglasses back on and  
8 then escorted by the guard force away. So the actual  
9 session, there would be no purpose in questioning  
10 somebody whilst blindfolded. That would be wrong. If  
11 during exercises, during the course, somebody starts to  
12 question whilst one of our role-players acting as  
13 a captured person is still obscured of vision, then the  
14 serial is interrupted by the directing staff, who says,  
15 "Don't. That is not permitted".

16 Q. Thank you. If you will forgive me for putting it in  
17 this way, S004, it might be thought that it would be  
18 surprising and disappointing if you, with all your  
19 experience, did not well understand that that was the  
20 situation, that CPERS should not actually be deprived of  
21 their sight while being asked questions. As you rightly  
22 say, that would clearly be wrong.

23 What the Inquiry might be interested in is to  
24 understand what interplay there is between the  
25 development of this sort of policy and you as those who

1           have to teach it. Was it at any stage the case that you  
2           were able to give feedback in the development of this  
3           sort of policy effectively to say to those who were  
4           designing the policy, "This wording just is not clear"?

5   S004:    The policies in use in 2005, 2006 and 2007,  
6           I personally, as the OC of the training, was involved in  
7           their development and evolution. In 2008 we weren't and  
8           in this latest iteration, which I have not yet seen --  
9           other than what S067 was talking about here, I haven't  
10          seen that -- we weren't involved in that either.

11   Q.    As those who need to train to the policy --  
12          Captain Adams, again, please do contribute -- would it  
13          be not helpful if, in the development of this policy,  
14          you are at least consulted?

15   CAPTAIN ADAMS: Absolutely. That is normally the process.  
16          A draft policy paper will come out for that very reason,  
17          so you can look at it and ask yourself the questions you  
18          have asked: does it make sense? Does it read the way  
19          you think it should read? Then you feed those back to  
20          shape the policy in that sense.

21                 In other senses our inputs into the policy are  
22                 limited simply because we are the practitioners and we  
23                 are not forward-facing. So what the policy wants to  
24                 achieve is sometimes not asked of us. But certainly in  
25                 terms of, "Here is the policy, what do you think and how

1 does that relate to how you deliver the training?", we  
2 should have a say in that.

3 THE CHAIRMAN: Could you speak a little more slowly?

4 A. Sorry.

5 MR MOSS: Thank you, Sir.

6 Because if the policy lacks clarity, there is a risk  
7 of a knock-on effect in the teaching, is there not, if  
8 you have to teach to the policy?

9 A. Yes.

10 Q. Do you know why it is the case, as S004 has told us,  
11 Captain Adams, that you were not being consulted about  
12 the 2008 and 2010 policy?

13 A. For the 2008 policy I don't know because I have only  
14 been in post a year and we tend to spend two and a half  
15 years in post, so it is before my time so I don't know  
16 what happened then. The 2010 policy I know has gone out  
17 to various quarters, legal quarters, for example, to  
18 look at it from that perspective, and the paper was  
19 given to me a couple of days ago. But even with the  
20 2010 policy paper, from my perspective I would want to  
21 see outcomes from this Inquiry and help reshape the  
22 policy.

23 Q. Thank you. Just briefly then, I think perhaps  
24 principally, S004, for you, may I just give you the  
25 opportunity to comment, in case you can help us or in

1 case it raises concerns, on just a few of the matters  
2 that have come up in respect of the new policy. For  
3 that we will need MIV012284.

4 In the right-hand column please, S004, under (a)(2),  
5 you see:

6 "The use of any stress position. Requiring CPERS to  
7 adopt a posture that is intended to cause physical pain  
8 and exhaustion."

9 We are told that in the final version of this it is  
10 "physical pain or exhaustion" rather than "physical pain  
11 and exhaustion". Is there any reason why the reference  
12 to intention shouldn't be removed, so that it is made  
13 clearer that it is the objective end result of causing  
14 pain or exhaustion that is prohibited, no matter what  
15 the intention?

16 S004: May I have a moment just to read it? It is the  
17 first time I've seen it.

18 Q. Yes, of course.

19 S004: With regards to stress positions, our position is  
20 that it is an absolute. You do not use stress positions  
21 for whatever purpose.

22 Q. So if the effect of a position is that it does, in fact,  
23 cause exhaustion, extreme discomfort, physical pain, you  
24 would not disagree with the suggestion that intention --  
25 what's in the mind of the person applying those

1 positions -- doesn't come into it?

2 S004: I would disagree with that in as much as restraint  
3 positions might be required to control a captured person  
4 who either is assaulting you or potentially damaging  
5 somebody else and C&R positions may well cause pain and  
6 distress and the intention is to stop them hurting  
7 somebody. So you would use those. And it was an  
8 interesting point to note in one of the evidence from  
9 the expert that any form of pain inflicted would be  
10 illegal.

11 Q. Yes.

12 S004: That would then restrict our RMP or our guard force  
13 from any form of self-defence.

14 Q. One follows that.

15 THE CHAIRMAN: I don't think you need factor in  
16 self-defence. That is a different problem altogether.

17 Forgive me, Mr Moss, but we have discussed this many  
18 times in the Inquiry and I think that collectively we  
19 would think that you ought to consider, instead of  
20 "intended", "deliberately causing physical pain",  
21 because it is deliberately putting somebody in  
22 a position, not necessarily with the intention of  
23 causing pain -- but deliberately putting someone in  
24 a position which does cause pain and exhaustion, which  
25 may cause you to run foul of the Geneva Conventions.

1 S004: Sure. Thank you, Sir. It occurs to me that the use  
2 of the word "deliberate" perhaps would lead somebody to  
3 be able to say "I accidentally did it".

4 THE CHAIRMAN: No, it would not. That's precisely the  
5 point. "Deliberately" would exclude the accidental.

6 S004: Right.

7 THE CHAIRMAN: You may think these are all lawyers' points,  
8 but they are not unimportant.

9 S004: No, indeed. I would say if you took the word  
10 "intended" out, it would have no impact to the overall  
11 meaning, so remove the word.

12 THE CHAIRMAN: That is perfectly true. It would actually,  
13 from the point of view of -- it would exclude a defence  
14 of the man who put someone in a position by saying, "Oh,  
15 well, I never intended that, despite the fact that  
16 I beat him over the head with a hammer" or whatever,  
17 which we get in the criminal courts quite a lot.

18 S004: Okay. Thank you, Sir.

19 MR MOSS: It may not be unhelpful to the Inquiry process  
20 simply, S004, obviously because you and your colleague  
21 instructors are those who have to teach this, but  
22 provided that provision is made for whatever label is  
23 applied, but what you understand at the moment to be  
24 restraint positions, so long as that is provided for,  
25 a necessary and appropriate search position, that sort

1 of thing, you don't see a difficulty with changing the  
2 current reliance on intent in the definition of "stress  
3 positions"?

4 S004: No, I don't.

5 Q. So far as serial 5 is concerned, MIV012287, the document  
6 may be new to you, but I think the content of the  
7 right-hand column under (a) will be familiar from  
8 previous documents. Presumably you would not have  
9 a difficulty if the policy were to make clear that, in  
10 terms of facility design, route choice, operational  
11 planning and so on, the need to deprive prisoners of  
12 their sight should be avoided in the first place if  
13 that's practicable?

14 S004: If that's practicable, yes. TQ, of course, doesn't  
15 necessarily take place in a formed establishment. It  
16 can be in somebody's house, by the side of the road,  
17 et cetera.

18 Q. Quite. Then, similarly, would you have any difficulty,  
19 in terms of what you need to teach, if the policy gave  
20 emphasis that it is only where facilities or the others  
21 who may be seen are genuinely sensitive that CPERS  
22 should be deprived of their sight?

23 S004: In terms of things causing us difficulty, if it's in  
24 the policy, then we, as teachers, trainers, will teach  
25 to that regardless of the difficulty.

1           What was the second part of the question?

2   Q.   I think I raise it because the new draft JDP 1-10 -- we  
3       don't need to look it up -- in its footnote 22 it  
4       emphasises that if the concern is about CPERS seeing  
5       facilities, they have to be genuinely sensitive  
6       facilities before sight deprivation would be justified.

7   S004:   The only problem I might see with that is in whose  
8       eye is it genuine.  If it is somebody on the ground they  
9       may consider something sensitive which later is  
10       considered to be an over-reaction to something.  So  
11       "genuine sensitivity" would need defining with a list of  
12       examples of "These are the sorts of intended locations".

13   Q.   Yes.  I think when Colonel McNeil of J3 ops PJHQ gave  
14       evidence to us the other day, he indicated that it would  
15       be helpful to give some indicative examples of the sort  
16       of facilities that did have a genuine security concern  
17       or might well do in theatre, that sort of thing.

18   S004:   I would absolutely agree.  It is so helpful if, when  
19       training soldiers, you can give examples that they can  
20       relate to so that they have a left and right of arc as  
21       to what is or is not permissible.

22   Q.   Thank you.  If we can just go on to MIV012289, serial 7,  
23       in the same document, please, "Effects of  
24       self-introduced pressures".  Again I think the concept  
25       is very familiar to you, S004.

1           In terms of the teaching staff, would there be any  
2           difficulty if the policy made clear in the right-hand  
3           column that nothing must be done to artificially  
4           increase those sort of pressures?

5   S004:   My staff and myself would have no difficulty with  
6           that, sir.

7   Q.   That is something that is in fact taught on the course,  
8           isn't it?

9   S004:   Yes.

10   Q.   Thank you. I'm going to return to the question of the  
11           harsh technique, but if you take it from me for the  
12           moment that within the tactical questioning policy the  
13           harsh technique and indeed approaches generally are not  
14           addressed anywhere in the new tactical questioning  
15           policy. We can contrast that with what's done in the  
16           interrogation policy.

17           Could we turn to MIV012329? This is a redacted  
18           version of the confidential annex to the interrogation  
19           policy which sets out the range of interrogation  
20           approaches that are authorised for use in interrogation.  
21           Do you see that?

22   S004:   Yes, I do.

23   Q.   Is there any reason, from a teaching staff point of  
24           view, why a similar annex setting out what approaches  
25           are authorised for TQ should not also appear in the TQ

1 policy?

2 S004: I think it would be most helpful.

3 Q. Thank you.

4 Thank you very much. Could I turn to another topic  
5 then, which is, Captain Adams, how you addressed in your  
6 statement the way in which the prohibition in the five  
7 techniques is taught. If we look at paragraph 6 of your  
8 first statement, please, you said there, three lines  
9 down:

10 "There are eight lessons or briefings on each course  
11 that make reference to the prohibited techniques and  
12 treatment of captured persons ... over the courses."

13 I know it is dealt with in the second statement, but  
14 so that we have it, what were you intending to convey by  
15 that sentence in your statement?

16 A. Can I pass that to S004?

17 Q. Well, on this occasion, I think not. It is your  
18 statement --

19 A. Okay.

20 Q. -- and you were saying to the Inquiry -- forgive me --  
21 that there are eight lessons or briefings on each course  
22 that make reference to the prohibited techniques and the  
23 treatment of CPERS over the courses.

24 A. I think it is an incorrect use of English. The two  
25 lessons are on the prohibited techniques.

1 Q. If we look at paragraph 6 of your second statement then,  
2 MIV012253, you say there:

3 "At paragraph 6 of my original witness statement  
4 I stated that 'there are eight lessons or briefings that  
5 refer to the prohibited techniques and treatment of ...  
6 (CPERS) ..."

7 You say that the "and" between "techniques" and  
8 "treatment" is disjunctive and that it could read  
9 "and/or".

10 You go on to say that there are two lessons that  
11 specifically cover the prohibited techniques in detail,  
12 and then you give reference to the two documents. Was  
13 that simply a mistake in your first statement, the  
14 reference to eight?

15 A. It was.

16 Q. Thank you.

17 Can we turn then, please, to the two lessons or  
18 presentations and handouts and so on where you say that  
19 the prohibited techniques are covered in detail? The  
20 two references that you gave us were to the introductory  
21 talk that, S004, you present and to the legal briefing.

22 Can we look at those in turn? Although I'm looking  
23 at them primarily from the question of the five  
24 techniques, we might sweep up one or two other issues as  
25 we go through them.

1           S004, could we look at your introductory talk first?  
2           The reference in your statement, Captain Adams, was  
3           MIV002356, but we now have the updated version of it  
4           with the speaking notes. Could we have a look at that  
5           at MIV010483?

6           S004, is this the introductory talk that you try,  
7           whenever you can, to give personally on the course?

8   S004:   Yes, it is my opening remarks to any of the courses  
9           that we run, including courses where it's consensual  
10          debriefing for use in the UK and clearly none of the  
11          prohibited techniques would be used. But without  
12          sounding too grand, it is my mission to drill home to as  
13          many people I talk to -- I address it when I lecture to  
14          military attaches, to RMP who I lecture to very  
15          occasionally and to the military custodians at  
16          Colchester, which I do roughly on a monthly basis.

17   Q.   Thank you. Would there be some occasions, perhaps for  
18          entirely understandable reasons, when you are not able  
19          to deliver it personally and one of the other  
20          instructors has to give the introductory talk?

21   S004:   I'm just pausing because I'm trying to recall  
22          an instance when it would have been anybody else other  
23          than me. In all truth I can't recall an occasion when  
24          I haven't opened a course. I may open a course and then  
25          leave to go and do something else, but usually I make it

1 a point to open every course.

2 Q. Thank you. I'm very keen, if you will forgive me for  
3 saying so, not to take any of these presentations out of  
4 context, so before turning to some of the issues of  
5 concern, can we just look at some of the passages which  
6 might be thought to be clear and strong in terms of the  
7 prohibition or the tone, just so that the issues of more  
8 difficulty perhaps are not taken unfairly out of  
9 context.

10 I think in your introductory talk, S004, if we look  
11 at MIV010498, you have, as a matter of course, a section  
12 on value and standards:

13 "Ignore what you have seen in the movies.

14 "Ignore what you have seen on the TV.

15 "Ignore any R to I instruction ...

16 "Don't invent new techniques.

17 "Report the wrongdoings of others to your OC ...",

18 and so on.

19 Perhaps it speaks for itself, but setting the tone  
20 that no doubt you want to follow throughout the whole  
21 course; would that be fair?

22 S004: Yes. Once upon a time it was called the "Hollywood  
23 syndrome", but that was felt to send the wrong message,  
24 so we changed it to "Values and standards" because that  
25 is then in harmony with the values and standards of the

1 British Army. I go through each of those with examples.

2 As you will see in the speaking notes at the bottom,  
3 it's not easier for junior NCOs, and I make a point to  
4 them that "You, as a qualified tactical questioner, may  
5 well be having to argue your point as an SME to your  
6 boss, to the guy who writes your annual report, who is  
7 frustrated at lack of success; you, the junior NCO, have  
8 that responsibility to point out the consequence of your  
9 actions", and if they do any actions that are incorrect,  
10 they then have to report them in. It takes a strong  
11 moral backbone to do that as a junior, but we try to  
12 foster that right from the start.

13 Q. Thank you. If we look in the same context at MIV010504,  
14 the same course, still your introductory talk, the  
15 "Definitions" section, but your speaking note:

16 "In reality you should treat anyone the same.  
17 Whoever is taken into custody, captured, arrested,  
18 detained or any other term used to describe the fact  
19 that they are no longer free, and that they are now your  
20 responsibility to look after during their time with the  
21 TQ or interrogation effort, should be treated the same  
22 under the Geneva Conventions and let someone else ...  
23 determine their eventual status."

24 So: your responsibility to treat them and do not  
25 worry too much about what category. Treat them as if

1           they are prisoners of war.

2   S004:    Yes.  The purpose of that is so that, rather than  
3           asking a junior individual on the ground to make a call  
4           of the category, we say, "If you treat them as PWs, they  
5           will get the highest level of protection and somebody  
6           else makes the call".  But it's put there to ensure that  
7           the more junior people have that protection; that they  
8           aren't being asked to make calls way above their pay  
9           band.

10  Q.  Thank you.

11  THE CHAIRMAN:  It is obviously sense to put the highest  
12           standards throughout.

13  S004:    But there are varying standards of treatment  
14           depending on the category.  But we on the course say:  
15           treat everybody as though they get the highest and  
16           somebody else can make the other calls.

17  THE CHAIRMAN:  I entirely understand that.

18  MR MOSS:  Finally and very briefly, over the page there is  
19           a slide on not torturing.  The picture perhaps gives the  
20           impression.

21           Over the page, the quote from Diplock and then  
22           Pavlov, familiar to us from earlier material.  Just over  
23           the page again, please.

24           Then over the page again:

25           "... all of which must be conducted in compliance

1 with the Geneva Conventions and within the law."

2 Then we see the text there:

3 "We cannot afford to operate outside of the law as  
4 many US and some UK personnel have found to their cost  
5 in Iraq. To do so also caused significant political and  
6 military embarrassment, as well as costing the life of  
7 a detainee and costs currently standing at 13 million."

8 Costing the life of a detainee, presumably that is  
9 Baha Mousa?

10 S004: Yes, that is the reference.

11 Q. Against that background, can we come back to the front  
12 slide, please, MIV010483? There is no reference in any  
13 of the slides on the presentations, S004, to the five  
14 techniques or the prohibition on the five techniques,  
15 despite all the general emphasis on compliance with the  
16 law and so on.

17 So far as the Inquiry has been able to see, the only  
18 reference to it is in this front page, where it is said,  
19 "Who knows any of the five prohibited techniques? Let's  
20 look at them".

21 Then what has been added to the speaking note is  
22 added 6 August 2010, "but always mentioned". Then the  
23 bits redacted -- obviously, I'm not going to read them  
24 out -- but it is your initials?

25 S004: Yes.

1 Q. Can you just help us with how all this fits in what is  
2 actually said and what is actually taught and what was  
3 added on 6 August?

4 S004: The speaking notes were added on 6 August.  
5 I annotated them with the date so that it would be clear  
6 that we weren't trying to reverse engineer something.  
7 It's always been dealt with within the branch. In five  
8 separate locations we have large laminated posters which  
9 have the five prohibited techniques on them --

10 Q. Yes.

11 S004: -- both going into the student coffee area, before  
12 they go down to the interrogation booths, in the  
13 corridors. Even for our role-players we have that put  
14 up. So the issue of the five prohibited techniques is  
15 almost a fundamental. It's dealt with all the time.  
16 It's always in their eyeline when they are going in and  
17 out of the cells, whether they are going in and out of  
18 their coffee room. It is emphasised.

19 Q. Thank you. It may help to give us the flavour --  
20 I don't want to get into too much fine detail -- but  
21 when were the posters put up, roughly? Don't guess if  
22 you don't know.

23 S004: I wouldn't want to swear to it. I don't know.

24 Q. Was it this year or last or earlier?

25 S004: The first one went up last year, but then we

1           increased the number during this year. Sorry, I can't  
2           put my hand on my heart and say when.

3   THE CHAIRMAN: I'm going to ask you a question similar to  
4           that. When do you think that the necessity to refer  
5           specifically and often to the five techniques and the  
6           banning of them first featured?

7   S004: I have always mentioned the five techniques.

8   THE CHAIRMAN: You always have, have you?

9   S004: I have, and I have been in the branch ten years.

10 THE CHAIRMAN: When has it been seen throughout to be very  
11           important?

12 S004: I think the increase in the -- for want of a better  
13           word -- advertising by putting laminated posters up came  
14           during this year and probably as a result of this  
15           Inquiry, that it was felt that we needed to have it more  
16           publicly seen.

17 THE CHAIRMAN: Yes, I follow.

18 MR MOSS: Again it may be that I stray too far into the fine  
19           detail of it, but without doubting for a moment, S004,  
20           what you say, that your current practice, as it has been  
21           for a long time, as you say, was to introduce the five  
22           techniques in your opening discussion, would it not be  
23           a good idea to have within the presentation, so that it  
24           is there clear from the start a slide on the PowerPoint  
25           presentation that sets out the five techniques right

1 from the outset?

2 S004: It would do absolutely no harm whatsoever. It  
3 couldn't even be referred to as "overkill" because we  
4 have the posters, we have the details of Baha Mousa in  
5 the lecture theatre and it is referred to by myself and  
6 by other directing staff and instructors.

7 Q. It is a minor point and you will forgive me for raising  
8 it, but if we just look at MIV010497, just in terms  
9 perhaps of the need to keep the policy joined up, as the  
10 horrible phrase goes, we see, if these are recent  
11 speaking notes:

12 "The UK is a full signatory of the Geneva  
13 Conventions. The military take on PW handling is  
14 contained in ITD 6 ..."

15 So far as the Inquiry is able to work out, I think  
16 that reference is now at least two years out of date in  
17 that it has been changed to from ITD to MATTs and that  
18 the LOAC part or the operational law part is now MATT 7  
19 rather than 6.

20 S004: Yes.

21 Q. Again, without in any sense criticising you, is that  
22 also an indication that there is a need for something of  
23 an overhaul of these presentations generally just to  
24 check that they are consistent with what's being taught  
25 elsewhere in MATT training and the like?

1 A. Yes, I would absolutely support that. It's ongoing as  
2 we speak. I've assigned one of my directing staff to  
3 look at and make note of things that are incorrect or  
4 things that need adding and then I'll go over that  
5 myself, but it's an ongoing process.

6 THE CHAIRMAN: Can I just ask you this? Do you note eyes  
7 glazing over when things like Geneva Conventions are  
8 mentioned in an lecture?

9 S004: No, Sir. I have to say that when I'm giving  
10 lectures or presentations eyes never glaze over.

11 THE CHAIRMAN: You don't, but any of them?

12 S004: No, they don't. There has been comment by some  
13 juniors that we place too much emphasis on the legal  
14 aspects --

15 THE CHAIRMAN: Well, that is what I was wondering about.

16 A. -- because we really do emphasise it. I make no apology  
17 to them and I say, "You ignore this stuff at your own  
18 peril".

19 THE CHAIRMAN: And presumably you now couple it with a word  
20 or two about Baha Mousa?

21 S004: We have a presentation at the back of our lecture  
22 theatre which has headlines, photographs, to reinforce  
23 the point that it is completely and utterly unacceptable  
24 behaviour.

25 THE CHAIRMAN: Yes. And the consequences of transgressing?

1 S004: Yes.

2 MR MOSS: Thank you, sir.

3 May we turn, then, to the second of the  
4 presentations, Captain Adams, to which you referred as  
5 dealing with the prohibition of the five techniques in  
6 detail, and that's the legal briefing. The front page  
7 is MIV003488.

8 Captain Adams, can you help us with the rank and  
9 post of the person who would normally present this?

10 CAPTAIN ADAMS: The rank would normally be an SO1, so at the  
11 lieutenant colonel level legal adviser.

12 Q. Is that the legal adviser at Chicksands?

13 A. At Chicksands.

14 Q. I think we have been told that there aren't, but we  
15 don't seem to have any speaking notes for this beyond  
16 the presentation. Do either of you know whether there  
17 are in fact speaking notes somewhere?

18 A. The answer to that is I don't know, but I have sat with  
19 the lawyer who delivers the briefing, who is relatively  
20 new. I assume that he has. I've asked him what he  
21 covers, et cetera, but I don't know whether he has  
22 speaking notes or not.

23 Q. S004, do you know?

24 S004: No, because whilst I have sat through presentations,  
25 both by the formal LEGAD and the current LEGAD, I have

1           only seen the PowerPoint and don't know if there are  
2           speaking notes attached to that.

3   MR BARR:   Sir, if I can just interrupt with the aim of  
4           assisting the Inquiry, we indeed have the SO1 legal from  
5           Chicksands here sitting in the public gallery, so he  
6           may --

7   THE CHAIRMAN:  You can tell us at a convenient moment what  
8           his take on that is, to use a modern expression.

