(9.30 am)

THE CHAIRMAN: Good morning, ladies and gentlemen.

Mr Elias.

MR ELIAS: Good morning, Sir. May I call Robin Brims, General Brims, please?

THE CHAIRMAN: Yes. General, if you could remain standing for the moment and I will ask that you be sworn.

ROBIN VAUGHAN BRIMS (sworn)

THE CHAIRMAN: Thank you, General. Do sit down. As with other senior officers, I don't really need to ask them to speak up because you all seem to be able to make yourselves heard, but if you would speak into the microphone, that would help.

Yes.

Questions by MR ELIAS

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

A. Robin Vaughan Brims.

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

A. Yes, sir.

Q. You retired in October 2007?

A. Yes.

Q. Would you have a look, please, at a folder which should be to your right hand and to a statement within it
which, at the last page -- that is our BMI07407 -- should have your signature above the date of 5 March 2010.

A. Yes.

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

A. Yes.

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

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

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

You served in Germany and in Northern Ireland before promotion to lieutenant colonel. Then you commanded the 3rd Battalion The Light Infantry between 1989 and 1991 in Germany and in Ireland.
You had a staff posting as a colonel in the Ministry of Defence; chief of staff, Headquarters Northern Ireland 1997/1998; promoted to major general in January of 2000; commanded the Multinational Division (South-West) in Bosnia, before assuming command of 1 (UK) Armoured Division in November 2000.

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

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

A. Yes, sir.

Q. And you handed over to Peter Wall?

A. Yes sir.

Q. I want to ask you just a little, please, about, firstly, your responsibility for training of soldiers under your command as GOC. You tell us in your statement that, as
far as you were aware, prior to Op Telic 1, 1 Div
soldiers were not told specifically that they could not
and should not subject prisoners to one or more of the
two techniques. That is correct, is it?

A. That's correct.

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

A. Yes, sir.

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

A. Correct.

Q. And unlawful?

A. Correct.

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

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

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

A. If you are using hooding in an inhumane way, it is
clearly unlawful. I have always thought that. If it is
being used as a temporary and, in the circumstances, only readily available method of depriving somebody of sight for security purposes, then it wouldn't -- that in itself would not be inhumane. But the -- because earlier on you said to me that the five techniques, that they are inhumane because they are inhumane treatment, as I understood it -- they were -- that was the basis of them not being allowed.

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

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

Q. That is at Umm Qasr?

A. Yes.

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

A. It depends on the circumstances of hooding. I think hooding becomes a -- it can conjure up more than -- in different people's minds. If it is purely to blindfold somebody, I don't think it is inhumane. If it is being used in any way stressfully, then it is inhumane, and I would draw that distinction.
Q. I understand. I suppose one of the difficulties is that it may be, in any individual case, difficult to ascertain whether the fact that a bag is over the head of a man for minutes or perhaps hours is in fact stressful for that individual.

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

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

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

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

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

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

A. I don't agree with the first bit, that hooding is always inhumane, so I can't go on to the next bit of your question.
Q. All right. Maybe we will come back to that in another
way in due course.

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

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

Q. That neatly leads me to your directive, which I was
going to take you to at this point. But we could agree,
could we, the expectation that soldiers will -- to
paraphrase it -- do the decent thing and the lawful
thing, the expectation may be one thing, the directive
and guidance that is required to ensure that may be
another?
A. You need to give directions to ensure that people understand what they are trying to do, and in a large organisation you expect subordinates at the various levels to provide the necessary supervision in the execution of the various activities that go on.

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

A. Yes.

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

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

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

A. Yes.

Q. And at paragraph 21:

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

Can I just take you to (a) and (b)?
"(a) There must be no triumphalisms on achieving phases II/III. Indeed we must restore, foster, Iraqi dignity in our area of operation and work together as far as possible to achieve phase IV for their benefit."

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

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

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

Q. Over the page, please, at 22:

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

So going to the last sentence in that paragraph:

"The media's impression of us must be that identified at paragraph 11, 'professional, disciplined, determined, quietly confident in our abilities and at all times acting decently'."
1 Really that is to underline the evidence you have
2 been giving to the chairman today as to your intent --
3 A. Yes.
4 Q. -- and the way the operation was to be carried through.
5 Can I take you, please, to the very last paragraph
6 on the next page, page 5, under (c) of your directive or
7 mission statement, as I have been calling it:
8 "Let us insist on the highest standard of (self)
9 discipline from the moment of arrival in theatre. It
10 will be a significant force protection measure before we
11 are ordered to employ force, it will significantly
12 improve our sustainability (people and equipment) on
13 employment, and it is the primary antidote to fear.
14 Good discipline leads to trust, confidence and
15 camaraderie -- a virtuous circle. This is the state
16 from where we shall prevail."
17 So that, General, you would no doubt tell the
18 Inquiry was the tone, as it were, that you wished to
19 set --
20 A. Yes.
21 Q. -- and the standards that you wished your soldiers to
22 maintain.
23 A. Yes.
24 Q. At paragraph 20 of your statement to the Inquiry, please
25 at BMI07387, just to underline, I think, as you do in
this statement, what that mission statement was about, as it were, the last four lines of this paragraph:

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

As you say over the page:

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

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

A. Yes.

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

Can we look, please, at paragraphs 28 and on of your statement to the Inquiry where, under the heading "Communication of orders", you say that:
"There were a number of ways in which orders ... might be communicated down the chain of command."

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

A. Not necessarily.

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

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

Q. Yes.

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

Q. Well, perhaps it is my fault. Let me just examine that. I am not suggesting for one moment that if you, for example, were to change the standard operating procedure on the ground, that your order need necessarily itself be in writing. But if the message was to be certain to get through to those who had to operate it at the ground
level, if you like, it would, in those circumstances, be
desirable, wouldn't it, that such an instruction was
cascaded at some point below you in writing?

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

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

A. Yes.

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

A. Yes.

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

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

(a) At the routine 1 Div group meetings, which took
place twice a day, morning and evening, with my staff, brigade commanders and their staff, orders would be given orally by me, then disseminated over the radio or written up later and sent down the chain of command."

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

A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

A. Yes.

Q. In what context, General?

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

Q. I am going to come to that, if I may, in just a moment,
the Umm Qasr visit. Can I just leave that to one side?

A. Yes.

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

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

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

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

At 5:

"The reduction in MP brigades now puts a greatly increased burden on the UK with regard to the evacuation of prisoners of war and, given the limited resources available, it is highly unlikely that the UK ... has
taken 'all suitable precautions' with regard to the safety of prisoners during evacuation and may also 'unnecessarily expose prisoners ... to danger while awaiting evacuation ...'"

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

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

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

"Transport for the [prisoner handling organisation] ... remains critical and the policy of ... pooling vehicles is unsatisfactory if evacuation from the battlefield is to be in accordance with international
legal obligations. The issue of [prisoner of war handling organisation] manning remains 'legal red' and requires resolution."

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

A. Yes.

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

A. Yes.

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

A. No.

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

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

Q. Was that, do you recall, in relation to your visit to
Umm Qasr or at about the same time or was this something that was quite separate from that?

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

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

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

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

A. No.

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

A. No, I don't.

Q. Or the use of stress positions?

A. No.

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

A. I don't remember a briefing that I received about ICRC and -- connecting them to stress positions, no, I don't.
Q. Or hooding?
A. Nor hooding.

Q. But you can't remember what the concerns were, can you?
A. No. They appeared to be not about stressful issues. They seemed to be more about points of detail -- food, that sort of -- type of food.

Q. Moving on then, please, to your Umm Qasr visit. You tell us in your statement that you think it was around the end of March that you made your visit.
A. Yes.

Q. The purpose of the visit?
A. I needed to go and visit many parts -- indeed all parts -- of the division to see how they were getting on, to satisfy myself that the operations were being conducted properly and see for myself that our own soldiers were managing in the circumstances that they were finding themselves.

Q. Do you recall who went with you on that visit?
A. All the visits I went on I had a fairly large number of people accompanying me. I always had my military assistants and I always had my close protection team. I can't remember who visited with me on that day and I saw a number of people whilst I was at the facility including the commander of the Queen's Dragoon Guards -- but he was based there anyway and I would expect to see
him -- but I can't remember precisely who came with me.