9   MR BARR:   Thank you.

10  MR MOSS:   Again, I'm conscious -- I'm going to ask you both  
11           questions about this if you have both seen it -- of the  
12           need not to take matters out of context, so can we just  
13           look at MIV003525?  This is a slide -- we don't seem to  
14           have the colour version -- which refers to hooding now  
15           as being an outrage upon personal dignity, as one can  
16           see from the middle of the page.  That is right, isn't  
17           it?

18           So part of the teaching -- again, without labouring  
19           the point -- in terms of keeping these things up to  
20           date, the reference there to the joint doctrine note 2  
21           of 2005, since then that's been replaced by JDP 1-10 in  
22           2006 and JDP 1-10 amendment 1 in 2008, hasn't it?

23  S004:   No, sir, it has been replaced by JDN 3-06.

24  Q.   But is it out of date, the one that is referred to here?

25  S004:   The reference is out of date, yes.  I don't know

1 about the quote.

2 Q. Thank you. But MIV003527 again very clear, in fairness  
3 to all concerned, on the headlines so far as the five  
4 techniques are concerned, clearly set out in the legal  
5 briefing. Would you agree?

6 S004: Yes, sir.

7 Q. And MIV003528, the background now given in some detail  
8 with the reference directly to Prime Minister Heath's  
9 statement, again so presumably students can understand  
10 not just the prohibition but something about where it  
11 came from and its history.

12 S004: Yes. It is important that they understand the  
13 context of it.

14 Q. If we go on to MIV003530, if I may start with the middle  
15 bullet point. Again, in fairness, one sees that the  
16 prohibition on hooding is set out in uncompromising and  
17 clear terms, I think -- no circumstances.

18 S004: Yes, absolutely.

19 Q. Can I turn then, having looked at some of the aspects --  
20 and there are many others and the chairman has seen them  
21 that are clear and impressive --

22 THE CHAIRMAN: Can you just pause a moment? At MIV003530:

23 "Under no circumstances can any of the techniques be  
24 used solely for the purpose of conditioning ..."

25 Why use the term "conditioning" at all?

1 S004: I don't think we should. I think it is a word that  
2 should come out. It is still in the current training  
3 material. I think what we are looking at is the legal  
4 brief, but in my own material the word exists and as  
5 soon as I'm able, that word will come out.

6 THE CHAIRMAN: Well, I rather agree with you.

7 A. But I can't make the change yet.

8 THE CHAIRMAN: It seems to indicate there that there may be  
9 circumstances or there may be some other reason for  
10 using conditioning.

11 S004: Yes. It is not helpful at all.

12 THE CHAIRMAN: All right. Thank you.

13 MR MOSS: It may be allied to the chairman's last point, but  
14 I was to going to ask you about that bottom bullet  
15 point. Conditioning is one point of it, but the use of  
16 the word "solely" there might be taken to suggest, might  
17 it not, that it could be used, sensory deprivation or  
18 any of the techniques, partly for conditioning and  
19 partly for operational security. The reference to,  
20 "solely" is unclear and ambiguous, isn't it?

21 S004: Yes. I think, if I may, a lot of the language is  
22 ambiguous and that's one of the things we are hoping,  
23 from the external legal audit, that clarity is brought  
24 to bear on this so we can bring our training into line  
25 so that it is legitimate, valid and legal.

1 Q. I don't want to go back over old ground about old  
2 teaching. Can I just ask you this purely about the  
3 current practice? Is it any part -- bearing in mind  
4 this last bullet point of a presentation that you don't  
5 give -- of the teaching of you or your colleagues that  
6 you can use the by-product or the side effect of  
7 security use of the techniques to maintain or prolong  
8 the shock of capture? Is that something that is  
9 currently talked about?

10 S004: Not currently. It may still appear in the material  
11 because I'm not changing any of the material, but, no,  
12 because it's too ambiguous and hence the scrutiny it  
13 brings from yourselves.

14 Q. Again, one cannot seek a counsel of perfection, but in  
15 MIV003530, the slide that we have on the screen at the  
16 moment, in the first bullet point dealing with sensory  
17 deprivation, the valid operational reason might be  
18 thought to leave quite a lot to be interpreted. To an  
19 extent, that's inevitable. Are examples given of what  
20 a valid operational reason is on this talk or elsewhere?

21 S004: I think that's a question best directed to the  
22 person who delivers the presentations.

23 Q. MIV003531, just over the page -- can I try to take this  
24 shortly -- this slide appears in a number of MoD  
25 publications. It appears, I think, in MATT 7 in the

1 prisoner handling section. When it is used in your  
2 branch -- we see there "Stress/restraint positions.  
3 What is the difference?" and an example is given with  
4 a soldier. What is actually said about that slide, so  
5 far as you know, about whether what is shown in the  
6 slide is acceptable or not or may be acceptable  
7 depending on the circumstances? Do you know?

8 S004: It is used to discuss a stress position and its  
9 function and restraint positions and we just use the  
10 imagery to talk through, "Is that a stress position?"  
11 If the guy kneeling with his hands on his head is there  
12 for a moment, then probably not. 20 minutes later,  
13 that's going to hurt like hell.

14 Q. All right. It is difficult -- I certainly can't tell  
15 from the photograph. Again just in terms of ensuring  
16 that consistent messages are being given, do you know  
17 whether or not those who are lying prone on the ground  
18 are plasticuffed to the rear?

19 S004: I can't tell from the photograph.

20 THE CHAIRMAN: It looks to me as if the one nearest to this  
21 blacked-out-face soldier is lying on his front with his  
22 hands behind his back.

23 S004: Yes, whether his hands are plasticuffed into place  
24 or he has been told to put his hands behind his back,  
25 I don't know.

1 THE CHAIRMAN: Either way, it looks as if that is what the  
2 position is. Yes, all right.

3 MR MOSS: The following page goes on to give the discussion  
4 about restraint position. You touched, S004, on that  
5 earlier on.

6 Do you know what is said, either in this briefing or  
7 during the teaching in other parts of the course now  
8 about restraint positions?

9 S004: Do I know what's taught on other parts of the course  
10 about restraint positions? I'm reluctant to answer  
11 because I'm not entirely sure.

12 Q. Perhaps without turning it up, if you take it from me  
13 for the moment that within the MATT 7 operational law  
14 prisoner handling section, what might be thought are  
15 some useful examples are given of where restraint  
16 positions might be justified. One of the examples that  
17 is given is where soldiers at the point of capture have  
18 captured a number of prisoners but are heavily  
19 outnumbered. You gave some examples earlier of where  
20 restraint positions may be justified. Presumably that  
21 might be one of them.

22 S004: That would.

23 Q. Do you think that there is scope for improvement on the  
24 course that you run in terms of making clearer to those  
25 who attend the distinction between "restraint positions"

1 and "stress positions"?

2 S004: My feeling is that they do understand the difference  
3 because, in my opening address, I ask about a stress  
4 positions, what is it, and then I put to them, "Okay,  
5 well what is a restraint position?" You are saying  
6 causing somebody pain, but potentially that's what you  
7 do in C&R, control and restraint, and we do talk through  
8 it. Then it's mentioned again by the legal adviser and  
9 every soldier should be seeing MATT 7 annually anyway.  
10 So the understanding should be quite clear.

11 Q. Because at the risk of being pedantic, on this slide,  
12 for example, the reference to "Over time it may also  
13 become painful", in what circumstances would a position  
14 be held over time that would become painful to maintain  
15 but would be legitimate?

16 S004: If you were having to restrain somebody and were  
17 waiting -- and you were on your own and your colleague  
18 had gone off to get some more or gone to get physical  
19 restraints, such as plasticuffs, you might be holding  
20 that person in a position which is uncomfortable until  
21 you can safely secure that individual.

22 Q. I'm not suggesting for a moment that it is impossible,  
23 it may well occur, but it is likely to be quite an  
24 exceptional situation, isn't it?

25 S004: Yes.

1 Q. The language that's used there -- again I do appreciate  
2 that it is not your presentation -- "a side effect, not  
3 the reason", does that not risk harking back, as it  
4 were, to some of the difficulties this Inquiry has seen  
5 in its evidence about operational security, use of sight  
6 deprivation and having a side benefit that it may have  
7 a use for the shock of capture, the side effect? Is  
8 that not terminology better avoided?

9 S004: I think it is terminology that should be avoided for  
10 the sake of clarity, yes.

11 Q. Thank you. One sees again, at the bottom of the page:

12 "Under no circumstances can a restraint position  
13 ever be used solely for the purpose of conditioning the  
14 detainee."

15 That is apt to be misunderstood, isn't it?

16 S004: Yes. My understanding of this presentation is that  
17 the new LEGAD is in the process of reviewing and  
18 revising, and if it's your intention, sir, to speak to  
19 him later, perhaps he could talk to those points.

20 Q. Thank you?

21 THE CHAIRMAN: This is obviously very important stuff.

22 I don't want to stop it. But generally speaking it  
23 seems to me you are recognising that there are a number  
24 of parts of these presentations that could usefully be  
25 altered and updated to better and more clear language;

1 is that right?

2 S004: In broad terms I absolutely agree. I think that's  
3 one of the reasons we asked for independent legal audit  
4 in order to bring focus on those issues.

5 THE CHAIRMAN: I am sure you are now getting a feel for the  
6 sort of things at any rate that are coming out of the  
7 Inquiry about them.

8 S004: Yes, Sir.

9 MR MOSS: It may be, Sir, that I can take the others at  
10 greater speed.

11 THE CHAIRMAN: It is up to you, Mr Moss. It is not  
12 unimportant. I do detect that S004 has a fair grip of  
13 what we are on about.

14 S004: Indeed, Sir.

15 MR MOSS: I'll take it more briefly, S004. If we go over  
16 the page to MIV003533. I'm looking at this in detail  
17 because it is the one presentation that deals with the  
18 techniques in real detail, as you will understand. This  
19 slide dealing with noise and sleep deprivation -- we  
20 will come on to that briefly -- presumably, again, it  
21 would be helpful to have some specific guidance on sight  
22 deprivation within this presentation: avoid it if  
23 practicable. If you do do it, only for the period when  
24 it is genuinely necessary, but it may be justified by  
25 operational security considerations, force protection.

1 S004: Yes. I am sure the legal adviser will take on board  
2 your comments, sir.

3 Q. Thank you.

4 Now excess noise that is dealt with here:  
5 "... only if there is a valid operational reason  
6 (security)."

7 Not necessarily from this presentation, but more  
8 generally, can you help us with what that is a reference  
9 to, circumstances in which there may be a security  
10 reason for the application of excess noise?

11 S004: I can't help. All I can do is give a view that we  
12 shouldn't be using excess noise as a means of ensuring  
13 some form of security.

14 Q. So the thrust here, would you agree with this: an  
15 operational climate may well be noisy in any event?

16 S004: Absolutely, yes, they are.

17 Q. There will be some circumstances where nothing can be  
18 done about that, whether for the deployed soldiers or  
19 for the CPERS?

20 S004: Correct.

21 Q. But noise should not be deliberately increased in the  
22 vicinity of CPERS whether for security or other reasons?

23 S004: Not in my view, not at all.

24 Q. The Inquiry heard some evidence about the use of  
25 generators as a noise shield, for example to prevent

1 those who were held in a holding tent from hearing what  
2 was going on in an interrogation tent, so the generator  
3 as a noise shield behind. First of all, is that taught  
4 now as being an appropriate way to organise an  
5 interrogation facility?

6 S004: Absolutely not, not by us.

7 Q. And is something included now on the course, if that is  
8 a practice that perhaps may have been used in the past,  
9 albeit that it may well be that soldiers had to hear the  
10 generators as well -- is that something which is now  
11 specifically taught on the course to avoid --  
12 effectively: you must find other ways to prevent those  
13 in the holding room from hearing what's going on in the  
14 interrogation tent?

15 S004: It is not dealt with in that way to raise it and  
16 then say "Don't do it". It's something that we don't  
17 address as a technique that's valid. If you need  
18 somebody not to hear what's being said, then use  
19 ear-defenders.

20 Q. Again, without in any sense criticising you, S004, do  
21 you think, moving forward in terms of improvements, that  
22 as a general point there is something to take from that  
23 in terms of, if there has been what might be thought to  
24 be less than perfect practice in the past -- perhaps  
25 even poor practice, for example the use of generators as

1 a noise shield -- that the course should teach: perhaps  
2 in the past this has been done, perhaps with good  
3 motives, but it should be avoided in the future to cut  
4 out bad practice or sub-optimal practice?

5 S004: I'm less convinced about the validity of raising  
6 things that you shouldn't do. What I'm about to say is  
7 not meant in any way flippantly, but we do not say, "By  
8 the way, do not kick people to death".

9 THE CHAIRMAN: Yes, I get your point that there is a limit  
10 to the number of things you can say "don't do" because  
11 you are always going to miss something out.

12 S004: Indeed, and that is not one that I would consider.

13 THE CHAIRMAN: And you have to inculcate into them that they  
14 have to use their sense of fairness and common sense as  
15 well.

16 S004: And in the main, I think, the vast majority of the  
17 army has that sense of value and fair play and the  
18 Baha Mousa thing was an obscenity.

19 MR MOSS: Thank you. So far as sleep deprivation is  
20 concerned, if we just go down to the next bullet point:

21 "If only there is a valid operational reason  
22 (imminent questioning)."

23 Do you, S004, or you, Captain Adams, understand the  
24 reference to "imminent questioning"?

25 S004: I've read the debate about the use of the word

1 "imminent". I've looked it up and it was "about to  
2 occur soon" and then I suppose we wonder what "soon"  
3 means.

4 THE CHAIRMAN: Yes.

5 S004: "Imminent questioning" is questioning that is due to  
6 happen shortly. If somebody has been detained and  
7 there's one TQer and four detainees, the other three are  
8 going to be put away to one side awaiting questioning  
9 and, if they want to dose off, they will dose off. When  
10 the TQer or the interrogator is then ready to question  
11 that individual, the individual number one is moved  
12 away; number two is, if dosing, woken and brought in.

13 MR MOSS: Yes.

14 S004: But there's no technique such as Smulski was using  
15 in 2003 of banging an iron bar to deliberately keep  
16 people awake. If they want to go away and dose until  
17 such time, that is fine, but no instruction will be  
18 given, "Keep them awake until I am questioning them".  
19 There is no point.

20 Q. I follow entirely. I am grateful. Without drafting on  
21 the hoof, the essence of what needs to be taught on this  
22 would be as follows, wouldn't it, "If the TQer is ready  
23 to TQ a prisoner who happens to have dosed off, it is  
24 legitimate to wake that CPERS up to TQ them so long as  
25 you respect the overall policy about sleeping patterns"?

1 S004: Yes, the 18 and 24 and the four hours continuous,  
2 yes.

3 Q. "But under no circumstances can you do anything to keep  
4 a CPERS awake merely because questioning may be  
5 happening in the next half hour, the next hour or  
6 shortly"?

7 S004: No. If that individual wants to make use of that  
8 time to rest or to get their head down, the  
9 probabilities -- having now been a captured person, the  
10 chances are all those internal pressures will be praying  
11 on their mind, they are probably unlikely to dose off,  
12 but we would not do anything to stop them.

13 Q. Without drafting in committee there is scope, would you  
14 agree, to make that clearer in these materials?

15 S004: Yes.

16 Q. Thank you.

17 Do you know, S004, whether there is any material  
18 currently on the courses that gives a specific warning  
19 about trying to ensure that CPERS are not left sitting  
20 in the sun?

21 S004: I think there is one reference. I can't put my hand  
22 on to where it is precisely in the course. I think  
23 there is one that I read. I can't remember when.

24 Q. Again, bearing in mind some of the evidence that this  
25 Inquiry heard that that had been something that happened

1 on more than one occasion, I think you would accept not  
2 good practice?

3 S004: No, to keep them in the heat or to keep them in the  
4 cold. We have a duty of care to look after people.

5 Q. Again, a point of detail, but one that no doubt you  
6 would look at to ensure that that is being clearly  
7 taught within the materials and on the presentation?

8 S004: Yes, either myself or through the legal  
9 presentation.

10 Q. Thank you very much.

11 Now, Captain Adams, in your statement you said that  
12 there were two presentations that touched on the five  
13 techniques. There is, I think, a third. Can we just  
14 look at that briefly, please?

15 S004, I think this is your new presentation, isn't  
16 it, dealing with CPERS handling within the TQ process.  
17 MIV010617.

18 I think we are told in the annex to Captain Adams'  
19 statement that this is a new, improved and expanded  
20 presentation dealing with that matter. Is that right?

21 S004: Without seeing the rest of it, sir, I can't comment.

22 Q. If we just go over the page and over the page again, so  
23 you can get the feel of it and know which one we are  
24 talking about.

25 S004: Yes, that looks to be right.

1 Q. Thank you. Again very briefly if I may, MIV010622. So  
2 we don't take things out of context, large font, very  
3 clear "Firm, efficient, fair"; that sort of thing being  
4 emphasised now as watch words that are no doubt taught.  
5 Would that be right?

6 S004: That makes it sound as though they are new watch  
7 words. That "firm, efficient and fair treatment" has  
8 been in place for as long as I can recall in the  
9 training.

10 Q. Forgive me, it is my fault for taking it too shortly,  
11 but additional emphasis being given to that perhaps in  
12 the way it is presented. Would that be fair?

13 S004: Yes.

14 Q. At MIV5010632 -- I'm going to skim through them because  
15 we have all had the opportunity to read them -- but if  
16 we go through the next four or five slides -- just pause  
17 there -- clear warnings being given about the risk of  
18 positional asphyxia, with improved slides on this making  
19 the position very clear.

20 S004: Yes.

21 Q. Over the page again and once more, please. The clearest  
22 possible warnings about those sort of risks are things  
23 that you have now included, I think, in your teaching on  
24 the course, isn't it?

25 S004: Yes.

1 Q. Thank you. Could we go over to the next slide,  
2 MIV010637, to deal with restriction of vision and how it  
3 is dealt with here.

4 Obviously the restriction of vision in the slide is  
5 set out:

6 "During movement through sensitive areas.

7 "Only when strictly necessary.

8 "Blindfolds only, no hoods."

9 Would it not be a good idea, given that this is the  
10 new presentation that's dealing with CPERS handling, to  
11 ensure that all of the techniques -- prohibited  
12 techniques -- are covered in this presentation?

13 S004: They could certainly be added, sir.

14 Q. In the sense that perhaps without indulging in overkill  
15 you should lose no opportunity to drum it in,  
16 particularly in a presentation that's dealing with how  
17 CPERS should be handled properly within the facility?

18 S004: It could usefully be added there and I do take your  
19 point about overkill and at what point do we stop  
20 labouring it.

21 THE CHAIRMAN: Yes, I'm very conscious of that, S004. You  
22 are the people in charge, you know what is right and  
23 what is wrong. It is you and your people who have to  
24 see how far you go in the detail of all this.

25 S004: Thank you, Sir.

1 MR MOSS: Thank you, Sir.

2 Now the principal issue that I just want to explore  
3 with you in this is actually what appears in the  
4 speaking note, because whereas the slide is saying  
5 "restriction of vision only when strictly necessary",  
6 the speaking note says "The only times you need to  
7 restrict vision are when moving prisoners around in  
8 sensitive areas. The inside of the interrogation  
9 facility is a sensitive location, whereas the open  
10 prisoner compound is probably not".

11 S004, can I raise this suggestion to you? Is there  
12 not a risk there that by saying in bold terms "the  
13 inside of the interrogation facility is a sensitive  
14 location", that one will end up with the routine  
15 deprivation of a CPERS' sight whenever they are brought  
16 into the interrogation?

17 S004: The speaking notes are actually about 180 degrees  
18 out in that there are now interrogation facilities where  
19 there is no sensitivity. Because of the structure and  
20 layout, you can ensure that the prisoner is moved from  
21 a holding area to the questioning area without blindfold  
22 or obscuring of vision at all because there's nobody  
23 else about and it's a corridor --

24 Q. Yes.

25 S004: -- whereas in the open prisoner compound, whilst in

1 the compound they don't need to have vision obscured,  
2 but for force security reasons you may wish to have  
3 vision obscured when moving them from that compound  
4 through to a different location, so that they can't work  
5 out the layout and plan escape, et cetera.

6 THE CHAIRMAN: "Interrogation facility", we are talking  
7 there about interrogation at a more permanent base, not  
8 tactical questioning.

9 S004: Yes, interrogation facilities, purpose-built.

10 MR MOSS: But you see the difficulty, S004, that whereas the  
11 new JDP seems to be giving even more emphasis to the  
12 need to avoid sight deprivation if practicable and then  
13 keep it to the minimum necessary, on the face of the  
14 speaking note here you risk giving the students the  
15 impression that: always deprive them of their sight when  
16 taking them to the interrogation facility because the  
17 interrogation facility is a sensitive location.

18 S004: Yes. The message is wrong. When you're inside it,  
19 it's not that sensitive because all you have is  
20 a corridor and various closed doors. Getting to it  
21 might be.

22 THE CHAIRMAN: Yes.

23 MR MOSS: Thank you. While we've got this slide, then,  
24 can I just pick up on a slightly different matter which  
25 is the reference to blindfolds only, no hoods. In this

1 module the Inquiry has heard evidence that it is now  
2 a clear matter of operational policy in Herrick that the  
3 preferred method of sight deprivation is the use of  
4 blacked-out goggles and that blindfolds should only be  
5 used where there is a good reason for not using goggles,  
6 they have run out or they are not available. So only in  
7 extremis should blindfolds be used as a less  
8 satisfactory means of achieving it than goggles.

9 Without going to numerous references, I think you  
10 would agree, S004, that the Chicksands material at the  
11 moment is littered with references to blindfolds as  
12 opposed to goggles. Would that be fair?

13 S004: It is absolutely fair and the word -- we would -- we  
14 do in one of the presentations refer to blindfolding  
15 with goggles.

16 Q. Yes.

17 S004: It's the act. It's blindfolding. We could say,  
18 "Well, you will obscure with vision using ...", but the  
19 word "blindfold" is there. In the policy it refers to  
20 blacked-out sunglasses as well as goggles as well as  
21 blindfolds.

22 Q. Take it from me for the moment without having to turn it  
23 up, the new JDP that is in draft mirrors what is going  
24 on in Herrick in now using blacked-out goggles and, if  
25 blacked-out goggles are not available, an improvised

1           blindfold. I don't seek for a moment to emphasise the  
2           challenge of keeping up to date with policy elsewhere,  
3           but there must be scope, mustn't there, for revising  
4           these teaching materials to bring it into line with what  
5           the TQers and interrogators would be doing in theatre  
6           under the current doctrine, which is using goggles and  
7           only if goggles are not available are blindfolds  
8           acceptable?

9   S004:    Currently in the training branch we have five sets  
10           of goggles and three sets of blindfolds, so we use them  
11           interchangeably and the main issue is the obscuring of  
12           vision. Without criticising any new JDP, which  
13           I haven't seen, to say "You will only do this", the  
14           purpose is to obscure the vision. Whether it is with a  
15           goggle because that is what is currently used is a moot  
16           point, I think.

17   THE CHAIRMAN: I'm going to break off for a minute. Do you  
18           have any more on this particular point?

19   MR MOSS:   No.

20   THE CHAIRMAN: I think you have a fair grip, if I may say  
21           so, of the main principles. It is the application going  
22           through in the detail that needs to be looked at very  
23           closely to make sure that they are consistent with the  
24           main principles.

25   S004:    Absolutely, sir, and for what it is worth, we are



1 S004: Yes.

2 Q. If we go over the page, do we see at question 10, for  
3 example, something about how, when CPERS are being  
4 moved, how they should consider using blindfolds,  
5 positional asphyxia mentioned at question 12. So those  
6 sorts of things are tested at the end of the course,  
7 aren't they?

8 S004: Yes, they are.

9 Q. At MIV010428, at question 5, I think perhaps the same  
10 issue arising about the distinction between goggles and  
11 blindfolds, but at least a specific question testing the  
12 understanding about not using sandbags as a hood.

13 S004: Yes.

14 Q. Thank you. So far as handouts are concerned, thus far  
15 we've principally been looking at the presentations.  
16 I will be corrected by my learned friends if I'm wrong  
17 about this, but I think, having looked carefully at all  
18 of the handouts, that the prohibition on hooding is  
19 mentioned in one and stress positions and sleep  
20 deprivation are mentioned in a separate one, but there  
21 doesn't seem to be, at the moment, a handout which sets  
22 out all of the prohibitions on the five techniques and  
23 something that students can take away with them. Again,  
24 is that something that might helpfully be looked at?

25 A. I think what we would probably do is take the laminated

1 poster which contains the five prohibited techniques and  
2 turn that into a handout so that's incorporated into the  
3 student bundles.

4 Q. Thank you. Very finally, just on a miscellaneous point,  
5 can I just look, please, with you at MIV0100363? It may  
6 be that this is one of the presentations that has been  
7 replaced subsequently, but I'm interested in it for its  
8 teaching about inducements. Could we just look within  
9 it at page MIV010369? It is quite difficult to work  
10 out. Forgive me, it is one of the recent slides so it  
11 hasn't been replaced. This is a current teaching  
12 material, I think you'll agree.

13 If you look at the top there, it says "You can offer  
14 inducements for their cooperation" and then one of the  
15 inducements is "Let them change position".

16 S004: Yes.

17 Q. What is actually taught there about that?

18 S004: If they are stood, they could sit. If they are  
19 sitting, they could stand. If they are sitting, they  
20 could sit on a mat.

21 Q. Would you agree that, because of the need to be cautious  
22 about the techniques, a reference to letting somebody  
23 change position as an inducement for cooperation, that  
24 one needs to be very careful in that sort of area lest  
25 it be thought that somebody could be made to stand until

1           it is positively uncomfortable, with the inducement  
2           given that, if you answer the questions, you can sit  
3           down?

4   S004:    I take the point.  I'll take it under advisement.

5   Q.   Thank you.

6   THE CHAIRMAN:  Who creates these slides?

7   S004:    Most of them are quite historical and they have been  
8           changed as we've moved along or we would create them in  
9           the branch.

10  THE CHAIRMAN:  In the branch.  Who would be responsible for  
11           creating them?  Is it you or someone else?

12  S004:    I would be responsible for quality controlling them.

13  THE CHAIRMAN:  But who would actually --

14  S004:    Make the slide and put the bullets on, one of my  
15           directing staff.

16  THE CHAIRMAN:  Right.

17  MR MOSS:   Thank you, Sir.

18           Now I want to turn to the topic of walking around  
19           a blindfolded CPERS.  Could we have on the screen,  
20           please, MIV000451?  This was the Module 4 disclosure  
21           which was given to the Inquiry in May/June as being the  
22           current handout that was used.  If we go, please, to  
23           MIV000454, we will see in the method of assessment at  
24           paragraph 16 the passage perhaps of concern:

25           "Questioner conducts a visual scrutiny of the

1 subject (subject still blindfolded). The questioner can  
2 increase the pressure by moving around the subject --  
3 this will also give the questioner a better opportunity  
4 to observe the subject's body language."

5 Then:

6 "Instruct the subject to remove the blindfold and  
7 watch how the subject reacts to the new environment."

8 Now so that this is not taken out of context,  
9 without turning it up, the preparation that went  
10 alongside this -- is this right -- by May of this year,  
11 if not earlier, was referring to this being a process  
12 that took a maximum of 45 seconds or so.

13 S004: Yes.

14 Q. Nevertheless, this handout did still have that element  
15 of increasing the pressure on a subject by moving round  
16 the CPERS while he or she was still blindfolded, didn't  
17 it?

18 S004: Yes.

19 Q. It must follow, Captain Adams, mustn't it, that whereas  
20 your statement refers to a number of checks and audits  
21 that were done of the material, that it wasn't until May  
22 of this year that any of those internal checks and  
23 audits within the DISC picked up on the fact that the  
24 teaching was still advising interrogators to use the  
25 period when the CPERS were blindfolded to move around

1           them and increase the pressure on them?

2   CAPTAIN ADAMS:  Yes, I think sometimes the difficulty with  
3           audits is the level of detail that they go into and  
4           detail such as that could be overlooked.  When -- for my  
5           part, when we look at audits of documentation, we are  
6           sometimes looking to make sure all the documentation is  
7           there and, unless you have a subject matter expert, they  
8           can't look into the very, very fine detail of what  
9           you're talking about.

10  Q.  Does it give you cause for concern --

11  A.  Yes.

12  Q.  I was going to say: does it give you cause for concern  
13       that it might be said that, despite the audits that had  
14       taken place, there was, even this year, teaching going  
15       on within the branch that may have been contrary to the  
16       Geneva Convention?

17  A.  Yes.

18  Q.  In terms of the changes and improvements made, may we  
19       look next, please, at how this is now dealt with?  We  
20       have it, I think, at MIV010455.

21           S004, are you content that the current teaching on  
22       this does now get the tone right and is all accurate?

23  S004:  Yes.

24  Q.  Within this slide, which is the amended one now dealing  
25       with it on the presentation -- we will turn to the

1           handout in a moment -- but when it is saying "Assessment  
2           CPERS is delivered by the guard force. Command is given  
3           to remove blindfold", does that not risk reinforcing the  
4           impression that this will have happened as a matter of  
5           course because it shouldn't always be the case that they  
6           come in with a blindfold on at all, should it?

7   S004:    It could be looked at like that. Personally I look  
8           at it that a CPERS who is delivered wearing a blindfold,  
9           automatically you will get them to remove the blindfold.  
10          It doesn't necessarily mean, therefore, that all  
11          prisoners will arrive blindfolded. Maybe there should  
12          be a word "If CPERS is delivered wearing a blindfold" to  
13          make that point. But the automatic action should be: if  
14          wearing blindfold, get it removed.

15   Q.    Thank you. The handout, which you say by human error it  
16          was seen that this hadn't been amended until I think as  
17          recently as last month; is that right?

18   S004:    Yes, it was picked up by the MoD legal team for  
19          which I'm very grateful.

20   Q.    If we just go to the new version, it's at MIV010129.  
21          This is the amended version. If we can just go over --  
22          again I do appreciate that it's a point of possibly  
23          almost tedious detail -- but if we look at paragraph 16  
24          just on its own -- can we just have paragraph 16  
25          highlighted? Can we possibly put that onto the

1 right-hand side of the scene and have on the left-hand  
2 side of the screen MIV000454? I think, in fact, it has  
3 gone the other way. It doesn't matter. On the  
4 right-hand side of the screen we have the original  
5 version, so originally it was saying:

6 "Questioner conducts a visual scrutiny of subject  
7 (subject still blindfolded). The questioner can  
8 increase the pressure by moving around the subject --  
9 this will also give the questioner a better opportunity  
10 to observe the subject's body language.

11 "Instruct the subject to remove the blindfold and  
12 watch how [he] reacts ..."

13 So what is being said there is: visual scrutiny; you  
14 can increase the pressure while they are still  
15 blindfolded; opportunity to observe their body language;  
16 then you remove the blindfold. If you look at the  
17 September 2010 version on the left, what seems to have  
18 happened is that that middle paragraph has been amended.

19 "The questioner tells the CPERS to remove the  
20 blindfold and then conducts a visual scrutiny of the  
21 subject."

22 Pausing there, that is dealing with the blindfold  
23 comes off as soon as they enter the room now.

24 S004: Yes, and also in the second line in brackets it says  
25 "subject may be blindfolded", so to deal with your point

1           that it is an automatic blindfolding, that, I think goes  
2           towards dealing --

3   Q.   Forgive me, but the one on the right-hand side of the  
4           screen is the old one that has now been replaced.  So  
5           the one on the left-hand side is the new one; all right.

6   S004:   But both say "may be blindfolded".

7   Q.   Okay.  It goes on to say:

8           "The questioner can move around the subject ..."

9           This is when he is not blindfolded, so there is no  
10          difficulty with that.

11  A.   Yes.

12  Q.   "This will also give the questioner a better opportunity  
13          to observe the subject's body language."  But what it  
14          goes on to say is "instruct the subject to remove the  
15          blindfold and watch how the subject reacts to the new  
16          environment."

17          Now the CPERS is meant to have had the blindfold  
18          removed already.

19  A.   Yes.  It's an error.  The principle part of it is that  
20          centre paragraph where the blindfold comes off.  That's  
21          the message.  I'll remedy that as soon as I can make  
22          alterations to the course material.

23  THE CHAIRMAN:  Tell me this:  is that something that had been  
24          audited by the legal adviser?

25  A.   They will have had all of that material, yes -- the

1 independent legal advice, yes.

2 THE CHAIRMAN: It is, to say the least, a little troubling  
3 that that sort of detail is not picked up.

4 S004: Yes, it is, for which I can only apologise, Sir.  
5 That is down to me.

6 THE CHAIRMAN: It is not necessarily your fault --

7 S004: It is my material, Sir.

8 THE CHAIRMAN: If it has been looked at, audited, this is  
9 the sort of thing which ought to have been eradicated  
10 straightaway.

11 S004: We haven't had the result of the independent legal  
12 audit, and that may be one of the things that they  
13 develop. If it is not developed by them, then I will  
14 certainly be taking that on board myself.

15 THE CHAIRMAN: I appreciate that. What I need to have is  
16 the confidence that this sort of error, which is a short  
17 simple one, doesn't occur again.

18 S004: Yes. I am sure Captain Adams is of the same mind.

19 CAPTAIN ADAMS: Absolutely, Sir.

20 MR MOSS: Can I move on to an entirely different matter now,  
21 which is the question of the way that the teaching deals  
22 with bridging and with the prohibition on threats.

23 Captain Adams, can we look at paragraph 23 of your  
24 first statement, please, at MIV006128? You say there  
25 that students are taught that they can't make threats of

1 any sort to a detainee, including so-called credible  
2 threats. You explain what a credible threat is and you  
3 say:

4 "Such threats are not acceptable and are not taught.  
5 Students are taught that facts relating to the CPERS can  
6 be stated (even if this might be unpalatable to the  
7 CPERS). An example of a factual statement would be,  
8 'Once I have finished questioning you, then you will be  
9 processed out of this facility'."

10 S004, do you agree that that is the essence of the  
11 approach that is still taught?

12 S004: Yes, but it's one of those areas where I think the  
13 phrase has been used here before. It's the line and  
14 does it cross the line --

15 Q. Yes.

16 S004: -- and I await legal guidance as to the legitimacy  
17 of that. Is it stating facts or is it an implied  
18 threat? It's not a call I can make, sir.

19 Q. On any view, a difficult area where you understandably  
20 seek expert help.

21 Can we just look together, though, at what the  
22 current materials are on it? I think we have it at  
23 MIV010390. We see there the slide on bridging examples  
24 and this is what's referred to, Captain Adams, I think  
25 in your second statement as being the third slide -- is

1           that right -- or is that more a matter for S004, the  
2           third slide with the one over the page "Bridging  
3           examples", being what's described in the statement as  
4           a "hidden slide"; is that right?

5   S004:    If that's what --

6   Q.    Sorry, I think we have gone over more than one page.  If  
7           we just have MIV010385 and the bridging examples.  
8           I think this is the third slide.  Then over the page to  
9           MIV010386 is a very similar slide.  I don't know  
10          whether -- Captain Adams, in your second statement there  
11          is a reference to one of these slides being hidden.  Is  
12          that all something that you can speak to or is that more  
13          S004?

14   CAPTAIN ADAMS:  It is more S004.

15   Q.    S004, do you have the context now with a slide that is  
16          very similar but in fact is hidden?

17   S004:   Yes.  In future presentations there won't be hidden  
18          slides and the reason for hiding them is because it has  
19          been updated and whoever has made that change has,  
20          rather than make a new presentation -- I already  
21          explained that some of the presentations evolve rather  
22          than a totally new presentation -- and it may be that on  
23          PowerPoint you have the facility to hide a slide.  So  
24          there's no conspiracy behind having a hidden slide.  In  
25          future presentations we would try to avoid it merely

1 because of the confusion it caused here.

2 Q. Thank you. Let's have MIV010385 on the screen, please,  
3 if we may. Let's just try and follow what's been  
4 happening in terms of the development on bridging and  
5 threats. If that goes on to the left-hand side of the  
6 screen, please, and on the right-hand side could you put  
7 up MIV010386? Thank you.

8 So the new version is on the left, the old version  
9 is on the right. What seems to be the difference is  
10 that if one looks at the second bullet point, it's now  
11 "may improve" rather than "improve", but perhaps the  
12 point of substance is that "... may improve impact of  
13 this by stating what can happen", whereas the old  
14 version was "... improve the impact of this by implying  
15 what can happen"; likewise the third bullet point, "...  
16 equally state what may have", rather than on the  
17 right-hand side, "... equally can imply what may  
18 happen".

19 If I have understood -- no doubt you have had some  
20 input into it and I'm not criticising it -- what was set  
21 out in Captain Adams' statement correctly, this new  
22 emphasis on "stating" instead of "implying" is to reduce  
23 the risk of implied threats. Would that be right?

24 S004: Absolutely correct. To try and give clarity to  
25 something which isn't that clear.

1 Q. So if you stick to enunciating clear facts of what may  
2 happen in the future, that is seen to be less risky than  
3 leaving things hanging in the air or making  
4 implications; is that the result of it?

5 S004: Yes.

6 Q. You have already accepted that perhaps having old slides  
7 in the presentation as hidden slides is perhaps not best  
8 practice and to be avoided in future.

9 S004: I fully accept that.

10 Q. Can we go on to looking at what is and isn't acceptable  
11 in the current presentation? In MIV010388 there is an  
12 example given. If you just look at that and take  
13 a moment to look at the speaking notes, I think this is  
14 being given as an example of what is acceptable, isn't  
15 it?

16 S004: Yes.

17 Q. The second bullet point, I just raise it simply for your  
18 comment, appreciating that legal input is awaited:

19 " If you DO NOT answer my questions to my  
20 satisfaction, who is going to look after your wife and  
21 children if you are in British custody?"

22 It might be said that there is nothing inhuman about  
23 that as a statement of fact, but it might be suggested  
24 that that is to apply some moral coercion to the CPERS  
25 to encourage them to answer. Is there anything you

1           would say yourself about that as someone who has to  
2           teach this material?

3   S004:    No, I fully accept it.  I think it's a troublesome  
4           area and the sooner we can get clarity on it, the  
5           better.

6   Q.   Thank you.  Then if we go over the page, I think  
7           a second example is given of what is acceptable:

8                 "If you answer my questions to my satisfaction you  
9           will be held in British custody.  While in custody I can  
10          guarantee your personal safety and that you will treated  
11          in accordance with the GC.

12                "If you do not ..."

13                Then the speaking note at present says that this is  
14          not threatening the CPERS, this is merely stating a fact  
15          and "... as long as he answers your questions he will be  
16          held in British custody and therefore will be safe".

17                While one follows that, the use of "if you do not  
18          ...", it might be said that the whole purpose of that is  
19          to encourage the CPERS to think about the  
20          disadvantageous treatment that might occur if he doesn't  
21          answer the questions and that, in reality, that is an  
22          implied threat.  That's one interpretation at least.  
23          Again, is there anything you would wish to say about  
24          that?

25   S004:    We certainly want to encourage the captured person

1 to think about where they are and where they might be  
2 and I think it's for others to decide or tell me whether  
3 that is perceived as a statement of fact or whether it's  
4 an implied threat.

5 THE CHAIRMAN: It could be either, but it certainly could be  
6 an implied threat --

7 S004: It could, sir.

8 THE CHAIRMAN: -- in which case there would be a problem.

9 MR MOSS: Could I turn then to the topic of the harsh  
10 approach? Can we look, please, at paragraph 26,  
11 Captain Adams, of your first statement at MIV006129?

12 You are giving here, aren't you, Captain Adams, an  
13 assurance that the harsh technique as currently taught  
14 has already been the subject of legal scrutiny; is that  
15 right?

16 CAPTAIN ADAMS: Yes.

17 Q. You go on in your second statement to tell us that it is  
18 now the subject of further legal scrutiny; is that  
19 right?

20 A. Yes, they're undergoing legal audit.

21 Q. I think one of the questions which one of the core  
22 participants wishes to raise is: where are the materials  
23 in relation to that legal audit that is going on at the  
24 moment. I think it is right to say that, as is MoD's  
25 right, you are asserting legal professional privilege on

1           that advice; is that right?

2    A.   Yes.

3    Q.   Without going into what the advice may or may not say,  
4           are you able to give us an indication of who is carrying  
5           out that legal audit? Is it independent counsel or  
6           legal advisers from MoD?

7    A.   Yes, it is independent.

8    THE CHAIRMAN:  Sorry, who is it who is giving you advice?

9    A.   I don't the name.

10   THE CHAIRMAN:  Never mind the name. Do you know what  
11           organisation or person it is who is doing it?

12   A.   I know the person.

13   THE CHAIRMAN:  You know the person. All right. I don't  
14           want to pry into who is doing this and that. I just  
15           want to be confident that it --

16   MR BARR:  It may suffice to say this: in fact it is three  
17           people, two of whom are independent counsel and one of  
18           whom is an army lawyer.

19   THE CHAIRMAN:  What I wanted to be satisfied of is that he  
20           knew who is doing what.

21   MR MOSS:  I'm very grateful. Thank you.

22            Could we just go over the page, please, to  
23           paragraph 27? I don't want to re-open old ground  
24           Captain Adams, but in 27 you said that you are aware  
25           that the Inquiry has seen a video recorded in 2005. You

1 say that neither example on the video shows the harsh  
2 approach being delivered in accordance with current  
3 training delivered by the directing staff.

4 Pausing there, that much, if I can put it this way,  
5 we well understand. What you go on to say is:

6 "Rather they were used as teaching aids for  
7 discussion on later courses about what was acceptable  
8 and what was not. This is the position regarding the  
9 video, notwithstanding that it was presented in  
10 a different manner in the Payne court martial."

11 Now what the Inquiry was told and what the court  
12 martial was told was that the chair-throwing video was  
13 used as an example of what not to do, but that the  
14 rather graphic harsh given by, if I'm remembering  
15 correctly, the soldier with the Scottish accent was used  
16 as an ideal example of how to do a harsh. Now  
17 I understand what you say about current teaching, but  
18 does that remain the position or was paragraph 27  
19 seeking to say anything different?

20 A. No, I mean both the videos are -- I think one was  
21 presented as one good and one bad, when in fact they  
22 were both bad.

23 Q. But as you go on to say, that sort of use of previous  
24 students' examples is not the way it is now done; it is  
25 now done by the instructors demonstrating.

1 CAPTAIN ADAMS: Yes.

2 Q. Is that right, S004?

3 S004: Yes, it is.

4 Q. Now, Captain Adams, can I direct this specifically to  
5 you? Do you accept that the harsh technique is another  
6 of those areas that sails close to the wind on any view  
7 and that particular care is required to ensure that it  
8 does not spill over into what might be unlawful?

9 CAPTAIN ADAMS: Yes.

10 Q. It seems to be the case that previously there was  
11 a separate presentation for the tactical questioning  
12 course different from the interrogation course on the  
13 approaches that were to be used.

14 If I have understood your second statement,  
15 Captain Adams, the position now is that there is  
16 a single presentation on basic approach that is used on  
17 both courses; is that right?

18 A. Yes.

19 Q. We have that at MIV010363. S004, is this right, that  
20 this is the presentation that's now used on both the  
21 tactical questioning and the interrogation course in  
22 relation to basic approaches?

23 S004: Yes.

24 Q. If we go on then, please, to page MIV010370, in the  
25 slide itself at the top, the main basic approaches are

1 "friendly", "firm", both with logic. Then at the bottom  
2 "neutral" and "harsh". Then the speaking note, if we  
3 just have the half page again, "friendly", "firm" and  
4 "logical" are talked about there. Then at the bottom it  
5 says:

6 "The likelihood of using the next two is minimal --  
7 (just talk through the principles)."

8 Then:

9 "Harsh -- the one everyone expects to get, but it  
10 still has its uses if it is done well and in line with  
11 MoD policy guidance ...

12 "Neutral -- a vital approach used to gain  
13 an assessment of the prisoner."

14 Can we start, please, with tactical questioning? On  
15 the tactical questioning course, can you give us  
16 a better understanding, S004, please, of what is  
17 actually said about the harsh technique currently on the  
18 tactical questioning course?

19 S004: As it says there, the likelihood of using them is  
20 minimal because of the circumstance. The neutral  
21 approach is much more -- has greater utility in a formed  
22 questioning area such as interrogation. And the harsh  
23 has limited utility based on the feedback I've received  
24 from theatres.

25 Q. Let's take it in stages. Does it follow that in terms

1 of practical exercises that the students do to hone  
2 their skills in tactical questioning, that they get to  
3 practise the friendly logical and the firm logical, if  
4 I'm getting my terms right, because those are the main  
5 ones they are actually likely to use in practice?

6 S004: Yes. They are given a theoretical understanding of  
7 the harsh and the neutral, but they aren't practised in  
8 those because they are not going to use them.

9 THE CHAIRMAN: If I could just intervene for a moment, so  
10 that you know to some extent the way my mind is working.  
11 I'm troubled by the harsh technique and I'm particularly  
12 troubled about the harsh technique used by tactical  
13 questioners who are the least experienced of all people  
14 involved in questioning. In a short version,  
15 immediately after capture, it doesn't seem to me that  
16 there is any real significant benefit by retaining for  
17 tactical questioners the harsh technique. I want to  
18 know what your reaction, both of you, would be for that  
19 if I made such a recommendation.

20 S004: From my perspective, Sir, if you made that  
21 recommendation, I could not do anything because that  
22 would alter one of the training objectives if we removed  
23 it entirely, so that would have to go back through the  
24 sponsor.

25 THE CHAIRMAN: I am not saying "interrogation"; I'm saying

1 "tactical questioning".

2 A. No, on tactical questioning. If we were to remove it  
3 from tactical questioning, it would need to go through a  
4 formal process to come down to us, to trickle down, to  
5 say the sponsors have accepted it and the training,  
6 planning and management department have agreed it and  
7 that is then what we teach to, and the training  
8 objectives would have changed to be in line with  
9 Captain Adams' department.

10 THE CHAIRMAN: But from a practical point of view, is it  
11 a serious runner as something which is of use at that  
12 level in a battlegroup?

13 S004: The harsh approach?

14 THE CHAIRMAN: Yes.

15 S004: On the advice I've received from other theatres of  
16 operation, no, it isn't, which is why we've minimised  
17 its training.

18 THE CHAIRMAN: If it is not producing anything of any real  
19 value, do you recognise presumably that the  
20 inexperienced questioner -- when I say "inexperienced",  
21 inexperienced in relation to interrogators. Do not the  
22 dangers of letting him loose with a harsh technique  
23 override all possible benefit from it?

24 S004: I'm not sure it would override all possible benefits  
25 because that is a bit hypothetical, but it's not

1 something that we practice them in, therefore they are  
2 very unlikely to be using it, because all of our  
3 emphasis on the theoretical -- the majority of our  
4 emphasis on the theoretical and all of our effort on the  
5 practical is aimed at the firm logical and the friendly  
6 logical because those are proved to be --

7 THE CHAIRMAN: They are successful.

8 S004: -- most successful. I'm reluctant to say that  
9 something doesn't work in a given theatre, sir.

10 THE CHAIRMAN: I understand your reluctance, but I equally  
11 recognise -- I don't know whether you do -- that there  
12 may be dangers in tactical questioners being told that  
13 there is a vague possibility that they can do the harsh  
14 technique.

15 S004: I recognise those dangers. My concern is in  
16 a public inquiry saying what works and what doesn't  
17 work.

18 THE CHAIRMAN: No, I follow you. That is a very fair point.

19 MR MOSS: Captain Adams, can I ask you this because it may  
20 be that it applies at your level and, without I hope  
21 rudeness, above S004's level of seniority. Is there not  
22 a danger in your permitting, at the moment, tactical  
23 questioners to be told that there is something called  
24 the harsh, they are told the gist of what it is, but  
25 they don't actually get the full training on what it's

1 limits are nor do they practice it? Isn't that  
2 something of a risky halfway house?

3 Should it not be the case that they are either told,  
4 "It is close to the line, you need to be really careful  
5 and we are going to train you in it fully and properly"  
6 or told, "It is not for you as a TQer. You might hear  
7 of interrogators doing it, but you're not to"? Is the  
8 current compromise really a suitable one?

9 CAPTAIN ADAMS: I think personally I would prefer greater  
10 clarity on that. The clarity that would be provided on  
11 that would come from the policy setters of the questions  
12 you have put, sir. I understand the logic in that  
13 completely. I would -- those questions would be put to  
14 whoever is setting the policy for this and for us simply  
15 to follow that.

16 Q. Yes. Again it may be one of those things that falls  
17 between the stools of witnesses, but you will have heard  
18 my questioning of S004 earlier on, and what may be  
19 troubling the Inquiry is that when, then, one turns to  
20 the policy for tactical questioning, one doesn't even  
21 see any indication in the 2010 policy of whether the  
22 harsh technique is approved or not. Can you help with  
23 how that has come to pass?

24 A. Yes, because I would like to think, from the Inquiry's  
25 findings, that that would then inform the policy and add

1 new lines of thought to the policy that you set out here  
2 to question, you know, what is being currently set out  
3 in that policy.

4 Q. Do you, for example, at the moment, have a working  
5 understanding of whether TQers are authorised to use the  
6 harsh or not?

7 A. I think -- strictly speaking, as per the guidance, we  
8 are a deliverer who deliver to a policy that's set and  
9 so we deliver against that policy, so in that respect we  
10 comply with the policy and assume that the policy  
11 complies with the law, which should be one of the first  
12 considerations of that. We are simply the deliverers of  
13 the training to the template that has been set in the  
14 policy.

15 Q. Forgive me, I do not mean this in a rude sense, but what  
16 is the answer to the question, because if the 2010  
17 policy doesn't say one way or the other whether tactical  
18 questioning is permitted, how can you know what should  
19 be trained in your organisation?

20 A. It comes back to an earlier point that was made that,  
21 for example, we have recently seen the policy. I would  
22 want the opportunity to look at the policy in more  
23 detail, to then go back and ask the questions that we  
24 are not sure of.

25 THE CHAIRMAN: Leave aside the policy. I would infer that

1           if the tactical questioner is told there is a harsh  
2           technique and he isn't stopped from doing it with  
3           a plain ban, there is, from a practical point of view,  
4           a real risk that he will use it. The other problem will  
5           be that if there is a real risk that he will use it, he  
6           has been told about it, but he has not been properly  
7           trained on it, the danger is even greater that he will  
8           go over the top. So you are left, as has been suggested  
9           to you, in the worst of all worlds.

10   S004:    I think, Sir, if I may, in the TQ policy I haven't  
11           seen it, but if -- I accept what you say, that there is  
12           no mention of it. That's the policy. That's what we  
13           train to. If there is no mention of it, I would want to  
14           be going back through the chain of command to say, "Why  
15           is it now your intention that we no longer teach this?"  
16           if that's the case, that's fine --

17   THE CHAIRMAN:  Yes.

18   S004:    -- it can come out, but I haven't seen the policy  
19           yet.

20   THE CHAIRMAN:  One way or the other it has to be clarified,  
21           this, because at the moment it's a muddle.

22   S004:    Yes, indeed. It falls between two stools, Sir.

23   MR MOSS:   I am not sure that I can take that any further.

24   THE CHAIRMAN:  No. I think the point has been made pretty  
25           clearly.

1 MR MOSS: S004, it may be that you will tell me that the  
2 answer is that it is with the lawyers and it is  
3 a difficult area, but can I just turn to the substance  
4 of the harsh very briefly? You are aware, of course, of  
5 the prohibition in the Geneva Convention on insulting  
6 a CPERS if they do not answer questions.

7 S004: Yes.

8 Q. At the moment, the approach would seem to be that,  
9 whether in the loud or in the cynical sarcastic versions  
10 of the harsh, the guidance is to be careful not to  
11 insult in terms of comments that would be racist or  
12 sexist and so on; is that right?

13 S004: Yes.

14 Q. But that what is permitted is to deride the performance  
15 of the CPERS in military terms.

16 S004: Yes.

17 MR MOSS: So the line that is drawn -- whether it be right  
18 or not -- is that you can insult their military  
19 performance, their leadership, the fact that they were  
20 captured, what a useless soldier they are, but you can't  
21 insult them.

22 S004: If we are talking about lines, then the thinness of  
23 that line is evident.

24 Q. The concept of a drill sergeant we see still referred to  
25 in the policy. What perhaps may be said against that is

1           that whereas it is a metaphor that NCOs would well  
2           understand, drill sergeants perhaps have a spectrum of  
3           loudness and harshness themselves and that some drill  
4           sergeants, in the way they might berate people on the  
5           drill square, may well go beyond what would be  
6           appropriate even in the use of the loud harsh. What do  
7           you say about that?

8   S004:   Speaking as a former drill sergeant myself, it is  
9           entirely possible for anybody to go overboard on  
10          anything. However the guidelines for managing and  
11          directing troops is very, very carefully scrutinised  
12          over the management of soldiers. When you refer to the  
13          policy, are you talking of 2008 or 2010?

14   Q.   The 2010 policy.

15   S004:   Again I have only glimpsed it.

16   Q.   Is that a comparison or a comparative, a drill sergeant,  
17          that you use when teaching on the course when teaching  
18          interrogators?

19   A.   It's evolved from even then. The way we use the harsh,  
20          I think it may have been mentioned, is a short sharp  
21          shock to re-orient the individual to their circumstances  
22          and it may be loud, it may be quiet, but it is over in  
23          a flash. We are talking a matter of seconds.

24   Q.   But in Geneva Convention terms it is nevertheless  
25          used -- even if it is used to bring the CPERS back to

1 the reality of the gravity of their situation, it is  
2 used against the CPERS who is refusing to answer  
3 questions or who is staring at a point on the wall.

4 S004: Yes.

5 Q. It is right, isn't it, that it is exactly in that  
6 context -- the CPERS who is refusing to answer  
7 questions -- that the Geneva Convention protections are  
8 particularly meant to bite, that they don't suffer any  
9 disadvantageous treatment or unpleasant treatment or  
10 insults.

11 A.

12 S004: Yes, and I await with interest definitions of  
13 "unpleasant".

14 THE CHAIRMAN: Everybody does.

15 MR MOSS: Now can I just turn, I think more briefly, to  
16 conditioning?

17 Captain Adams, in your first statement you told  
18 us -- can we look at paragraph 34 at MIV006132 -- that  
19 conditioning was not taught at DISC in the I Branch;  
20 that students were taught what the shock of capture is  
21 and given definitions and understanding those pressures  
22 enables the questioner to identify a better tailored  
23 approach to questioning the CPERS.

24 As a result of that, as you know, the Inquiry gave  
25 you feedback and asked you to address, in your second

1 statement, why, if that was the case, it was the  
2 situation that there were quite a number of references  
3 to "conditioning" still in the Chicksands materials, if  
4 I can use that shorthand.

5 What you therefore said in paragraph 13 of your  
6 second statement at MIV012256 was that in fact the word  
7 "conditioning" still exists in current training  
8 material -- and you gave an example.

9 "However in current material the word 'conditioning'  
10 is intended to convey how the questioner may make use of  
11 pressures, both self-induced by the CPERS and  
12 system-imposed."

13 Could we just have a look, albeit briefly, at that  
14 example at MIV000444? Forgive my annotations on it, but  
15 if we could just perhaps highlight the bit that is in  
16 red and highlighted "Conditioning" at the top of the  
17 page.

18 "'Conditioning' is the process by which advantage is  
19 taken of the existing pressures that a prisoner is under  
20 whilst not making them worse."

21 So without turning for the moment, Captain Adams, to  
22 S004, this is an example of this phrase "conditioning"  
23 being used as something that is permitted and  
24 legitimate, isn't it?

25 CAPTAIN ADAMS: Yes.

1 Q. Still in current teaching materials meant to convey the  
2 concept of prolonging the shock of capture without  
3 making it worse; would that be right?

4 A. Yes.

5 Q. If one goes, then, back to the legal briefing that we  
6 saw earlier on, MIV003530:

7 "Under no circumstances can any of the techniques be  
8 used solely for the purposes of conditioning the  
9 detainee."

10 It may not be quite so clear, but in general terms  
11 the sense that conditioning is being used there is as  
12 something inappropriate and unlawful, isn't it?

13 A. Yes.

14 Q. Taking the matter very shortly, would you agree that the  
15 problem with conditioning is that it's been used in two  
16 completely different senses, one as being a legitimate  
17 lawful object of maintaining the shock of capture by  
18 lawful means and the other as a deliberate use of  
19 hooding and stress positions in a way that is unlawful.

20 A. Yes.

21 Q. If it's being used and has historically been used in two  
22 senses, putting it shortly, something's got to be done  
23 about that, hasn't it?

24 A. Yes, I agree. That is something that we have looked at,  
25 yes. The use of the word "conditioning" itself is not

1 something that I like.

2 THE CHAIRMAN: The problem, as Mr Moss points out to you, is  
3 that a number of the witnesses in the Inquiry who gave  
4 evidence earlier said that "conditioning" had come to  
5 have a pejorative and unfortunate meaning and it really  
6 ought to go.

7 A. Sir, I agree.

8 MR MOSS: Perhaps in somewhat of a similar phrase, so far as  
9 the shock of capture is concerned -- it may be that  
10 other core participants will have more questions --  
11 S004, would you accept that even the phrase "shock of  
12 capture" is one that needs to be approached with  
13 caution, at least when it's being used in anything  
14 that's being said to soldiers on the front line,  
15 maintaining the shock of capture?

16 S004: No.

17 THE CHAIRMAN: The problem there is not so much the shock of  
18 capture, which is a description of what happens --

19 S004: Yes.

20 THE CHAIRMAN: -- a factual description; it is maintaining  
21 it that is the worry about that.

22 S004: Yes. I entirely see the point. The word  
23 "maintaining" was once upon a time replaced by the word  
24 "prolonging". I'm not sure why.

25 THE CHAIRMAN: Yes, it is the same thing.

1 S004: It's the same thing. That's where we need advice to  
2 say, "Actually by doing that, by prolonging or  
3 maintaining, you are actually, de facto, ending up with  
4 increasing the pressures artificially".

5 THE CHAIRMAN: Exactly.

6 S004: I take your point, sir.

7 MR MOSS: It is a point made by General Trousdell in his  
8 report to this Inquiry, but the essence of it being that  
9 telling a soldier at the front line to maintain or doing  
10 anything with the shock of capture frankly is to invite  
11 trouble because, whereas you may have a deeply embedded  
12 understanding of not increasing by artificial means  
13 exactly where the line is to be drawn, for the soldier  
14 on the front line who may be involved in combat with  
15 physical fighting with the CPERS and so on, "prolonging  
16 or maintaining the shock of capture", again perhaps  
17 a difficult phrase for the soldier on the front line to  
18 understand.

19 S004: We aren't training the soldier on the front line.  
20 We are training TQers, who will be a soldier on the  
21 front line but who will have the benefit of explanation.  
22 I do take your point that it could lead to that, but we  
23 try to ensure that TQers and interrogators leave the  
24 course with a very clear understanding of what is  
25 acceptable and what isn't within current policy.

1 Q. It may be that it is more applicable to the soldiers on  
2 the front line and more witnesses are coming for  
3 training evidence on Monday, but do you think that there  
4 might be scope for greater reliance and emphasis on that  
5 concept of firm, fair and efficient prisoner handling as  
6 guidance to what the prisoner handling part of the  
7 organisation should be doing, rather than prolonging the  
8 shock of capture?

9 S004: I'm reluctant to comment on the prisoner handling  
10 organisation and their training and understanding. It  
11 is outwith my experience.

12 Q. I understand that. Thank you. Dealing, then, with your  
13 teaching on shock of capture, if we just look at the  
14 presentation briefly that deals with it. It is at  
15 MIV010564. Again, it is just that it might be said that  
16 shock of capture is another area where there's a need  
17 for real caution in the sort of language that's being  
18 used. The phrase that's used on the slide here, S004,  
19 is "atmosphere of efficiency" as being one of the  
20 system-induced pressures which perhaps everybody  
21 understands how that has a role to play. But the  
22 speaking note refers to an "... atmosphere of  
23 ruthlessness ... very wearing. This is why we try to  
24 keep everything coldly efficient and like a well-oiled  
25 machine".

1           Again, a reference to an atmosphere of ruthlessness,  
2           is that not getting close to the line or perhaps  
3           overstepping it slightly?

4   S004:    Within the concept of firm, fair and efficient  
5           handling, that's -- I think that's acceptable.

6   Q.   All right. Over the page, to MIV010565, "System-induced  
7           pressures" I think the presentation here, S004, is  
8           dealing here with, as one sees at the top:

9           "Prisoner diet (may be repetitive and bland)."

10          And the speaking note:

11          "Bland or repetitive diet -- Geneva Convention  
12           stipulates that we have to feed our prisoners but we can  
13           dictate when he is fed within the guidelines set by  
14           [the] policy. Prison diets can be bland and  
15           repetitive."

16          That is not a suggestion, is it, that prison diets  
17           should be deliberately bland and repetitive for the  
18           purposes of system-induced pressures?

19   A.   Absolutely not. Having been the recipient of many bland  
20           and repetitive army meals, no.

21   THE CHAIRMAN: Far more than the rest of us.

22   MR MOSS: Is that distinction one that is made clear on the  
23           course, expanding on the speaking notes that are here?

24   S004: No. The ability for a TQer or an interrogator to  
25           actually influence what food is being produced is

1           virtually non-existent.

2   THE CHAIRMAN: I was going to say. Absolutely out, I would  
3           have thought, for a TQer.

4   A. For a TQer and for an interrogator to say he wants a  
5           particular food served --

6   THE CHAIRMAN: It is what the battalion or the battlegroup  
7           produces, hopefully in accordance with their cultural  
8           requirements.

9   MR MOSS: Finally, I have a list of various miscellaneous  
10           points that do not fall into any categories that I have  
11           asked you questions about so far. Can we just deal with  
12           those?

13           First of all, suitability of those doing the course,  
14           Brigadier Purdy, in his recent report, referred to  
15           concerns about the calibre, really, of those, S004, who  
16           were going through the course. What is the up-to-date  
17           position on that? Is that still something about which  
18           you have concerns?

19   S004: It is absolutely something I have concerns about.

20           If we get private soldiers being sent on the course, my  
21           own personal view is that they are not necessarily the  
22           right people. However, to put a blanket ban on junior  
23           soldiers would be wrong. We have many Royal Marines who  
24           are private soldiers as marines, who are excellent.  
25           They are mature, they are operationally experienced,

1           they bring a great deal to bear. But we have had other  
2           units send us junior soldiers clearly not of the right  
3           material and we find them unsuitable.

4   Q.   Captain Adams, do you know, from your vantage point, how  
5           that is now being taken forwards?

6   CAPTAIN ADAMS: The honest answer to that is that is now --  
7           I have read Brigadier Purdy's report. That is the --  
8           what I would do as the director of training is monitor  
9           that fear. We speak, I get feedback on the pipeline  
10          input and we have a monthly management board where we  
11          discuss issues such as failures on courses and the  
12          reasons for the failure, of which one of those could be  
13          on the pipeline input an inappropriate selection of  
14          soldiers to go on the course. So that is where it would  
15          filter to me.

16   THE CHAIRMAN: Isn't the answer to this that you ought to  
17          reject those who are unsuitable? You can't prescribe  
18          for a unit that they can't put a private or they must be  
19          sergeant rank or whatever. You want people who are  
20          capable and if you get someone who is no good, you --

21   S004:   That is absolutely what happens, Sir. We find them  
22          unsuitable. Students are either found suitable for the  
23          duty or unsuitable. We have no hesitation --

24   THE CHAIRMAN: So it doesn't matter where they come from.  
25          You know what you need and you reject them if they are

1 not up to it?

2 CAPTAIN ADAMS: Yes.

3 S004: Yes. It would be better if the units supplying us  
4 paid more attention to the needs, rather than just  
5 sending us the person who might be available.

6 THE CHAIRMAN: I am sure you make that clear to them.

7 MR MOSS: S004, can I ask you this? Everybody will  
8 understand that you can't script every word of  
9 a presentation and that it would be dull if you did so  
10 and kept to the script. How do you manage the need for  
11 consistency now between the instructors in these  
12 difficult areas, bearing in mind that one can't stick  
13 rigidly to a script?

14 S004: I'm a qualified assessor and I'll sit in on  
15 presentations, certainly of new instructors into the  
16 branch, to ensure that the style and presentation is  
17 acceptable and also the content.

18 One of the strengths of our courses, HUMINT -- human  
19 intelligence -- the discipline is an extremely dynamic  
20 discipline and what works for you might not work for me,  
21 and by having a range of instructors with different  
22 operational experience, that informs and illuminates the  
23 lessons, but they have core notes that they must work  
24 to, but, within that, they can talk about their own  
25 experience and what they have found to work.

1 Q. Thank you. The Inquiry has seen at least three areas  
2 now, I think, where teaching has moved on to deal with  
3 potential problems that have been identified: walking  
4 around blindfolded CPERS is one of them, the previous  
5 way in which the harsh was taught is another and implied  
6 threats and the way that that is taught, there have been  
7 changes -- material changes I think as well -- in recent  
8 months and years.

9 Is anything being done in terms of what might be  
10 thought of as the re-education of those who went through  
11 the course and had the previous teaching, perhaps  
12 particularly interrogators who would have a five-year  
13 qualification?

14 S004: The straightforward answer is no. Nothing is done  
15 for tactical questioners. That's one of the reasons  
16 they only have a short two-year qualification life to be  
17 a tactical questioner. The interrogators will get  
18 continuous ongoing professional development within the  
19 defence HUMINT unit where, once they qualify from us,  
20 they go to the DHU, will deploy, but they get ongoing  
21 training and then they will be in there for some time.  
22 One of the interesting nettles we have to grasp is,  
23 following your report in due course, how we communicate  
24 the recommendations out to the wider population.

25 Q. What about, S004, those where there have been

1 improvements already, which I understand you have made  
2 for every good reason, without waiting for the report of  
3 this Inquiry, is there a liaison link somehow with the  
4 HUMINT wing for operations so that interrogators who  
5 were trained three or four years ago are basically told,  
6 "You may have seen the harsh taught like this. This is  
7 now scaled back. Harsh is now limited in this way"?

8 S004: The officer commanding the interrogation company in  
9 the DHU was a student on our interrogation course two  
10 courses ago and his 2IC, she attended it on the first  
11 iteration of the new improved course. We have very,  
12 very close links with the DHU and ourselves, so that we  
13 have them in the branch talking about what new stuff  
14 they are getting from theatre, what works and how can  
15 we, within the TOs and EOs, improve things. They run  
16 for interrogation; they run the selection process into  
17 which we have a large input. So the links between  
18 E Company and I Branch are very, very close and  
19 developing all the time.

20 Q. But might that be strengthened yet further by having  
21 some sort of requirement that when you make a change --  
22 I don't mean a trivial one -- but a change of teaching  
23 that's material, that those in the DHU are told about it  
24 so that the ongoing CPD definitely reflects the changes  
25 in teaching approach that are made within your branch?

1 CAPTAIN ADAMS: I think as the director of training we would  
2 have to take that on board. We would either have to  
3 have some form of continuation training --

4 THE CHAIRMAN: Now, I'm quite anxious --

5 MR MOSS: Sir, we are very nearly there.

6 We know that interrogation in theatre would be  
7 video'd. Is there a process whereby interrogation  
8 videos are interrogated from the training viewpoint, so  
9 actual interrogation sessions are looked at by the  
10 training wing occasionally to check whether what is  
11 being done operationally is in accordance with training?  
12 Is that done at Chicksands?

13 S004: No, we don't see the videos. What I do is I've got  
14 an ongoing programme of detaching my instructors from  
15 the instruction branch out to theatre so that they  
16 actually keep their skills as interrogators honed and  
17 also observe the latest practices, paperwork, et cetera.  
18 They will go out -- normal tours are six months. They  
19 will go out for -- the last time it was three months.  
20 I'm hoping to shorten it to six weeks because I think  
21 the lessons can be learned. So they do go out and keep  
22 their skills up to date.

23 Q. That process whereby they observe the latest practice,  
24 is that a recent development?

25 S004: No, we all -- well, recent. We haven't been doing

1           interrogation very long in the current theatre. I think  
2           it was only -- I think 2008, July 2008. That's  
3           a speculation. We, as an entire branch, went out  
4           November last year to Afghanistan and stayed there some  
5           time observing and then, subsequent to that, my sergeant  
6           major went out on a tour, then one of my senior  
7           instructors, and I have a rolling programme for the  
8           others to go in due course.

9   THE CHAIRMAN: I think I've got the message there.

10   S004: Say that again, Sir.

11   THE CHAIRMAN: I've got the message from that.

12   MR MOSS: So far as life span is concerned, you set out two  
13           years for tactical questioners, five years for  
14           interrogators. Do those life spans apply to  
15           interrogators who qualified before the life span was  
16           brought in, if you see what I mean?

17   S004: If they qualified more than five years ago, their  
18           qualification has run out. They have to return and  
19           attend the course -- the new four-week course -- and  
20           re-qualify before they can be deemed as an interrogator.

21   Q. So the five-year qualification applies now regardless of  
22           when people qualified, even if they qualified before the  
23           five-year life span was brought in?

24   S004: If an operationally experienced interrogator returns  
25           from theatre today and his qualification runs out

1 tomorrow, he needs to attend the course regardless of  
2 that operational experience.

3 Q. Now I don't know whether just the last point of the clip  
4 of the film is ready to play on MATT 7. I think you  
5 will have had notice of this. Could we just have the  
6 current MATT 7 training film? It is just a very short  
7 clip that deals with the interrogation just at the end.

8 (Video played)

9 MR MOSS: Thank you. That is how the prisoner handling film  
10 at the moment ends in MATT 7. Before I ask any  
11 questions about it -- I appreciate it is not your  
12 film -- did you have any observations on it  
13 straightaway?

14 S004: I think the director who produced it may also have  
15 produced Spooks.

16 THE CHAIRMAN: I take it that is not a serious observation.

17 S004: I apologise, Sir, no. Dramatic dark atmosphere, the  
18 iron door slamming shut, the hint of menace is to  
19 over-egg the pudding considerably. Interrogation  
20 facilities are very brightly lit and the big slamming of  
21 the door thing just creates an atmosphere which is  
22 unrepresentative, Sir.

23 Q. As a matter of interest, had you seen that film  
24 previously to the Inquiry notifying you that I was going  
25 to ask questions about it?

1 S004: I watched it yesterday afternoon.

2 Q. It would be right to say, wouldn't it, that it's not  
3 very clear from that why sight deprivation is needed at  
4 all. I mean he does walk through a room with a red  
5 light on, which may be a signals room or may be all  
6 sorts of things, but there is no explanation on the film  
7 of why the goggles are being applied.

8 S004: No, there is earlier on. There is one bit where the  
9 guy is walked through and there's a lots of radio  
10 equipment.

11 Q. It doesn't come out very well on the screen.

12 S004: Not on that, no.

13 Q. But in terms of the layout and so on and nothing being  
14 explained about why goggles might be needed in some  
15 cases in bringing a CPERS through to an interrogation  
16 room, would you agree that that video leaves a lot to be  
17 desired?

18 S004: I think the whole of the video could do with being  
19 revisited. I think it is five years old now and in  
20 light of current experience could do if we have the  
21 money to do it.

22 MR MOSS: Thank you, Sir. Those are my questions.

23 THE CHAIRMAN: Ms Hetherington -- sorry, I should have said  
24 there will be questions probably from other counsel.

25 Questions to S004 by MS HETHERINGTON

1 MS HETHERINGTON: S004, just dealing first with conditioning  
2 and shock of capture and how that is currently trained  
3 on the courses, Captain Adams in his statement said that  
4 "conditioning" is currently referred to as being how  
5 a questioner may make use of pressures. We saw also the  
6 handout which says that it's the process by which  
7 advantage is taken of existing pressures that the  
8 prisoner is under.

9 I don't think we need to turn them up, but there are  
10 many references in the material to both self-induced and  
11 system-induced pressures and two of the self-induced  
12 pressures are fear of death and fear of harsh physical  
13 treatment. What I wanted to know was, on your courses,  
14 how do you train your questioners to make use of the  
15 fear of death or the fear of harsh physical treatment?

16 S004: We would observe the demeanour and approach of the  
17 captured person, whether they looked strong, arrogant,  
18 whether they looked fearful. You could make use of that  
19 by asking questions, "What is it you are afraid of?"  
20 The aim is to convert any individual into a willing  
21 source, somebody who is prepared to talk to you.

22 If somebody is fearful and scared, you may well use  
23 that to reassure them and it would be called, in our  
24 terms, "dislocation of expectation". If you are  
25 expecting a harsh time and actually somebody sits you

1 down, gives you coffee, cigarette, some snacks,  
2 whatever, and that dislocates your expectation. It  
3 might create some obvious areas to talk about. If you  
4 can start somebody talking on whatever the topic is,  
5 then you can gradually shape the topic and bring it  
6 around to where you want it to be.

7 Q. Are they told that they shouldn't take advantage or make  
8 use of fear of death or dying by failing to reassure and  
9 deliberately staying silent if a prisoner says that they  
10 are fearful of those things?

11 A. It is not incumbent on us to give the prisoner peace of  
12 mind.

13 Q. So they would be taught that it would be legitimate to  
14 stay silent or shrug shoulders if a prisoner approached  
15 them and said "I'm scared ..." --

16 THE CHAIRMAN: Not shrug shoulders, but stay silent.

17 MS HETHERINGTON: Stay silent. If a prisoner came into a TQ  
18 session and was asked, "What are you afraid of?", and he  
19 said "I'm worried that you are going to torture me or  
20 kill me," does the training suggest that it would be a  
21 legitimate --

22 THE CHAIRMAN: That is different again, what you are putting  
23 to him, to what you have said in the first place.

24 MS HETHERINGTON: What would the training say in that  
25 situation?

1 A. If, on being asked, the CPERS said, "I'm scared witless  
2 because I think you are going to give me a good  
3 beating", immediately -- the way it works on our  
4 exercises is we prompt our role-players to respond to  
5 reassurance. A number of the serials will have  
6 reassurance built into them. So the guy comes in scared  
7 and he is not going to answer anything until he gets  
8 reassurance. Recognise that he has the pressures of  
9 fear, ask him about it, and then you would reassure him.  
10 But nonetheless it is not our job to give the guy peace  
11 of mind. We may choose to do that, but we may choose  
12 not to do that.

13 Q. If you deliberately choose not to do that, are you not  
14 exacerbating his fear?

15 A. Not in my view, no.

16 Q. Just dealing with a different matter, but still related  
17 to the questioning process, the matter of changing  
18 position and allowing a change of position as an  
19 inducement. You were asked about that by Mr Moss and  
20 you explained that it was letting them change position  
21 in any way: if they are standing, they can sit; if they  
22 are sitting, they can sit in a different position.  
23 I just wanted to look at a slide adjacent to the one  
24 that you looked at with Mr Moss. The one we looked at  
25 was MIV010363. Within that presentation it was

1 MIV010369. The slide simply said "Let them change  
2 position".

3 Could we look at the previous page, MIV010368 and  
4 the first section of the speaking notes, which seems to  
5 say something slightly different to what you were saying  
6 earlier:

7 "Prisoners must not be seated too quickly (unless  
8 required because of health or age). Keep them standing  
9 and reward them with a seat if they are cooperating."

10 A. Yes.

11 Q. Does that not suggest that prisoners are deliberately  
12 kept in a standing position because that will be more  
13 uncomfortable for them and then can be used as a lever  
14 to make them answer questions?

15 A. I don't think standing has ever been in the category of  
16 stress positions.

17 Q. Perhaps not, perhaps yes in some cases, actually. But  
18 deliberately keeping someone in a fixed position in  
19 order that it makes it more uncomfortable for them and  
20 therefore they want to answer your questions in order to  
21 get out of that situation, is that not conditioning  
22 them?

23 A. No, I don't -- not according to me, no.

24 Q. On a different matter relating to the training on the  
25 prohibition on the five techniques, you were asked by

1 Mr Moss, in relation to the use of generators, whether  
2 it would be advisable to explain that practice, the use  
3 of generators to screen other questioning, might have  
4 been practised in the past but was now prohibited and  
5 you doubted that.

6 In relation to the five techniques, we saw in the  
7 legal presentation that students are rightly taught that  
8 those techniques were banned in the 1970s, after the  
9 Ireland case and the Heath statement. Do you think  
10 there ought to be some recognition that in some quarters  
11 at least that ban was lost in the interim and so  
12 students may have seen those techniques in previous  
13 operational tours, but that's not because the ban is  
14 somehow not to be followed, but because it was lost but  
15 has now been firmly re-established?

16 A. I'm not entirely sure it is my place to point out what  
17 was lost. But what I do to address that point, as  
18 I said earlier, at the beginning of any presentation  
19 I give at the start of a course, I will always address  
20 that to flag up that loss of knowledge, that loss of  
21 corporate knowledge. So I address that indirectly by  
22 saying "What are the five techniques? Give me one".  
23 It's surprising to me still that I don't get quick and  
24 spontaneous answers to that question from every  
25 audience.

1 THE CHAIRMAN: Anything else, Ms Hetherington?

2 MS HETHERINGTON: Just the last point. Just a point on the  
3 control of content and the systems. You have talked  
4 about what happens or doesn't happen in terms of  
5 informing people who have been trained in the past when  
6 the materials change. When you make a change on the  
7 system, what mechanisms are there to ensure that all the  
8 instructors are updated on that and are using the  
9 current materials and not some other materials that they  
10 have in their own personal possession?

11 A. Well, they wouldn't have their own personal materials  
12 which they would use. We have a folder which is TQ  
13 within which it would have admin, et cetera, et cetera,  
14 archive, presentations, handouts. They would go to --  
15 if it was a TQ course, they would go to the TQ  
16 presentation folder, open it and all the current  
17 material is in there and it is date stamped, but I title  
18 it with the date that the last change was made so they  
19 should always be working from the current material.

20 MS HETHERINGTON: Thank you. Thank you, Sir.

21 THE CHAIRMAN: Mr Garnham?

22 Questions to CAPTAIN ADAMS and S004 by MR GARNHAM

23 MR GARNHAM: Thank you, Sir. Just one matter which  
24 I address to both witnesses. I'll show you the piece of  
25 text in a moment, but at an earlier stage of this

1 Inquiry some of the lawyers involved attempted  
2 a definition of "stress position" and I have a question  
3 to both of you about the practicalities of that  
4 definition in the light of a question the chairman put  
5 to S004.

6 I wonder if we can have on the screen, please, the  
7 passage I have given notice of earlier from Day 107?  
8 Can you see, gentlemen, at line 9 the following  
9 definition was suggested:

10 "Any physical posture which a captured person is  
11 deliberately required to maintain will be a stress  
12 position if it becomes painful, extremely uncomfortable  
13 or exhausting to maintain."

14 My question to both of you is this: from a teaching  
15 point of view, were you concerned, if that definition  
16 were to be applied, that it might affect the ability of  
17 people in your position to teach the difference between  
18 stress positions and restraint positions? In other  
19 words, might a restraint position as currently taught  
20 offend against that definition? If I ask Captain Adams  
21 first, do you understand the question?

22 CAPTAIN ADAMS: Yes.

23 Q. Is there a risk that, were that definition enforced for  
24 stress positions, it would limit what you can teach  
25 about restraint positions?

1 THE CHAIRMAN: I would like the answer to this. It is very  
2 important. If it is something you want to think about,  
3 by all means do and let me know after lunch whether it  
4 is something you can agree with. It is, as I say, an  
5 important point.

6 MR GARNHAM: Sir, in case it helps the witnesses, I was  
7 going to rephrase it additionally in this way to ask  
8 whether there are circumstances in which a restraint  
9 position may become painful over time, a restraint  
10 position that you would want to teach in certain  
11 circumstances. That's the question I would like you to  
12 think about.

13 S004: As a teacher we don't teach restraint positions.  
14 That's for others qualified to do so. I think, in  
15 response to one of the questions from Mr Moss,  
16 I indicated that there could be circumstances in  
17 restraint -- remote though they might be -- which could  
18 lead to becoming painful over time whilst assistance was  
19 sought or whatever. There would be the remote  
20 possibility.

21 Looking at the definition -- or suggested definition  
22 there -- I don't see, as it stands, any difficulty in  
23 teaching that vis-a-vis restraint positions and stress  
24 positions.

25 THE CHAIRMAN: That is very fair. Perhaps Mr Barr would

1           like -- I'm not saying that I need this as something --  
2           that it must go to the fore, but I'm very interested in  
3           what it would do or may do to the trainers. You could  
4           let me know, perhaps, Mr Barr.

5 MR BARR: Yes. We will do that.

6 THE CHAIRMAN: I mean, it is a very fair question, but  
7           I don't think it's right that they just simple answer it  
8           off the cuff.

9 MR GARNHAM: I would much prefer it to be a thought-through  
10           answer because it seemed to me potentially important.

11 THE CHAIRMAN: I think it is a matter which corporately  
12           could be thought through and an answer given.

13 S004: It might be a question, Sir, better or also directed  
14           to those who teach C&R techniques to see if they would  
15           have difficulty, rather than us.

16 THE CHAIRMAN: That's why I think it is better that the  
17           answer comes from the MoD.

18 MR GARNHAM: Sir, that is the only matter I have.

19 THE CHAIRMAN: Ms Dobbin?

20 MS DOBBIN: No questions, Sir.

21 THE CHAIRMAN: Mr Barr?

22 MR BARR: No questions, thank you, Sir.

23 THE CHAIRMAN: Thank you very much. Well, our next witness  
24           doesn't come until 2 o'clock.

25           Thank you very much, both of you, for coming to give

1 evidence. I'm extremely grateful to you. You are now  
2 free to go and indeed we are free to go, but come back  
3 at 2 o'clock.

4 MR MOSS: Thank you, Sir.

5 (12.53 pm)

6 (The luncheon adjournment)

7 (2.00 pm)

8 THE CHAIRMAN: Mr Elias.

9 Please sit down.

10 MR ELIAS: Sir, may I call -- or perhaps I should say more  
11 accurately recall -- Brigadier David Yates, who was  
12 sworn in an earlier module of this Inquiry.

13 THE CHAIRMAN: Yes. Good afternoon.

14 DAVID YATES (called)

15 A. Good afternoon, Sir.

16 THE CHAIRMAN: Do sit down.

17 A. Thank you.

18 Questions of BRIGADIER YATES by MR ELIAS

19 MR ELIAS: Brigadier, you have given this Inquiry two  
20 statements in relation to this module.

21 A. That is correct.

22 Q. And you have now signed the statements?

23 A. Indeed I have, yes.

24 Q. I just wanted, for the record, your confirmation that  
25 the contents of those statements -- and the second

1 expands upon the first --

2 A. Yes.

3 Q. -- are true to the best of your knowledge and belief.

4 A. Yes, they are.

5 Q. Thank you very much.

6 Now Brigadier Yates, I don't say this in any way

7 remotely critically of you, but I think of the eight

8 volumes of documents that we have for this module,

9 almost two are because you have produced them to the

10 Inquiry.

11 If I say this -- I think "audit" may be too high

12 a word, but they have been gone through by the Inquiry.

13 A. Yes.

14 Q. But everybody may be pleased to know that I do not

15 propose to take you through anything like

16 a one-hundredth of those documents, but they have

17 enabled the Inquiry to ascertain, as far as we can, what

18 is happening on the courses that you have provided the

19 teaching materials for and we are grateful for that.

20 A. Yes.

21 Q. When I want to do this afternoon, if I may, is look at

22 the system in relation to the army's teaching of army

23 lawyers --

24 A. Yes.

25 Q. -- and other matters related to this. Then I propose to

1           come back to look at teaching strategy and to three of  
2           the courses in particular, perhaps just to throw up one  
3           or two aspects of those courses where it may be thought  
4           they have not caught up with current thinking and  
5           practice.

6   A.   Yes.

7   Q.   Can we then, first of all, please, have on the screen  
8           the first statement that you have made for this module?  
9           We find it at MIV006153.  You command the army's  
10          operational law branch, the OLB, based in Warminster.

11  A.   Yes.

12  Q.   You have delegated responsibility for training and  
13          deploying of army legal services officers in operational  
14          law.

15  A.   That's correct, yes.

16  Q.   I'm just wondering -- forgive me, Brigadier -- if it  
17          wouldn't be easier if you sat in the other seat.

18  A.   Of course.

19  THE CHAIRMAN:  It is closer to the microphone.  But you now  
20          have to turn it on.

21  MR ELIAS:  Sir, forgive me, we have a technical problem.

22                               (Pause due to computer malfunction)

23  MR ELIAS:  Yes, I think we are up and running again then,  
24          please.

25                               Could we have on the screen again, please, the

1 statement? Thank you very much. You make the point,  
2 Brigadier, in the first paragraph that it is the  
3 operational law branch which you command, the OLB, and  
4 in the footnote at the foot of the page, you say this:

5 "Operational law is much wider than the law of armed  
6 conflict and embraces the whole range of legal issues  
7 that impinge upon operations. Areas covered include the  
8 law of armed conflict, humane rights, criminal law,  
9 military discipline, administrative action cases, law of  
10 occupation, environmental law and the law of treaties  
11 and agreements."

12 A. Yes.

13 Q. I'm going to come back, as I have said, to look at  
14 training in just a little detail in a moment or two.  
15 Before doing that, can we look at one or two other  
16 matters that you touch upon in your statement? At  
17 paragraph 7, please, MIV006155:

18 "The selection of an individual to a specific post  
19 on operations ..."

20 You tell us this is carried out by the chief of  
21 staff and it is an essential part of the process.

22 "Not all operational lawyers' posts are the same and  
23 therefore choosing an officer with the appropriate  
24 experience, background (including attendance on the  
25 courses) and aptitude for the post is a key element ..."

1 Close consultation with the OLB will occur at this stage  
2 so the chief of staff has as much up-to-date information  
3 concerning the post as possible on which he will then  
4 base his selection. Having been selected the officer  
5 will then embark on his/her MST."

6 Mission-specific training?

7 A. Yes.

8 Q. You refer at paragraph 8 to mentors. This is a new  
9 concept or was a new concept when it was brought in,  
10 was it?

11 A. It's been developed since the operational law branch  
12 came into existence really. It was created back in  
13 I think 2003/2004. What we try and draw on is the  
14 experience from officers who have deployed from theatres  
15 such as Afghanistan to mentor officers who are about to  
16 deploy so they can pass on their personal experiences  
17 and their knowledge and so on.

18 Q. So you set out here:

19 "All lawyers have a mentor to guide them through the  
20 relevant documents, mentor them on exercise with their  
21 headquarters and facilitate contact with theatre  
22 lawyers."

23 A. Correct, yes.

24 Q. And also to pass on lessons learnt, as it were, from  
25 a personal perspective?

1 A. Yes, very much so.

2 Q. You there refer, in paragraph 8, to the personal  
3 pre-deployment letter which you send on appointment.

4 A. Yes, that's correct.

5 Q. I'll come back to that in just a moment.

6 Can we look, please, at paragraph 9, where you refer  
7 to Afghanistan and those currently undergoing  
8 instruction at OPTAG for deployment to Afghanistan.

9 A. Yes.

10 Q. Amongst the things there taught, you tell us now, are  
11 that "... until a detainee is handed over to the  
12 temporary holding facility ... the responsibility for  
13 the detainee remains with the detaining unit".

14 A. Yes.

15 Q. No cruel, inhuman or degrading treatment, they are  
16 taught.

17 A. Yes.

18 Q. Specifically they are taught that detainees are not to  
19 be hooded.

20 A. Yes.

21 Q. But you say that CPERS that are brought through an area  
22 of military sensitivity may be temporarily blindfolded  
23 to prevent them collecting classified information.

24 A. Yes.

25 Q. Can you assist? Is the teaching on that that

1           nonetheless the use of blindfold or goggles should be  
2           the last resort and avoided if it can be by every other  
3           means that can be properly taken?

4    A.   Very much so.  It should be for the minimum time that is  
5           absolutely necessary, and if you can create an  
6           environment, ie a geographic environment, that avoids  
7           the detainee passing sensitive areas, for example, then  
8           that is to be encouraged and that would avoid the use of  
9           goggles at all.  So it's very much as an absolute  
10          necessity and for the minimum amount of time.

11   Q.   That I understood.  But is that what is taught?

12   A.   That's my understanding, yes.

13   Q.   Do you know whether, for example, it is goggles that are  
14          taught that should be used or blindfolds or both?

15   A.   Certainly goggles that is taught by my staff, who  
16          present on OPTAG.

17   Q.   You tell us at the top of the next page in the same  
18          paragraph that it is taught that plasticuffs are to be  
19          applied to the front only and that only tactical  
20          questioners -- qualified tactical questioners that is --  
21          are to conduct tactical questioning.

22   A.   Yes.

23   Q.   You say that the OPTAG training would include advice on  
24          possible legal consequences of abusing detainees.

25   A.   Yes.

1 Q. There is reference to a recent court martial case there  
2 set out of March of this year and the consequences of  
3 assault in these circumstances.

4 A. Correct, yes, and other examples may be used as well.  
5 I cited that one simply as I know that was recently used  
6 in a training presentation by a member of my staff.

7 Q. In paragraph 10, Brigadier, you say:  
8 "It is stressed that service personnel are under  
9 a duty to report allegations or suspicions of detainee  
10 abuse by any party."

11 A. Yes.

12 Q. Can you give the chairman any indication of the  
13 importance that is placed upon that provision in  
14 training?

15 A. It's hugely important. It comes back really to the  
16 command responsibility aspect and it's trained -- and  
17 not just at OPTAG, but on a variety of courses to which  
18 army legal services officers present. We try and stress  
19 the importance of command responsibility and the  
20 importance of individual responsibility to have the  
21 moral courage to stamp out any abuse that is taking  
22 place and equally to report to the chain of command any  
23 abuse that they themselves witness.

24 Q. At paragraph 11 you come back to the pre-deployment  
25 letter to which I think you have already referred.

1 A. Yes.

2 Q. This is a letter that goes out on appointment, as  
3 you have explained. It also explains, you say, that  
4 "... each post requires specific training and that early  
5 communication with the present incumbent of the post is  
6 an absolute necessity".

7 A. Yes.

8 Q. To learn what is, as it were, in front of you?

9 A. Yes.

10 Q. I'm going to come back to the BLOC course, as it is  
11 referred to, in a moment. Can we just look at  
12 paragraph 14 please?

13 THE CHAIRMAN: Just before you go on to that, Mr Elias,  
14 "BLOC" is the brigade legal officers' course?

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

16 THE CHAIRMAN: So that I understand it, that means that  
17 those who are going to be in brigade headquarters, those  
18 legal officers?

19 A. It's a generic name, if I can put it that way. So it's  
20 for any legal officer who is deploying on operations,  
21 whether it's at brigade headquarters --

22 THE CHAIRMAN: Or division.

23 A. -- or a higher formation. It might even be the ISAF  
24 headquarters, which is a 4-star headquarters which  
25 commands the entire operation in Afghanistan.

1 THE CHAIRMAN: I follow. It doesn't signify any greater  
2 responsibility or different --

3 A. Absolutely not.

4 THE CHAIRMAN: -- legal knowledge required?

5 A. That is correct, Sir. It is for all lawyers deploying  
6 and it tries to give all of those legal officers  
7 sufficient training to prepare them for that deployment.

8 THE CHAIRMAN: Thank you very much.

9 MR ELIAS: I'm going to look at all the courses and I want  
10 to know to whom they apply when we look at it in just  
11 a moment.

12 Moving on, please, to paragraph 14, you say:

13 "In addition to the above processes [that is the  
14 processes particularly in relation to OPTAG and the  
15 other courses] each officer nominated to deploy will  
16 receive a letter specific to them ..."

17 Is that the same pre-deployment letter to which you  
18 referred or is this another one? Paragraph 14, just the  
19 first few lines.

20 A. It may well be -- I believe that's a separate letter.  
21 I think they will be written to by my training officer  
22 as well, setting out the training they require for the  
23 specific post or our understanding of that training.

24 Q. So what has now happened is the post has been looked at,  
25 as it were --

1 A. Yes.

2 Q. -- and what it may require, the previous training of the  
3 individual and his other attributes have been considered  
4 and now he gets a letter telling him, "You need to carry  
5 out this additional training" and so on. As you go on  
6 to say in this paragraph:

7 "This will identify any areas of weakness in the  
8 training already received by the officer and may require  
9 them to attend some of the courses ..."

10 Which you have described earlier in the statement.

11 A. Yes.

12 Q. Then we move on to paragraph 17, I think, in this  
13 process of appointment and taking up of the post.

14 "Immediately prior to deployment the legal officer  
15 will read the mission-specific 'country pack'."

16 What is the "country pack"?

17 A. The "country pack" would be a pack of material relevant  
18 to the country to which they were to deploy. So in the  
19 case of Afghanistan we will have one file of papers that  
20 will contain all of the latest and relevant  
21 documentation and guidance concerning the conduct of  
22 operations within that country. It may also contain  
23 additional information for situational awareness  
24 purposes as to the geography of the country -- any  
25 additional issues that would be beneficial for the

1 officer to know prior to deploying to that location.

2 Q. So in paragraph 17, as you say, in relation to  
3 Op Herrick, in Afghanistan you set out the documents  
4 that would be comprising the country pack for that  
5 purpose.

6 A. Yes, that's correct, but that's not an exhaustive list.  
7 The country pack is a large file containing lots of  
8 information over and above that. I think those are just  
9 the documents relating to detention operations.

10 Q. Thank you. Now then, "Having deployed", at  
11 paragraph 18, you tell the Inquiry, "the legal officer  
12 [appointed] will be asked to provide OLB through PJHQ  
13 J9 legal with updates of major developments in theatre.  
14 This would include issues or changes in policy  
15 concerning [for the purposes of this Inquiry] captured  
16 personnel."

17 A. Correct, yes, and that is so that we can just our  
18 training in relation to the next officer deploying to  
19 ensure that it is current and up to date and reflects  
20 the current guidance and direction and any areas of  
21 difficulty that have recently been experienced in  
22 theatre.

23 Q. What, if any, assurance, Brigadier, can you give the  
24 Inquiry as to the speed, if you like, with which such  
25 amendments are picked up and acted upon by OLB; the

1 feedback from the front, as it were?

2 A. It obviously relies on the individual and to some extent  
3 we rely on PJHQ to provide that information. Once the  
4 officer deploys to theatre, I don't have a command  
5 relationship in relation to that officer. He comes  
6 under the command of his brigade and his superior legal  
7 advice or guidance is given to him by PJHQ legal J9.  
8 But I instil in each officer, because I personally  
9 interview them before they deploy, the need to  
10 accurately report to us any changes and any problems in  
11 theatre that we then need to reflect in our own  
12 training.

13 So I can't give you an assurance because obviously  
14 you build in the personality aspect. You rely on the  
15 individual to follow that instruction when they are  
16 deployed and then you rely on PJHQ J9 legal to promptly  
17 pass that information to us so we can adjust our  
18 training. I'm not aware of difficulties that we've  
19 identified where there has been significant delay, but  
20 I'm in some difficulties assuring you that that process  
21 is immediate or takes place within X number of days  
22 following a change to guidance in theatre, for example.

23 Q. I understand. Then finally perhaps completing this  
24 aspect of selection and deployment in the way that you  
25 have outlined to us, at paragraph 19 you say this:

1           "Having completed their operational tour and as part  
2 of the 'recover' phase, the legal officer is immediately  
3 required to prepare a post operational report."

4           So there is a debrief effectively.

5 A. There is a debrief. It is both written and oral. So he  
6 sits in front of a team of officers, possibly two or  
7 three officers, who will take the officer through their  
8 written post operational report and try and extract and  
9 suck out as much information as they possibly can to  
10 enable us to drive our training both for the army and  
11 for lawyers deploying in the future.

12 Q. That will happen in every case, will it?

13 A. That will happen in every case, yes.

14 Q. You say that specific questions would be asked in the  
15 post operational report of the legal officer which would  
16 include questions relating to legal compliance and any  
17 further recommendations that he may wish to make.

18 A. That's correct. I believe I have actually produced  
19 a copy of the post operational report to the Inquiry  
20 which does contain sections, for example, dealing with  
21 CPERS and issues over ICRC inspection or various other  
22 matters that I think we try and extract as much  
23 information as we possibly can.

24 Q. You have. I don't take us to it, but it can be found at  
25 MIV006161. You say that this report is followed up by

1 a formal interview at OLB to capture recent lessons  
2 learnt.

3 A. Correct, yes.

4 Q. So the recent lessons learnt will themselves be  
5 recorded?

6 A. That is correct, yes.

7 Q. And, again, can you assist the Inquiry not only with the  
8 speed with which those lessons learnt may be picked up,  
9 but the practical way in which they are then dealt with?

10 A. Because you have a team of three lawyers doing it, they  
11 then will sit down and have a discussion as to what  
12 changes to training need to be made, whether that's  
13 training to the army, if we identify failings of  
14 training or we identify that we should be doing things  
15 better. Equally, in relation to the lawyer, if the  
16 lawyer tells us that they don't feel they were  
17 particularly well prepared in a certain area of the work  
18 on which they were required to provide guidance or  
19 advice, again we will seek to adjust our training  
20 accordingly to deal with that issue in the future.

21 Q. To make it clearer or the message simpler --

22 A. To make it clearer or to add additional value. So if  
23 there's not quite a omission, but if we could say more  
24 on a particular subject that would help deploying  
25 lawyers or indeed soldiers who are about to deploy, then

1 we will try to adjust our training accordingly.

2 Q. Thank you. Then can we look, please, at training in  
3 just a little detail? You refer to it at paragraphs 3  
4 and 4 of your statement, MIV006154, where you tell us  
5 that:

6 "The OLB was established in 2003 following a review  
7 ..."

8 At line 3:

9 "The review ... led to the creation of the post of  
10 brigadier operational law who has oversight and  
11 responsibility for all aspects of operational law within  
12 the army. One of the key responsibilities of the OLB is  
13 to train ALS officers and indeed the wider army in  
14 operation impractical law ...", which you have defined  
15 in that footnote.

16 A. Yes.

17 Q. "In relation to the training given to ALS officers this  
18 falls into two categories. The first category is  
19 specific career courses ... the second ... relates to  
20 mission-specific training ..."

21 A. Yes.

22 Q. Can we have a look, please, at a document that we find  
23 at MIV004499?

24 THE CHAIRMAN: Yes.

25 MR ELIAS: "DALS training strategy", dated July 2007:

1           "Introduction.

2           "Regular ALS officers should follow a mandated  
3 career training path as part of their career  
4 development."

5           The last three or four lines of the paragraph, the  
6 intent is:

7           "... to ensure that they develop and reinforce the  
8 knowledge and experience expected of legal officers  
9 across the range of ALS work undertaken throughout  
10 a career. All directed training is to be supported by  
11 the ALS chain of command."

12           Then under "Definitions" in paragraph 3, there are  
13 set out the three distinct tiers of training.

14           "First tier training is defined as training that  
15 delivers the core competencies expected of all ALS  
16 officers. It is intended that eventually all ALS  
17 officers should complete these courses."

18           That is what was being said in 2007. Is that now  
19 the position, that all ALS officers do --

20 A. Do complete all of those courses?

21 Q. -- complete the first tier courses?

22 A. It would depend on the length of an officer's career of  
23 course, because certain officers will do their short  
24 service commission and then will leave army legal  
25 services either because they decide to or there is no

1 space for them in the structure to have a full career.  
2 So I would say officers who serve to a full career will  
3 complete all of those courses or should complete all of  
4 those courses, but it really depends subjectively --

5 Q. It may take a career to do it?

6 A. -- subjectively on the career of that officer, yes.

7 Q. I understand. But you do say that first tier courses  
8 are mandatory.

9 A. The training strategy says that, yes.

10 Q. At (b):

11 "Second tier training consists of supplementary  
12 directed career courses that will assist an officer's  
13 career development in the longer term. The majority of  
14 officers should aspire to undertake some ..."

15 And:

16 "Third tier training consists of those supplementary  
17 courses required in order for an officer to undertake  
18 specific postings or roles."

19 Self-evidently not all ALS officers will complete  
20 such courses.

21 A. Yes.

22 Q. There is then a table, if we go over two pages, please,  
23 to MIV004502, annex A of this document, which under  
24 table A sets out mandatory core training. We can see --  
25 and I don't read them out, Brigadier -- a host of

1 courses set out here.

2 A. Yes.

3 Q. It would be right to say, would it, that 2, the  
4 captains' operational law course, is sometimes  
5 abbreviated to COLC?

6 A. Yes.

7 Q. At 8, the brigade LEGAD operational law course, the  
8 BLOC, and at 9, the intelligence legal issues seminar  
9 are perhaps, of them, the more or most important ones  
10 dealing with prisoner handling.

11 A. That would be correct, yes.

12 Q. I'm just going to ask you a little about those courses  
13 in the moment. Can we go over the page to MIV004504 and  
14 annex B? These are directed career courses. I don't  
15 propose to ask you anything specific about these  
16 matters, but we can see, can't we, from, for example,  
17 number 2 in the external courses that there is a bespoke  
18 training course for colonels and above.

19 A. Yes.

20 Q. Higher level training and IHL.

21 A. That's correct, yes.

22 Q. Then at table C at the next page, please, annex C,  
23 "Directed role specific training", and under the heading  
24 "External courses", as they perhaps not largely but  
25 frequently appear to be, we see courses held in such

1 exotic places as San Remo, Oberammergau, Charlottesville  
2 and so on.

3 A. Yes.

4 Q. Again I don't propose to ask you any detail about any of  
5 those directed role specific courses, but to look  
6 specifically at what I'll call the "core courses" and  
7 the three that I have highlighted.

8 A. Yes.

9 Q. Those three courses that I have highlighted, Brigadier,  
10 would be courses which you might expect, at a relatively  
11 early stage, your ALS officer to have participated in?

12 A. Certainly the captains' course, yes. It really is  
13 dependent. The brigade legal officer's course, I would  
14 say most ALS officers are getting that course within the  
15 first two or three years now because of the tempo of  
16 operations and the number of officers that are  
17 deploying, because we try and give that course to every  
18 officer before they deploy and every officer whenever  
19 there is available space on that course.

20 THE CHAIRMAN: Does a legal officer, ALS legal officer,  
21 enter the service as a captain?

22 A. Yes, he does, sir, yes. He is commissioned as  
23 a captain.

24 THE CHAIRMAN: Yes, commissioned.

25 MR ELIAS: So all entrants, it follows, does it, will be

1 eligible at least for the captains' course --

2 A. Yes.

3 Q. -- and will all be eligible for the BLOC?

4 A. Yes.

5 Q. What about the international legal issues seminar?

6 A. Which?

7 Q. Forgive me. In the list it was --

8 A. Is that at Oxford or ...?

9 Q. It is number 9 in your list. Can we go back, please, to

10 MIV004502?

11 A. Sorry, intelligence legal issues seminar, yes. Yes.

12 Q. Forgive me, I said "international", didn't I, and

13 I should have said "intelligence".

14 A. Sorry.

15 Q. It is my fault entirely. Will that course be open -- at

16 least open -- to all?

17 A. Yes, but the driver will normally be an operation or

18 a forthcoming operational deployment.

19 Q. Now first of all may I deal, please, with the BLOC

20 course? I think you deal with that, do you, in your

21 statement beginning at paragraph 11, where you tell us

22 the BLOC is generic. You said that to the chairman

23 a few minutes ago.

24 "... mandatory for all deploying ALS officers unless

25 as stated above the deployment is so urgent as to

1           prevent attendance. This course was first introduced in  
2           2006 and now takes place over a nine-day period ..."

3           I think in one statement you said ten, but it is  
4           nine, is it?

5   A. I apologise for the confusion. Yes, we reduced the  
6           course by one day.

7   Q. "The aim of the course is to instruct ALS officers in  
8           operational law in order to prepare them for duties on  
9           operations. It fuses high level theory of LOAC,  
10           operational law and policy issues with tactical  
11           experience from operators and lawyers alike."

12   A. That's correct, yes.

13   Q. You describe the course at 12, consisting of "...  
14           presentations from prominent civilian academics,  
15           military lawyers as well as operational practitioners,  
16           such as attack helicopter pilots, infantrymen, artillery  
17           forward observation officers."

18           On the nine-day course, one of the days is devoted  
19           prisoner handling issues?

20   A. That's correct, yes, yes. We will also, if they are  
21           available -- that's not an exhaustive list of who  
22           presents -- we will invite others, say from the ICRC, to  
23           present on the course, and we have a course running  
24           towards the end of this month where we do actually have  
25           a representative from the ICRC carrying out

1 a presentation for us.

2 Q. I understand.

3 THE CHAIRMAN: Do any legal officers ever get out deployed  
4 into theatre at battalion level or company level and see  
5 what the ordinary soldier is getting up to?

6 A. Officers will deploy, but only during the course of  
7 their initial training. We train our officers and then  
8 we send them on what's called a three-month infantry  
9 attachment to an infantry unit, where they provide no  
10 legal advice to the battalion --

11 THE CHAIRMAN: Where they do the job that the ordinary --

12 A. -- but they get experience of the soldiers and the way  
13 they conduct their duties on operations. It may not be  
14 that we can send our lawyers on operations all of the  
15 time, but they will certainly get experience of working  
16 with the battalion and working with soldiers at least  
17 for three months before they arrive for their first  
18 legal job in post.

19 THE CHAIRMAN: I follow. Is that long enough to make sure  
20 that they understand the problems, difficulties and the  
21 rest of it that concern an ordinary soldier and  
22 a platoon commander?

23 A. I think it is, yes, Sir. Three months is quite a -- and  
24 we try and do it at a time when the battalion is busily  
25 engaged either on operations or on training perhaps in

1 Canada or Kenya. So they work in the field, they live  
2 in the field with the soldier and they can see the  
3 difficulties and the problems that the soldier  
4 experiences on a daily basis. We do have to balance the  
5 three-month period against the need actually to get the  
6 officer providing us with some legal work.

7 THE CHAIRMAN: Up and running.

8 A. So it's a balance between three months of exposure to  
9 the army and the necessity to get the officer into  
10 a legal post so he can start providing advice to the  
11 chain of command, for example.

12 THE CHAIRMAN: And they wouldn't ever have a refresher  
13 course of that nature?

14 A. No, sir, they won't.

15 THE CHAIRMAN: All right.

16 A. But if you're serving with one of the deployable  
17 divisions, for example, or one of the deployable  
18 brigades, you will have interaction with units at  
19 a lower level.

20 THE CHAIRMAN: Yes, you have a better idea of what goes on.

21 A. Of course, Sir, yes.

22 THE CHAIRMAN: Thank you.

23 MR ELIAS: You might, might you, in that three months, as  
24 a lawyer, be exposed to some of the legal issues that  
25 are thrown up by the troops on the ground?

1 A. That's correct, yes, very much so.

2 Q. You go on to say in paragraph 12:

3 "Whilst generic, a heavy emphasis is placed on

4 current operations. The course is not examined

5 formally, but students are tested by means of seminar

6 participation. Any officer who is weak in any specific

7 area is identified and given a programme of remedial

8 training."

9 A. That's correct, yes.

10 Q. Paragraph 13, Brigadier, you refer in just a little

11 detail to the prisoner handling issues that are provided

12 for in the day set aside.

13 A. Yes.

14 Q. You say it "... includes presentations under the

15 following titles, 'Detention on operations' ..."

16 A. Yes.

17 Q. There is reference to JSP 1-10, "... 'Tactical

18 questioning and interrogation' and 'Prisoner handling,

19 a custodial perspective'."

20 A. Yes.

21 Q. You say it comprises syndicate problems to test their

22 understanding of the subject --

23 A. That's correct, yes.

24 Q. -- and that the BLOC has an international reputation for

25 providing first class operational law training,

1           attracting legal officers from other nations, which you  
2           set out in that paragraph.

3    A.   Yes.

4    Q.   Can I just ask you, please, to look at one or two of the  
5           presentations from the BLOC course which you have  
6           provided to the Inquiry?

7    A.   Yes.

8    Q.   If you look, please, first of all at MIV007196.  This is  
9           a PowerPoint presentation, Brigadier, I think entitled  
10          "Prisoner handling, a custodial perspective".

11   A.   Yes.

12   Q.   And as we, I think, can see from the first page -- can  
13          we go over to the second -- not presented by a lawyer --  
14          that isn't a criticism, but that is the fact.

15   A.   Correct, yes.

16   Q.   -- but by the provost marshall staff.

17   A.   He is actually the defence subject matter expert for  
18          prisoner handling and custody.

19   Q.   Within that team, as it were?

20   A.   Well, across defence, the provost marshall army,  
21          Brigadier Forster-Knight is the defence subject matter  
22          expert for prisoner handling and custody and therefore  
23          it is deemed appropriate for that presentation to be  
24          delivered by a member of his staff.

25   Q.   I understand.  Can we have a look, then, please at

1 page MIV007235, where there is the slide referring to  
2 the UK doctrine on proscribed techniques.

3 A. Yes.

4 Q. This will be, will it, as far as you are aware, the  
5 current teaching?

6 A. I can't say precisely how old that presentation is. I'm  
7 assuming that the presentation is the last one that was  
8 delivered on the last course.

9 Q. Thank you. We see what's said about the following five  
10 techniques.

11 "... practices are never to be used.

12 "Stress positions ..."

13 And I'm not going to trouble you with it, but there  
14 is the definition that the Inquiry is now familiar with,  
15 "... intended to cause physical pain and exhaustion".

16 "Hooding -- putting a bag or sandbag over a captured  
17 or detained person's head."

18 Over the page, "Subjection to noise" again refers --  
19 and the Inquiry has debated this now at some length,  
20 Brigadier. I'm not going to trouble you with it, but  
21 just to point it out.

22 A. Yes.

23 Q. -- to a continuous loud or hissing noise. As you are  
24 probably aware now, some issues have been raised in  
25 relation to each of those definitions and the way that

1           they are put forward.

2    A.   Yes.  I think that there is another presentation,  
3           I recall, that is trained by my officers, which I think  
4           is far more to the point with regard to the noise issue,  
5           if I can put it that way.

6    Q.   That I suppose raises one of the issues with which the  
7           Inquiry has been concerned and that is to ensure that  
8           there is consistency of training across the board,  
9           whether it's lawyers, soldiers, commanders or whoever.

10   A.   There are steps being taken that seek to address that.  
11          I don't know if you wish me to deal with that now or  
12          later in questioning.

13   Q.   Can I come back to that?  It is an important matter  
14          I wanted to ask you about --

15   A.   I agree with you entirely.

16   Q.   Can I come back when we have looked at the course?  And  
17          indeed not only, as it were, as between different  
18          groups, soldier, lawyers and so on, but it is important,  
19          isn't it, that the same groups, lawyers, are all being  
20          given the same message --

21   A.   Indeed.

22   Q.   -- so there is no room, if we are chatting, having been  
23          on different courses, having been given slightly  
24          different messages.

25   A.   Yes.

1 Q. I'll come back to that consistency in a minute. Can we  
2 move on -- I'm just taking some of these by way of  
3 example -- to MIV007270. This is a slide showing  
4 blacked-out goggles. Do you know what instruction is  
5 given in relation to those?

6 A. No, I am afraid I don't. I can certainly find out for  
7 you, but I haven't personally sat through this  
8 presentation.

9 Q. I follow. But it would be important, wouldn't it, that  
10 when that slide is being shown, there is clear  
11 instruction as to the circumstances in which it may be  
12 proper to deprive of sight at all?

13 A. Absolutely, yes.

14 Q. Taking other means to avoid the use of goggles, for  
15 example, would be another message that should be given  
16 strongly?

17 A. Of course it should, yes.

18 Q. That these should be, if you like, a last resort. And  
19 so I suppose the handout from the course, the teaching  
20 on the course, these have all got to be consistent to  
21 give the same message?

22 A. Yes.

23 Q. There doesn't appear to be, in relation to this course,  
24 anything said in the presentation about the limits that  
25 may be placed upon tactical questioning. Is that

1           because it would be a subject covered somewhere else?

2   A. I'm in some difficulty, because I haven't sat through  
3       all of the presentations on this course, in answering  
4       that question, unless you can draw me to a -- you are  
5       simply saying it is omitted?

6   Q. From this particular presentation. It isn't there. It  
7       may be that it is deliberately not there because it is  
8       taught somewhere else. But you would certainly expect  
9       limits on TQing to form part of what lawyers need to  
10      know?

11   A. Of course I would, yes. But is this still the prisoner  
12      handling presentation?

13   Q. Yes.

14   A. I would suggest that it's taught elsewhere in the  
15      course. I am afraid I'm in some difficulty without  
16      looking through all of the course material.

17   Q. I don't, of course, speak for the chairman, but I don't  
18      think the Inquiry is going to, as it were, want to  
19      specify what should be in every aspect of every course.  
20      But the Inquiry will be concerned to understand that  
21      there is an appreciation that all these matters need to  
22      be part of the course for army lawyers.

23   A. I would accept that entirely, absolutely.

24   Q. Similarly on this particular prisoner handling  
25      presentation, there didn't appear to be anything that

1 puts limits on the use of restraint techniques and gives  
2 specific guidance in respect of them. Again that's  
3 something that lawyers need to know about?

4 A. Yes, that would be correct.

5 Q. Therefore you would -- if it's not in this. I may be  
6 wrong about it, but I think it's not in this course --  
7 if it is not here, you would expect to find it somewhere  
8 else, would you?

9 A. I would indeed, yes.

10 Q. You say in paragraph 4 of your statement -- could I just  
11 go back to that for a moment, please -- towards the end  
12 of the paragraph on the second page, please, four lines  
13 from the bottom of the paragraph:

14 "It should be noted that it is now mandatory for all  
15 ALS officers deploying on operations, whatever their  
16 rank, to attend the BLOC, unless the urgency of the  
17 deployment prevents this ..."

18 As you told us a little earlier.

19 A. Yes.

20 Q. "... in which case prior to deployment they are given  
21 bespoke personal training in order to fill this gap."

22 A. Correct, yes.

23 Q. How in practice is that delivered?

24 A. It may be on a one-to-one basis or may be a series of  
25 presentations dealing with the subject matter that the

1 officer will have to advise on in theatre, for example.  
2 So it may be presentations from PJHQ. It's difficult to  
3 identify specific areas that may be covered without  
4 knowing the specific post and the urgent deployment that  
5 results in the officer having to go at short notice.  
6 For example, it may be a post he's going to where all he  
7 will do is provide disciplinary advice to the chain of  
8 command, in which case he would go to the advisory  
9 branch of ALS and have a bespoke one week's course on  
10 the issues that he needs to know in order to provide  
11 advice to the chain of command, for example, purely on  
12 disciplinary matters.

13 Q. To your knowledge, if I may call them, the "bespoke  
14 courses" are filling the relevant gaps, are they?

15 A. Correct, yes, or seek to fill the relevant gaps.

16 Q. That is really what I'm asking you. Do you know whether  
17 in fact they are?

18 A. They will fill the relevant gaps, yes.

19 Q. May I turn, Brigadier, then to the captains' course?  
20 Just perhaps to pick up on one aspect of it only, again  
21 by way of example if I may, can we look again at  
22 MIV009369? We can see the title of it.

23 A. Yes.

24 Q. I would just draw your attention, if I may, to the date  
25 of February 2005, issue 5.

1 A. Yes.

2 Q. What is said on the right-hand side:

3 "This publication supersedes army code 71130  
4 (April 2001)."

5 A. Yes.

6 Q. In this document, can we please go to MIV009396? Part  
7 of the course -- the top half of that page, please --  
8 can you read it now it's enlarged?

9 A. Yes.

10 Q. "Basic protection of prisoners of war", references to  
11 the Convention, and items 7 to 11 set out the basic  
12 protections.

13 "It is important to remember that prisoners of war  
14 are in the hands of the enemy state and not the  
15 individuals or units which capture them."

16 A message that I think we saw in Module 2 of this  
17 Inquiry.

18 A. Yes.

19 Q. "Prisoners of war must at all times be humanely treated.  
20 Any unlawful act or omission ... causing death or  
21 seriously endangering ... is prohibited and may lead to  
22 individuals responsible facing prosecution for war  
23 crimes.

24 "Prisoners are entitled in all circumstances to  
25 respect for their persons and their honour ...

1           "Prisoners must be provided with free maintenance  
2           and medical attention.

3           "There must be no adverse discrimination on account  
4           of race, nationality ...", and so on.

5    A.   Yes.

6    Q.   And at MIV009403, under the heading "Chapter 9 --  
7           service discipline":

8           "Military persons are required to obey lawful  
9           commands but must not obey unlawful commands.  If a  
10          soldier carries out an illegal order, the fact that a  
11          crime has been committed by a person pursuant to an  
12          order of a Government or of a superior shall not relieve  
13          that soldier of criminal responsibility ..."

14          So again that is clearly part of the course that is  
15          taught.

16   A.   Yes.

17   Q.   At 2:

18          "Orders to commit genocide or crimes against  
19          humanity are manifestly unlawful."

20   A.   Yes.

21   Q.   And then at 3:

22          "Breaches of the law of armed conflict ..."

23          And at 4 -- and perhaps I may just underline this as  
24          being taught as part of this course in 2005:

25          "Commanders, at all levels, can be held responsible

1 for the acts of their subordinates, where a commander  
2 knew or, owing to the circumstances at the time, should  
3 have known, that his subordinates were committing or  
4 about to commit offenses and he failed to take all  
5 necessary and reasonable measures within his power to  
6 prevent or repress their commission or to submit the  
7 matter to the competent authorities for investigation  
8 and prosecution."

9 A. Yes.

10 Q. So, if I may say so, in the soldier's guide to the law  
11 of armed conflict, those matters would appear to be set  
12 out in plain and clear terms. Can we just go back to  
13 MIV009369? Just reminding ourselves that's the title of  
14 the presentation, there is no mention in this of the  
15 five techniques at all or any prohibition upon them.

16 A. No, because it's a soldier's guide to the law of armed  
17 conflict. So that document, which is a relatively  
18 old -- this is an army pamphlet, if I can put it that  
19 way, specifically dealing with war-fighting operations  
20 in which individuals will receive their protections  
21 under the Geneva Conventions, as opposed to under the  
22 European Convention on Human Rights, for example.

23 Q. So does it come to this: whilst this may not appear, as  
24 it were, in this presentation or handout, if that's what  
25 it be --

1 A. Yes.

2 Q. -- you would nonetheless expect the five techniques and  
3 the prohibition upon them to be dealt with somewhere  
4 else?

5 A. Yes. But I must stress this is a very short  
6 introductory course to relatively junior officers, so we  
7 may just simply concentrate on the building blocks of  
8 the law of armed conflict without going into the  
9 complexity of current operations which would be dealt  
10 with in greater detail in the brigade legal officer's  
11 course.

12 Q. But it may be said, Brigadier, that if this is designed  
13 for lower ranks, without going into any detail of  
14 operations, if there have been troubles, as perhaps  
15 there have been over years now, in the message as to the  
16 five techniques getting home, this might be, at  
17 a relatively early stage, a simple way of reinforcing  
18 it: put five prohibitions here?

19 A. That's correct, yes.

20 Q. That's all I want to ask you about the COLC course. May  
21 I just ask a little, please, about the international  
22 legal issues seminar? This really touches, if I may say  
23 so, upon the question of consistency and coordination of  
24 training.

25 A. Yes.

1 Q. Can we have a look, please, at MIV003488?

2 THE CHAIRMAN: This is one of the ones we looked at this  
3 morning.

4 MR ELIAS: We did.

5 As we understand it, it is a Chicksands training  
6 presentation --

7 A. Yes.

8 Q. -- but used, as we understand it, in the international  
9 legal issues seminar. Can we look, please, at MIV003532  
10 at one of the slides in the course? This has been  
11 canvass with the Inquiry indeed a number of times this  
12 morning, so I'm not going to take time with it, but just  
13 to ask you to look at it with me. There are a number of  
14 things in relation to the slide which is headed  
15 "Stress/restraint positions".

16 A. Yes.

17 Q. Can we look at just the last bullet point which I think  
18 is red in the original, if we had colour on the screen.  
19 "Under no circumstances can a restraint position  
20 ever being used solely for the purpose of conditioning  
21 the detainee."

22 Do you see that?

23 A. Yes.

24 Q. If that is taught, do you know why it is taught in that  
25 way? What is the meaning of "not to be used solely for

1 the purpose of conditioning"?

2 A. Without the speakers' notes it's very difficult for me  
3 to comment on a slide that's presented in front of me.

4 Q. I was about to intervene and say maybe it is unfair to  
5 invite you, as it were, to justify without the whole of  
6 the course and allowing yourself the notes that may have  
7 accompanied it. But perhaps I can put the matter the  
8 other way round: it may, mightn't it, be giving an  
9 unhappy and mixed message to give any suggestion that  
10 stress or restraint positions can be used at all for the  
11 purposes of conditioning?

12 A. It appears on the face of it to be open to that  
13 interpretation, yes.

14 Q. And that would be an unfortunate thing, wouldn't it?

15 A. Correct, yes.

16 Q. If we go over the page -- and again this was dealt with  
17 this morning and the chairman has the point, I know,  
18 well in mind because it was dealt with so recently --  
19 excess noise, sleep deprivation and food and water  
20 deprivation, only if there is valid operational reasons  
21 may these techniques be used. Again, it may be  
22 a somewhat unfortunate and mixed message, mightn't it,  
23 that excess noise may be deliberately used, as it were,  
24 against a prisoner for any purpose?

25 A. The slide could clearly be more explicit with regard to

1 an explanation over excess noise and its exposure to  
2 captured persons.

3 Q. Yes.

4 A. I agree.

5 THE CHAIRMAN: I didn't realise before that the Inquiry  
6 featured quite so prominently in these slides.

7 A. Yes. It's important to get the message home to  
8 individuals as to the consequences of getting things  
9 wrong.

10 MR ELIAS: So perhaps at this moment we come back, do we, to  
11 the question of consistency of message as between all  
12 other branches of the services, not only the army of  
13 course and certainly not only the lawyers.

14 A. That's correct, yes.

15 Q. I think you were going to tell the chairman that some  
16 steps were in place to assist in this regard.

17 A. Yes, it arises from the army inspector's report, and he  
18 made a recommendation -- and I am afraid I'm talking off  
19 the top of my head without having the report in front of  
20 me. But one of his key recommendations was to develop  
21 a LOAC training directive for the army which would place  
22 responsibility on the holder of my post to do  
23 an assessment of all training delivered both to lawyers  
24 and to the wider army, both from phase 1 training, when  
25 they walk through the door of their barracks to start

1           their training as a soldier for the first time, right  
2           through to the end of their career to identify the  
3           relevant career courses where LOAC and operational law  
4           training in the wider context should be delivered to  
5           both soldiers and officers of an appropriate standard  
6           and level.

7           What the idea behind the proposal is -- and I have  
8           to say we are the firm drivers of this -- is to  
9           inculcate in both soldiers and officers the correct  
10          legal and moral way of conducting their operations at  
11          the immediate start of their career and develop that to  
12          ensure that they are fully aware of their legal  
13          obligations, they are fully aware of the context in  
14          which they should be conducting their operations.

15          It requires us to look at every course that is  
16          delivered by the army, which is a huge task, of course,  
17          and to decide what is the appropriate level of LOAC or  
18          operational law training that should be delivered on  
19          that course to ensure that we are developing our people  
20          from the start to the end of their careers to act in  
21          a responsible and lawful manner so it becomes second  
22          nature to them on the battlefield, for example.

23          Part of what you have been driving at is the  
24          incoherence and inconsistency both in terms, I'm sorry  
25          to say, of legal training that has been delivered and

1           also training, I would suggest, that is being delivered  
2           to the army across the board that we need to get a grip  
3           of. We need to properly identify how it should be  
4           delivered and then we need to audit and check the  
5           effectiveness of that training.

6    Q.   So that we understand it, are you saying that putting  
7           this process, if you like, in your hands -- in the hands  
8           of one authority -- will at least ensure consistency of  
9           the message that is delivered?

10   A.   Correct, because there may be legal training that we are  
11           unaware of at the present moment in time, for example,  
12           being delivered by arms and service directors -- so  
13           commander Royal Artillery or other individuals -- that  
14           they have prepared themselves, that they are delivering  
15           themselves, that we've never even had sight of, which  
16           may be legally inaccurate, for example, may be giving  
17           poor lessons or whatever it might be. So we need to get  
18           a proper assessment done of what training is required  
19           and how that training can best be delivered.

20   Q.   You just raised the point that I was going to ask you as  
21           the next. Is it envisaged, then, that not only will  
22           delivery be in one hand, as it were, so consistency will  
23           follow, but that there would be -- because it is  
24           an issue which has been raised with the Inquiry a number  
25           of times now -- effectively a legal audit of all

1 training in this area?

2 A. Correct. An audit in terms of the numbers so we know  
3 precisely who has been trained in what throughout their  
4 career and an audit in terms of assessing the  
5 effectiveness -- and it may well be that it is not the  
6 lawyers that do that, but the army does have its own  
7 training regimes that can look at the way training is  
8 delivered and can decide whether it is meeting the  
9 training aims and needs of individuals and can make  
10 recommendations for improvements in the future.

11 The LOAC training directive is currently in draft  
12 form with DI training army, but we hope it will come to  
13 fruition in the next few months, certainly, so we can  
14 start this mammoth task of working out how we can better  
15 develop our people to avoid difficulties in the future.

16 THE CHAIRMAN: I just want to be clear I understand. This  
17 is going to be called the "LOAC ..." --

18 A. "Law of armed conflict training directive". But in my  
19 view that's too narrow. It really should be the  
20 operational law -- in the widest context, bringing in  
21 international human rights, et cetera.

22 THE CHAIRMAN: Yes, I mean, what I am sure you are well  
23 aware -- indeed what you have been expressing -- is that  
24 it needs to be -- the sort of thing that happened in  
25 Basra in September --

1 A. Yes.

2 THE CHAIRMAN: -- second nature to everyone to know that was  
3 absolutely forbidden.

4 A. Yes, absolutely, and it brings in element of command  
5 responsibility and it brings in elements of moral  
6 responsibility for the soldiers. It may not necessarily  
7 always be legal training that we are trying to drive  
8 these nails home. We are also seeking to improve the  
9 awareness of everybody as to what is the moral and the  
10 command responsibility in the way that they conduct  
11 their operations.

12 THE CHAIRMAN: I see. I was going to say it is ambitious,  
13 but it is not really ambitious. It is something that  
14 ought to be there in any event.

15 A. Yes, indeed, sir.

16 THE CHAIRMAN: It has a very wide scope.

17 A. It does have wide scope and it is a large task in terms  
18 of the amount of work that will be required. But one  
19 hopes that once you have identified the relevant  
20 courses, once you have prepared the necessary training  
21 materials, whether it be a MATT 7 type package that army  
22 officers, you know, deliver themselves or whether it is  
23 lawyers that deliver the training -- and that's one of  
24 the things that need to be identified -- once it is all  
25 in place, then any changes to training can be across the

1 board, can be carefully controlled and we can try and  
2 avoid these inconsistencies that have grown up because  
3 people have been delivering aspects of training in penny  
4 packets around the place without a coherent central  
5 focus which this training directive should give us.

6 MR ELIAS: What you have said, Brigadier, a number of times  
7 is that it is a huge task and I think we can imagine  
8 that --

9 A. Correct, yes.

10 Q. -- not least from the material that you have submitted  
11 in this one particular area.

12 A. Yes.

13 Q. Is it -- and I would like you to think about the answer  
14 because it is only an idea at the moment -- deliverable?

15 A. I think it is deliverable, yes, because there are  
16 a number of courses on which we present now, so it is  
17 just identifying where the gaps are and trying to get  
18 consistency to our training and looking at how we can do  
19 better from start to finish of a career. We have made  
20 also recommendations to the army inspector as to what  
21 the manpower bill might be in order to deliver these  
22 changes. I know it's part of his report for my  
23 establishment to be looked at to see whether we do need  
24 enhancements in order to deliver this new capability and  
25 to provide the audit and the oversight for future

1 assessments as to whether the training is delivering  
2 what we hope it will deliver in the future.

3 Q. Thank you.

4 THE CHAIRMAN: I suppose I'm bound to ask you a question  
5 that I asked the provost brigadier: does anybody suggest  
6 that this is a possible empire-building by the army  
7 legal services?

8 A. I have certainly not heard that.

9 THE CHAIRMAN: We have.

10 A. Yes. Our requests for manpower are perhaps less  
11 ambitious, if I can put it that way, than the provost  
12 marshall army. We have simply asked for one lieutenant  
13 colonel post, to make it clear, who would become the  
14 subject matter expert on my staff in relation to  
15 captured persons and he would then able to advise the  
16 provost marshall with regard to his responsibilities and  
17 could also develop training in that area.

18 We have suggested we need four additional major  
19 posts to be embedded at various training organisations  
20 within the army to develop this way of delivering  
21 training and to be -- and to bring coherence to what we  
22 are doing at the moment. So it's a relatively modest  
23 request for manpower --

24 THE CHAIRMAN: Yes.

25 A. -- given the impact that it may have if we actually get

1           it right and start doing this right from the start of an  
2           individual's career.

3   THE CHAIRMAN: The trouble is I imagine that, in the current  
4           climate, from what one reads in the newspapers, nothing  
5           is a relatively modest increase.

6   A. That's correct, Sir, I am afraid. In the current  
7           climate it is very difficult to see where enhancements  
8           are coming from. The army is fully manned so the army  
9           would have to decide not to do something else in order  
10          to give me five additional posts.

11   MR ELIAS: All right. Thank you for that. There are just  
12          two other matters I want to ask you about. The first  
13          I might entitle "leadership". Could we look at one of  
14          the courses or presentations that you supplied the  
15          Inquiry with? It is at MIV009551. We can see it is  
16          entitled "Leadership on operation, a legal perspective".

17   A. Yes.

18   Q. And over the page, "Brigadier McEvoy, operational law  
19          branch". Then the next page set out the presentational  
20          aims. On the next page, please, "Contemporary operating  
21          environment" and on the next page, the last paragraph,  
22          just to mark it:

23                 "Finally, I think that we need to train our  
24          commanders better to lead in the ambiguity and  
25          complexities of this new environment."

1                   Page MIV009555.

2    A.   Yes.

3    Q.   Can we turn, please, to MIV009582 in relation to  
4        detainee handling?  There is the message:

5                "No torture.

6                "No inhuman or degrading treatment.

7                "No hooding.

8                "Plasticuffs to the front only.

9                "No stress positions."

10              Over the page "No hooding" and it is explicitly  
11             demonstrated in the photographs what is meant, I think.

12   A.   Yes.

13   Q.   Over the page, MIV009584, however, there seems to be  
14        a tick, does there, against the box of a man who has  
15        a cloth blindfold on?

16   A.   Yes.

17   Q.   Might that be something of a mixed message?

18   A.   It may well be.  I mean this is clearly a relatively old  
19        presentation.  Brigadier McEvoy held my post three to  
20        four years ago, if not a little bit longer.  I think  
21        it's important to know what the words are that are  
22        associated with the slide.

23   Q.   Perhaps you make the point that I wanted to make in  
24        relation to the next slide.  Can we go on to MIV009585,  
25        please, where we can see the ticks are shown on the

1 box -- on the screen as they would appear -- "No stress  
2 positions", perhaps seeking to suggest that what we are  
3 seeing is not stress positions, but maybe that we need  
4 more explanation than the picture alone gives --

5 A. Yes.

6 Q. -- or the soldier would --

7 A. Yes.

8 Q. -- or the lawyer would.

9 A. Yes.

10 Q. Do you agree?

11 A. I do. I have to say I have taken the liberty of  
12 speaking to Brigadier McEvoy about that particular slide  
13 because it was mentioned to me in advance and he was  
14 very much seeking to convey in that slide that at the  
15 end of the day, if it is operationally necessary to hold  
16 captured persons where they can't be a threat to the  
17 soldiers who are detaining them, then obviously that is  
18 permitted. But under no circumstances was he saying  
19 stress positions should be used at any point in time.

20 Q. I think that is one of the points -- I think you were  
21 not here to hear it -- that perhaps Mr Garnham was  
22 touching on this morning in relation to definitions of  
23 "stress positions" and so on.

24 A. I actually heard that. Yes, I was very interested to  
25 note what he was saying or what was said in relation to

1           that.

2    Q.   It highlights one of the difficulties, doesn't it?

3    A.   It does, because the soldiers on the ground who may have

4           a large number of persons that they've captured -- if

5           there is only one or two or a small number of British

6           soldiers that are outnumbered by a vast number of

7           detainees, it may well be that they have to put them

8           into a position that would be regarded as uncomfortable

9           or may be regarded as uncomfortable until they

10          themselves receive reinforcement, otherwise their lives

11          and our responsibility to our soldiers may be put at

12          risk.

13   Q.   I suppose the message that is underlined to and for this

14          Inquiry is obviously the need for practical solutions,

15          understanding the difficulties of the front line soldier

16          in particular --

17   A.   Yes.

18   Q.   -- but also, perhaps, from the army's point of view, the

19          need to ensure that clear messages are sent --

20   A.   Absolutely.

21   Q.   -- that intentional pain and suffering, for example --

22   A.   No.

23   Q.   -- would not be tolerated if that were the sole aim of

24          such conduct.

25   A.   That's correct, yes.

1 Q. Finally then, from this presentation, just again really  
2 to record that it is there, at MIV009600. It is under  
3 the heading "Reputation".

4 A. Yes.

5 Q. I suppose, putting it in shorthand, this is the hearts  
6 and minds issue again, isn't it?

7 A. It is stressing to commanders that they do themselves no  
8 favours and their soldiers do themselves no favours.  
9 Not only do they have the criminal responsibility that  
10 may flow from their actions, but in terms of the  
11 reputation of the British Army and the reputation in  
12 conducting the conflict in terms of hearts and minds, it  
13 just doesn't do us any favours at all and is detrimental  
14 and may result in the death of additional British  
15 soldiers or further difficulties in the operational  
16 theatre.

17 Q. Thank you very much.

18 Then can I just move to this final topic, final  
19 point really. What training is given to army lawyers,  
20 whatever their standing, as it were, when on operation  
21 as to where they should turn in theatre for guidance or  
22 for staffing up an issue for consideration at some  
23 higher level?

24 A. I have indicated that I interview every army legal  
25 services officer before they deploy and I stress two

1 things to them. I stress first of all that if they have  
2 got difficulties in terms of the guidance that they are  
3 receiving, they must have the courage and the moral  
4 backbone to go back to their superior headquarters and  
5 not be afraid to question guidance if they think it is  
6 manifestly incorrect or could cause problems or -- not  
7 even manifestly incorrect -- if they feel it is wrong.

8 Secondly, I stress to them that if they don't get  
9 the answer they require in order to address the problem  
10 they have identified, they must -- and I order them to  
11 do this -- they must speak to me immediately and I can  
12 then ensure it is raised at an appropriate level with  
13 PJHQ or with Government lawyers, whoever is in the best  
14 position to address any deficiency.

15 Q. So it would now, would it, you are saying, be  
16 a requirement for an army lawyer who is unhappy at what  
17 he is seeing, who doesn't get the assurance from --

18 A. Yes.

19 Q. -- whichever officer is dealing with it or the  
20 commanding officer that matters will be remedied -- it  
21 is incumbent upon that lawyer to bring matters to your  
22 department's attention?

23 A. Yes, if he fails by raising it with his own chain of  
24 command, yes. It goes wider than that. If they are  
25 unhappy about my legal direction that they are being

1 given, if they feel that that direction is inaccurate or  
2 is wrong, again they must forcibly raise it with their  
3 chain of command and they must also raise it with me if  
4 they are still left in the position of receiving legal  
5 guidance to which they do not agree and they are  
6 uncomfortable with applying that guidance on the ground  
7 in the operational theatre.

8 MR ELIAS: Thank you, Brigadier.

9 THE CHAIRMAN: There may be a few more questions for you.

10 A. Of course, sir.

11 THE CHAIRMAN: Ms Hetherington?

12 MS HETHERINGTON: None from me.

13 THE CHAIRMAN: Mr Garnham?

14 MR GARNHAM: No, thank you, Sir.

15 THE CHAIRMAN: Mr Dobbin?

16 MS DOBBIN: No, thank you, Sir.

17 THE CHAIRMAN: Mr Barr?

18 Questions to BRIGADIER YATES by MR BARR

19 MR BARR: Just one question, Sir, on a slightly different  
20 topic.

21 What is the mechanism nowadays by which your lawyers  
22 in theatre have access to the legal materials which they  
23 need to do their jobs?

24 Q. "We try to ensure that they deploy with the requisite  
25 and the necessary documentation, that it is made

1 available to them before they deploy. What the army is  
2 currently working on, however, is what's called The  
3 "Army knowledge exchange". This is a computer system  
4 that will enable the army, in various areas, to share  
5 information, and the operational law branch has its own  
6 area within this computer network, if you like, that  
7 will enable us to download all the requisite information  
8 that an operational lawyer needs, to download the latest  
9 guidance from PJHQ, for example, or the latest decided  
10 cases so that they can see on their computer, while they  
11 are sat in the operational theatre, all of the material  
12 and they have it available to them at their fingertips  
13 so they can use it as a research tool to look at the  
14 current issues. We can even download our post  
15 operational tour reports on to it, so they can see  
16 problems that previous incumbents of that post may have  
17 experienced and how they have gone about addressing  
18 those problems.

19 So it is a huge tool that we can use in order to  
20 provide them with the latest information and guidance  
21 and to make a huge amount of research material available  
22 to them in terms of the current law, current case law  
23 and even, if we can get the requisite protections, even  
24 advice from counsel on certain aspects of the conduct of  
25 operations.

1 MR BARR: Thank you. That was all.

2 Questions to BRIGADIER YATES by THE CHAIRMAN

3 THE CHAIRMAN: That would strike me as being a very useful  
4 process.

5 A. Indeed, Sir. It's something that we are seeking to  
6 exploit to its full potential and it allows the lawyer,  
7 even before deployment, to start reading into the issues  
8 that he may be dealing with in theatre. Then, once they  
9 get to theatre, they've got all this wealth of  
10 information and history as to the problems that other  
11 lawyers have faced in theatre in the past to draw upon  
12 and to extract the lessons to assist them in providing  
13 good quality advice.

14 THE CHAIRMAN: Can they ring up or email, if they are in  
15 theatre, any friend they have, saying, "I've got this  
16 problem, what do you think about it?"

17 A. Of course they can, yes, and they are encouraged to do  
18 so. They should use their own chain of command, of  
19 course, which is PJHQ, and PJHQ do provide officers  
20 available to deployed lawyers to speak to and provide  
21 guidance to them. But equally there is no reason why  
22 they can't use their mentor from the operational law  
23 branch --

24 THE CHAIRMAN: Or simply somebody who they trust.

25 A. Indeed.

1 THE CHAIRMAN: As you probably know, lawyers in private  
2 practice do it every day --

3 A. But we do have to be careful not to cut across chains of  
4 command because if there is direction perhaps given by  
5 the Attorney General through PJHQ, it may not be that  
6 sensible to ring up a friend, if I can put it that way,  
7 and decide to do something contrary to the guidance from  
8 the Attorney, for example.

9 THE CHAIRMAN: I can see that.

10 A. So it has to be used very carefully and sparingly, I  
11 would suggest.

12 MR ELIAS: I have no further questions.

13 THE CHAIRMAN: I haven't either. Thank you very much,  
14 Brigadier, for coming back again and giving your  
15 evidence to us. We are extremely grateful to you. Do  
16 not bother to wait for us. I think we have some  
17 evidence to read into the transcript, so by all means  
18 leave.

19 MR ELIAS: Thank you. Sir, we have two witnesses.

20 THE CHAIRMAN: Yes, Mr Halliday.

21 Summary of witness statements by MR HALLIDAY

22 Summary of witness statement of KATHERINE DE BOURCIER

23 MR HALLIDAY: Sir, the first is Katherine de Bourcier. She  
24 is the head of cooperate information and the  
25 departmental records officer in the MoD. Her statement

1 addresses question 31, which reads as follows:

2 "Are sufficient records of operations being kept to  
3 ensure that relevant personnel and orders can be traced  
4 where subsequent investigations are required? The  
5 Inquiry will, for example, wish to reflect the  
6 difficulties encountered in modules 1 to 3 in  
7 investigating relevant post holders in formations in  
8 theatre and at PJHQ and obtaining copies of some  
9 relevant orders and directives."

10 Ms de Bourcier's statement refers to joint service  
11 publication 441, entitled "Defence records management  
12 policy and procedures". This policy gives some general  
13 guidelines for managing records, but devolves  
14 responsibility for deciding what records should be kept  
15 to military units on the basis that these units are best  
16 placed to know what information needs to kept.

17 Ms de Bourcier states that details of the types of  
18 records which should be kept are set out in the single  
19 service operational record-keeping policies. Taking the  
20 army policy as an example, the record types required to  
21 be kept include orders and nominal roles.

22 Ms de Bourcier informs us that the MoD's  
23 record-keeping policies were assessed by the national  
24 archives in early 2009 and that the assessment found  
25 that the MoD had made a considerable investment in

1 ensuring that good records management practices were in  
2 place. However, she acknowledges that there are two  
3 factors which adversely affect the MoD's record-keeping  
4 capability: first the lack of comprehensive electronic  
5 record-keeping systems and, second, a shortfall in  
6 supporting skills, ways of working, culture and  
7 behaviours in relation to keeping records.

8 Ms de Bourcier describes the work the MoD is  
9 undertaking in order to improve its management of  
10 records, but she accepts that it is not possible to  
11 provide assurance at this stage that there are no longer  
12 information gaps in records created on operations and,  
13 furthermore, she says that there will always be a risk  
14 of gaps in the operational record.

15 Witness statement of KATHERINE DE BOURCIER

16

17

Witness Name: Katherine  
Elizabeth de Bourcier

18

19

Statement No: [ONE]

20

Dated: 2 August 2010

21

22

THE BAHA MOUSA PUBLIC INQUIRY

23

24

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Witness Statement of Katherine Elizabeth de Bourcier

25

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1 I, Katherine Elizabeth de Bourcier, will say as  
2 follows: -

3 1. I am Katherine Elizabeth de Bourcier, SCS pay  
4 band 1, Head of Corporate Information and Departmental  
5 Records Officer in MOD.

6 2. I have been asked whether there are sufficient  
7 records of operations being kept to ensure that relevant  
8 personnel and orders can be traced where subsequent  
9 investigations are required.

10 3. Record keeping in the MOD, including for  
11 military operations, is set out in Joint Service  
12 Publication 441 (JSP441) Defence Records Management  
13 Policy and Procedures [MIV003579]. Given the scale and  
14 complexity of Defence, the policy devolves  
15 responsibility for deciding what records should be kept  
16 to business and military units within some general  
17 guidelines, on the basis that these units are best  
18 placed to know what information needs to be kept for  
19 operational, business or legal reasons. All business  
20 and military units are required to follow this policy.  
21 JSP441 directs that advice should be taken from the  
22 single service historical branches on the maintenance of  
23 operational records (JSP441 para 1.5). The historical  
24 branches own the single service operational record  
25 keeping policies (LANDSO1120 (Army) [MIV003708],

1 BR9461~(RN) [MIV003727], and AP3040 (RAF) [MIV003755],  
2 which govern the collection of the vital operational  
3 record set. These are designed to enable collection of  
4 key records from deployed units for historical purposes,  
5 which are a small proportion of all the information that  
6 is created on operations. Unit and formation commanders  
7 are responsible for completing operational records and  
8 compliance with the system is overseen by the service  
9 historical branches, so far as resources allow. Units  
10 and formations defaulting on completion of the  
11 operational record are reported to the chain of command  
12 in the respective Front Line Command for follow-up  
13 action. Operational records are not a substitute for  
14 the record keeping policies outlined in JSP441, but  
15 augment those policies to ensure key records are kept.  
16 Details of the types of records that should be kept can  
17 be found in the single service operational record  
18 keeping policies. Taking the Army policy as an example,  
19 the record types include orders issued and received  
20 (Annexes E and F), and nominal rolls (Annex H)  
21 [MIV003708]. Similarly, for the RAF Annex B of AP3040  
22 [MIV003755] details the need to provide a copy of  
23 operational orders and formation staff lists and for the  
24 RN the mandatory enclosures for the operational record  
25 identified in BR9461 [MIV003727] include 'any other

1 signal or document deemed of interest or significance to  
2 the historical record of the ship', which is taken to  
3 include operational orders, and signals on board signals.

4 4. MOD's record keeping policies were assessed by  
5 The National Archives in early 2009 within the framework  
6 of a wider Information Management Assessment  
7 [MIV003775]. This found that MOD had made  
8 a considerable investment in ensuring that good records  
9 management practices were in place, and that they were  
10 supplemented by the appropriate infrastructure, in terms  
11 of technology, guidance and protocols. The National  
12 Archives has the lead in government for such audit and  
13 governance work. In addition, at the request of the  
14 MOD's Chief Information Officer, the Army operational  
15 record keeping system was audited by Defence Internal  
16 Audit in early 2009. The final report [MIV003814]  
17 provided substantial assurance about the effectiveness  
18 and efficiency of management of Army operational record  
19 keeping.

20 5. While MOD has an appropriate records policy  
21 framework and strategic governance in place, these alone  
22 are not enough to guarantee that sufficient records of  
23 operations have been kept. There are currently two  
24 factors that adversely affect MOD records keeping  
25 capability. The first is a lack of comprehensive

1 effective electronic records systems; the second  
2 a shortfall in supporting skills, ways of working,  
3 culture and behaviours relating to keeping records.

4 6. Whilst the MOD Head Office, Permanent Joint  
5 Headquarters (PJHQ) and Air and Fleet Command HQs have  
6 an electronic document and records management (EDRM)  
7 system, Land Command, and all deployable headquarters,  
8 formations and units, lack this capability (see  
9 paragraph 12 for details on how MOD is addressing this  
10 issue). They instead rely upon records stored in  
11 Windows [TM] shared file store areas, which do not  
12 provide all the necessary elements required by the  
13 British Standard on Records Management (BS ISO 15489-1:  
14 2001) [MIV003836]. This creates a small risk to the  
15 integrity and authenticity of electronic documents and  
16 a significant risk that the deletion of records does not  
17 follow proper records management review and disposal  
18 processes (because these are not enabled and supported  
19 by the technology).

20 7. In addition, there is currently no established,  
21 electronic archiving capability in MOD for information  
22 returned from operational theatres. When operational  
23 deployments end, IT systems are returned to the UK and  
24 typically the servers are cleansed of data, with no  
25 process for saving the information held on them.

1           Consequently there is no systematic process for keeping  
2           information from operational theatres, beyond those  
3           records specified to be kept in the extant single  
4           service operational record keeping policies referred to  
5           above. To address this shortfall a temporary archiving  
6           capability has been established at PJHQ, which has been  
7           used to capture information returned from Operation  
8           Telic in Iraq and some limited information from previous  
9           operations. In the near future it will also begin to  
10          take information from Operation Herrick in Afghanistan.  
11          Funding for this is scheduled to cease on 31 March 2011,  
12          but the Department is aware of the vital importance of  
13          this information and is working to secure continuity of  
14          access to the information.

15                 8. With the transition from working with paper to  
16                 electronic information, and the related loss of clerical  
17                 support to assist record keeping processes, a capability  
18                 gap has emerged in terms of skills, ways of working and  
19                 associated culture and behaviours related to records  
20                 keeping. MOD currently provides information management  
21                 training to those whose jobs are directly related to the  
22                 management of information, but has not to date trained  
23                 regular users of information technology in their  
24                 responsibilities for managing information and keeping  
25                 records and how they should go about it, although policy

1 and guidance is made available to all staff.

2 9. Other challenges for MOD in embedding an  
3 effective culture of record keeping include the  
4 following:

5 (a) The process of saving records to file stores or  
6 formal EDRM systems is not always straightforward and  
7 can be time consuming, creating a risk that staff do not  
8 save documents that should be kept as records. The  
9 existing formal EDRM system is also perceived,  
10 erroneously, as being unable to recover records placed  
11 in the system, which discourages staff from making use  
12 of it.

13 (b) Although the basic principles of record keeping  
14 are consistent regardless of format, the ubiquity (in  
15 both the business and operational environment) and the  
16 ephemeral nature of e-mail has also served to blur the  
17 distinction between what needs to be kept as a record  
18 and what can be deleted.

19 (c) There is an ongoing requirement to persuade  
20 managers at all levels that they need to instil the  
21 importance of record keeping in their staff and to lead  
22 by example in this area.

23 10. A range of actions is in hand to address these  
24 challenges. Auditing compliance with record keeping  
25 policy can help change behaviours, but in a department

1 the size of MOD undertaking such governance activity is  
2 challenging and largely relies on local policing to  
3 ensure compliance. Some limited assurance work is  
4 undertaken by the central records team, supplemented by  
5 occasional reviews by MOD's internal auditors, but,  
6 given the resources available, this is unlikely ever to  
7 be comprehensive.

8 11. The National Archives Information Management  
9 Assessment identified areas for improvement in wider  
10 information management and MOD continues to work with  
11 The National Archives to bring about these changes  
12 through the associated action plan [MIV003862].

13 12. The Defence Information Infrastructure (Future)  
14 (DII/F) that is currently being rolled-out across MOD  
15 will, by around 2013, provide a common IT architecture  
16 in both the fixed (business) and deployed (operational)  
17 environment. This will include an upgraded pan-Defence  
18 EDRM system which will minimise the amount of effort  
19 that individuals need to undertake to declare a record  
20 and will include an improved search capability. This  
21 will also deliver a new capability for moving records  
22 captured in maritime and land deployed environments back  
23 to the UK fixed environment to ensure continued access  
24 and records management during the retention period of  
25 that content.

1           13. As DII/F will not be the only IT  
2           system/application used on military operations,  
3           a requirements study is currently underway to examine  
4           how best to archive records created on operations on  
5           systems and applications beyond DII/F. Current thinking  
6           suggests the best way forward is archiving in the UK, at  
7           periodic intervals, all UK-related information on  
8           servers in operational theatres, including, as far as  
9           possible, those operated by coalition partners (though  
10          this view may yet change). In parallel, further interim  
11          policy is being developed to manage operational records  
12          better until an enduring archiving solution is  
13          developed. Separately, work is in hand with PJHQ to  
14          develop a policy to capture operational records created  
15          by Joint units and formations for historical purposes in  
16          the same way that single service records are currently  
17          captured.

18          14. To address wider skills and cultural issues,  
19          MOD has developed an information skills strategy. This  
20          is under-pinned by a Defence Information Management  
21          Skills Maturity Model (the framework is at [MIV003862]),  
22          which requires all areas of MOD to demonstrate an agreed  
23          standard of information management behaviour by  
24          Dec 2012; with demonstration of an enhanced level by  
25          2015. To support this maturity model an e-learning

1 package has been developed to provide the knowledge that  
2 Defence Personnel need to support those effective  
3 behaviours. This package was launched in July 2010 and  
4 will be made available to all Defence Personnel, and on  
5 successful completion of both the e-learning package and  
6 the maturity model a certificate of competence will be  
7 issued to an individual, the Defence Information  
8 Management Passport. MOD's centrally produced policy  
9 and guidance on information management is also in the  
10 process of being reviewed, to ensure it is up to date  
11 and readily accessible.

12 15. Overall, it is not possible at this stage to  
13 provide assurance that there are no longer information  
14 gaps in records created on operations. MOD is working  
15 to address the areas it identifies as causing the  
16 greatest problems, which have been identified in this  
17 statement. Through the DII/F programme, and related  
18 information management initiatives, it is seeking to  
19 deliver a comprehensive approach to solving the current  
20 shortfalls, and implement effective information  
21 governance. But the scale of MOD as an organisation and  
22 existing problems with legacy systems means that  
23 delivering this goal is complex and inevitably time  
24 consuming. Notwithstanding this, unless a decision is  
25 taken to keep every piece of information relating to

1 operations as a record (which in itself would not be  
2 good records management practice) and the technical  
3 means to do this are put in place, then there will  
4 always be risk that gaps in the record remain.

5 Statement of Truth

6 I believe that the facts stated in this witness  
7 statement are true.

8 Signed: Katherine Elizabeth de Bourcier.

9 Dated: 2 August 2010.

10 Summary of witness statement of DAVID PLEDGER

11 MR HALLIDAY: The second witness statement is that of  
12 commander David Pledger. He is the commanding officer  
13 of the Defence "Survive, Evade, Resist, Extract"  
14 Training Organisation. As such he oversees resistance  
15 training, which is formally known as "conduct after  
16 capture training". He addresses question 29, namely:

17 "What precautions are now being taken to ensure that  
18 those involved in receiving and providing conduct after  
19 capture training do not import techniques taught during  
20 such training into UK armed forces' own handling of  
21 captured persons on operations?"

22 Commander Pledger has provided two statements. The  
23 first addresses practical resistance training during  
24 which students are exposed to unlawful interrogation  
25 techniques. Only a relatively small number of personnel

1 selected due to their roles, placing them at particular  
2 risk of capture, undergo this practical resistance  
3 training. During the course they are required to  
4 receive and sign for having received a briefing which  
5 states the following:

6 "The treatment of students during this exposure in  
7 no way reflects the treatment of prisoners of  
8 war/captives during interrogation by British or NATO  
9 forces. The exposure that you are taking part in today  
10 is designed to simulate the methods of interrogation  
11 that may be used by an enemy that does not abide by the  
12 conditions of the Geneva Conventions."

13 Commander Pledger's second statement addresses  
14 theoretical -- that is to say non-practical --  
15 resistance training which is delivered to all UK  
16 military personnel. This is delivered in a number of  
17 different formats, including a DVD which is watched at  
18 unit level and pre-deployment resistance briefs which  
19 are delivered by trained instructors.

20 Commander Pledger tells us that these two particular  
21 types of theoretical resistance training do not contain  
22 any warning that the treatment of captives they describe  
23 is not to be copied by British forces. He points out  
24 that the training is intended to relate solely to  
25 conduct after capture as opposed to treatment of

1 prisoners, but he accepts that the DVD and the  
2 pre-deployment briefs should contain suitable warnings.  
3 He says that such warnings will be introduced  
4 imminently. He also says that he would support the  
5 introduction into all theoretical resistance training of  
6 a reminder about the prohibition on the five techniques.

7 Witness statement of DAVID PLEDGER

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10 Witness Name: Commander David  
Pledger

11 Statement No:  
12 Exhibits:

13 Dated: 9 August 2010

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16 THE BAHA MOUSA PUBLIC INQUIRY

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18 Witness Statement of Commander D Pledger RN

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1 I, [redacted] Commander David Pledger Royal Navy,  
2 WILL SAY as follows:

3 1. I hold the position of Commanding Officer,  
4 Defence SERE (Survive, Evade, Resist, Extract) Training  
5 Organisation (DSTO) and have been in post since  
6 22 September 2008.

7 2. The DSTO delivers all four aspects of SERE  
8 training to UK Armed Forces personnel. Resistance  
9 Training (RT), formerly known as Conduct after Capture  
10 training, is provided in both theoretical and practical  
11 format. All UK military personnel should receive  
12 elementary briefs covering the theoretical aspects,  
13 whereas practical training is only provided for a small  
14 number of selected members of the UK military and  
15 provides limited exposure to non-Geneva Conventions  
16 compliant techniques that may be used by potential  
17 adversaries. The DSTO has been based at RAF St Mawgan,  
18 Cornwall, since 1 December 2008.

19 3. I have been directed to answer question 29 from  
20 the Inquiry's letter dated 21 December 2009 to the  
21 Ministry of Defence, namely: What precautions are now  
22 being taken to ensure that those involved in receiving  
23 and providing conduct after capture training do not  
24 import techniques taught during such training into UK  
25 Armed Forces' own handling of CPERS on operations?

1           4. Theoretical training is delivered in 4 formats:  
2           SERE Level A on DVD, Pre-deployment Resistance Briefs  
3           (PDRBs) and SERE Level B and C courses. SERE Level A is  
4           delivered at Unit level and simply involves personnel  
5           viewing the DVD; PDRBs are provided at a variety of  
6           locations, principally mounting centres, by DSTO trained  
7           PDRB Instructors; and SERE Level B is delivered by DSTO  
8           permanent staff either at RAF St Mawgan or in suitable  
9           classrooms at the receiving Unit. Theoretical training  
10          on SERE Level C is contained within the overall RT  
11          package and linked directly to the practical training.  
12          All theory training is primarily aimed at educating UK  
13          Military personnel in the application of UK Resistance  
14          Policy and guidance on the use of various coping  
15          strategies if taken captive by a potential enemy.

16          5. Practical RT is taught on the SERE Level C  
17          course delivered at RAF St Mawgan, [redacted] within the  
18          UK Resistance Instructors' Course, also at RAF  
19          St Mawgan. This training can only be provided by DSTO  
20          personnel and delivered at the approved sites detailed  
21          above and no RT is delivered at DISC Chicksands. All  
22          personnel undergoing this training have given consent to  
23          do so and are thoroughly briefed that the aim of the  
24          training is to provide limited exposure to anticipated  
25          methods of exploitation by an enemy who may not abide by

1 the Geneva Conventions or Law of Armed Conflict, in  
2 order to teach a variety of 'coping strategies' to  
3 counter many of these techniques. Personnel selected to  
4 undergo this training are drawn from those Units whose  
5 operational roles are considered to place them at  
6 greatest risk of capture. Consequently, the numbers  
7 required to undergo this training are comparatively  
8 small and strictly controlled by use of a 'Prone to  
9 Capture and Exploitation List (PTCE list)' owned and  
10 controlled by PJHQ J7.

11 6. All personnel undergoing practical RT and all of  
12 the training and support staff including the guard force  
13 (Army, Royal Marines or RAF Regiment personnel provided  
14 by the Regular Army Assistance Tables (RAAT) process or  
15 other service equivalent), are required to receive, and  
16 sign for having received, an oral brief on every course  
17 that details the following:

18 The treatment of students during this exposure in no  
19 way reflects the treatment of PWs/Captives during  
20 interrogation by British or NATO forces. The exposure  
21 that you are taking part in today is designed to  
22 simulate the methods of interrogation that may be used  
23 by an enemy who does not abide by the conditions of the  
24 Geneva Conventions.

25 Example exercise briefs are at MIV006028 and

1 MIV006039.

2 7. The content of these briefs is re-enforced at  
3 various stages of the training and specifically  
4 re-briefed to the Guard Force on completion. All  
5 members of the Guard Force are required to complete  
6 MATT 7 training which details the application of the Law  
7 of Armed Conflict prior to deployment on operations.  
8 DSTO Resistance Instructors have no operational role and  
9 are used solely for the purpose of delivering training  
10 to UK personnel. They are clearly educated during the  
11 Resistance Instructors course that non Geneva  
12 Conventions compliant techniques may not be used should  
13 they be involved in the handling of CPERS in subsequent  
14 tours; this is reinforced during their tours as  
15 Resistance Instructors through the Exercise briefs  
16 referred to above.

17 Statement of Truth

18 I believe that the facts stated in this witness  
19 statement are true.

20 Signed: David Pledger.

21 Dated: 9 August 2010.

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Witness Name: Commander David  
Pledger

Statement No: [TWO]  
Exhibits: NONE

Dated: 23 September 2010

THE BAHA MOUSA PUBLIC INQUIRY

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Witness Statement of Commander D Pledger RN

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1 I, [redacted] Commander David Pledger Royal Navy,  
2 WILL SAY as follows:

3 1. Further to my statement dated 9 August 2010, the  
4 Inquiry has asked for further detail regarding the  
5 theoretical aspects of SERE Training and whether  
6 sufficient warnings are contained to prevent risk of  
7 'contamination' with prisoner handling on operations.

8 2. Theoretical Resistance Training (RT) is provided  
9 within the following formats; SERE Level A DVD,  
10 Pre-Deployment Resistance Briefs (PDRBs) and SERE Level  
11 B and Level C training. Whilst it is explicit in all  
12 formats that the content of this training relates solely  
13 to the training of UK military personnel in their  
14 conduct if taken captive, it is recognised that there  
15 should be no ambiguity whatsoever regarding the  
16 treatment of CPERS on operations. SERE Level A DVD is  
17 a stand-alone training film that covers all 4 elements  
18 of SERE - Survival, Evasion, Resistance and Extraction,  
19 and is designed to prepare all UK military personnel  
20 deploying on operations. It is administered by  
21 individual Units and forms part of annual training for  
22 all three services [1]. It must also be viewed within  
23 six months of deploying. Units are advised not to  
24 expand on the content of the video, or to take  
25 questions. Originally created for OP TELIC 2, the film

1 was re-edited in 2008 and is due for review in 2011.

2 There are no specific warnings contained within the  
3 DVD; it has become increasingly clear that a suitable  
4 warning/caveat is required and will be included within  
5 the revision next year. The PDRB was introduced in 2004  
6 to supplement the DVD and consists of a formal theory,  
7 power-point brief given by an instructor, trained at and  
8 by DSTO. These briefs are delivered to personnel within  
9 6 months of deploying at a variety of locations; the  
10 current PDRBs, produced in December 2009 for those  
11 deploying to Afghanistan and Rest of The World (ROW), do  
12 not contain a specific warning/caveat although the  
13 entire brief is focused solely on UK personnel being  
14 taken captive. A review of the PDRB is due in  
15 December 2010 and will incorporate a warning as per the  
16 one detailed below. SERE Level B theory training  
17 consists of a variety of power-point based lessons; the  
18 following warning slide is shown at the beginning and  
19 end of this package:

20 "The treatment toward Captives witnessed during this  
21 Level B brief in no way reflects the treatment of  
22 Captives during Hostile Questioning by British or NATO  
23 forces. The training within this brief is designed to  
24 simulate the methods of Hostile Questioning used by an  
25 enemy who does not abide by the Geneva Conventions."

1           3. SERE Level C training was covered in detail in  
2 my previous statement and also includes a warning/caveat  
3 although since it also includes practical training,  
4 students are also required to sign as having read and  
5 understood the warning, included within the briefs at  
6 MIV006031, MIV006035 and MIV006038. A signed  
7 understanding of this statement is also now  
8 a requirement for any personnel required to view/visit  
9 this training as part of their duties.

10           4. I am acutely aware, as are all of my  
11 instructors, that many of our students arrive with  
12 pre-conceptions as to nature of this training which are  
13 often generated from a wide variety of open-source  
14 information, including biographies of those who have  
15 been held captive on previous operations, and  
16 documentaries. This reinforces for me how important it  
17 is to have a clear delineation between elements that  
18 conform to the Geneva Conventions and those that do not  
19 when delivering RT in both theoretical and practical  
20 formats.

21           5. I have been asked by the Inquiry whether I would  
22 consider it appropriate for warnings to be incorporated  
23 into all levels of Resistance Training and for them to  
24 include a specific reminder about the prohibition of the  
25 '5 techniques'. I would fully support this.

1           6. Defence policy dictates that only a qualified  
2           Resistant Instructor can plan and conduct resistance  
3           training. DSTO are currently conducting further work to  
4           allow selected unit instructors to receive additional  
5           training to deliver PDRB and Level B briefs on UK  
6           resistance policy. This initiative is intended to allow  
7           appropriate training in units and reduce the burden on  
8           DSTO. It will have the advantage that units will have  
9           individuals trained to instructor level as regards the  
10          purpose and nature of Resistance Training.

11          7. Theory on the handling of CPERS on operations is  
12          not delivered at or by DSTO.

13                 Statement of Truth

14                 I believe that the facts stated in this witness  
15                 statement are true.

16                 Signed: David Pledger.

17                 Dated: 23 Sep 2010.

18

19         [1] For the Army it is part of MATT8.

20         THE CHAIRMAN: Good. Thank you very much. Well, that is  
21                 all for today, isn't it, save for one announcement  
22                 I need to make?

23                 Do you have anything else, Mr Elias?

24         MR ELIAS: Only to say this, Sir: I think it's now apparent  
25                 that we shall complete our schedule of witnesses by

1 Thursday, and Friday, which was set aside, will not now  
2 be required.

3 THE CHAIRMAN: Well, I'm glad we are not going to break our  
4 esteemable record of being on time, at least I hope not.  
5 Perhaps I should not have said that.

6 Remarks by THE CHAIRMAN

7 THE CHAIRMAN: One thing I just want to say is this: it may  
8 be that you have previously got the impression that  
9 I would not want submissions in relation to the  
10 Module 4. I have been thinking about that. I don't  
11 want it to be an obligation on anybody to produce  
12 submissions. It is entirely up to all of you to decide  
13 what you do. If you want to put in a submission, please  
14 do, and if you would be kind enough to put it in before  
15 close of play on Wednesday 3 November.

16 I have already said that I would be helped by short  
17 pithy common sense recommendations. I don't want a lot  
18 of explanatory material about why or when you think they  
19 are right, but by all means put them in if you think  
20 that you would like to and hopefully it will be  
21 valuable.

22 I don't think that I'll produce before you a list of  
23 the sort of issues that I'm thinking about because it  
24 seems to me that, if you are going to put in  
25 submissions, it is much better that they come from you



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