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

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

Q. So was this your first visit?

A. Yes.

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

A. Not that I recall.

Q. So this was your only visit?

A. Yes.

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

A. Yes.

Q. What was that?

A. I saw an Iraqi prisoner of war being led across from one tent to another and he had a sandbag over his head. I was uncomfortable with this sight. I discussed it
briefly with the commanders of the prisoner of war
handling organisation and said that I would review the
matter when I got back to my headquarters.

Q. One prisoner?
A. As I recall, one prisoner.

Q. When you discussed it with the commanders there and
then, as I understand it, were you given any explanation
as to why the prisoner was hooded?
A. I can't remember being given one because I don't think
I asked for much of an explanation. It was fairly
obvious to me that it was to effectively blindfold the
prisoner as they were moving from (a) to (b) because
there were documents on evidence and it was quite clear
to me that the prisoner was not in any way stressed.

Q. Why do you say that?
A. Because I could see. He was being led very properly in
his blindfold state -- in a perfectly humane way from A
to B.

Q. But you couldn't see his head or face or eyes?
A. No.

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

Q. -- for the purpose that you have given?
A. Yes.
Q. If he had been blindfolded or, as we understand later
may have happened, blacked-out goggles had been used,
that would not have concerned you at all, would it?
A. Probably not.
Q. So it was the use of the hood that troubled you?
A. Yes. It was the use of the sandbag, actually, that
troubled me.
Q. And why?
A. Because it didn't look very nice.
Q. You tell us -- perhaps we should look at it -- at
paragraph 48 of your statement to this Inquiry:
"My immediate concern was that the hooding did not
fit the type of operation we were doing. As my
directive ... had indicated, treating Iraqis decently
and humanely (and being seen to do so) was of crucial
importance."
Should we understand then, General, that seeing this
Iraqi prisoner with a sandbag you believed not to be
treating an Iraqi decently and humanely?
A. I don't believe that that particular prisoner of war at
that point was being treated inhumanely. If I had
thought that, I would have intervened, I think, on the
spot. I didn't think he was being treated inhumanely,
but I didn't think that it was the right thing to be
doing in this context.
1 Q. So putting it bluntly, your concern was more the
2 presentational one than anything else?
3 A. It was a matter of interpretation. Presentation to
4 anybody was an important part of what we were doing;
5 presentation to Iraqi soldiers, our soldiers and anybody
6 else.
7 Q. So did you raise that with the commanders on the ground
8 at the time?
9 A. No. What I did was I heard -- we had a brief discussion
10 about it and I said I would go back to my headquarters
11 and take advice. That would be quite normal for me
12 because sometimes, in the immediacy of a situation, you
13 can give out an instruction which perhaps hasn't taken
14 everything into account. So I wanted to get back to my
15 headquarters and consult a wider forum of people and
16 reflect on things myself.
17 Q. And that's what you did?
18 A. Yes.
19 Q. Just before leaving Umm Qasr, then, did you see any
20 other prisoners hooded apart from the one?
21 A. I don't recall that.
22 Q. Did you see any prisoners in stress positions of any
23 kind?
24 A. No.
25 Q. Or prisoners sitting on the ground, for example, with
hands on heads out in the open?

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

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

Q. Did you take advice on what you had seen?
A. Yes, I did.

Q. From whom?
A. Principally commander legal at divisional level, but
also as I recall --

Q. That would have been Colonel Mercer?
A. Yes. But as I also recall, there were other present --
people present. I think the chief of staff was there,
I think the divisional POLAD was there, possibly my
Foreign Office policy adviser, possibly the commander of
the military police and possibly the commander of the
divisional artillery, who was, in effect, my deputy.

As I recall this meeting, like so many meetings,
they weren't necessarily a single meeting. Sometimes we
would have a discussion, people would go away, have
a further consultation and think about it and then
re-form. I can't remember precisely how this happened,
but that would be the sort of meeting it was.

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

Q. This might have been an ongoing discussion --
A. Yes, it was a bit of an ongoing discussion when I got
back.

Q. If you could tell us briefly, what was the nature of the
advice that you were seeking?
A. I wanted to know whether it was lawful to use a sandbag
in this way.

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

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

Q. Was that because you had some doubt in your mind as to
whether it was?
1   A. Yes.
2   Q. Would that doubt have been brought about because, on
3       consideration, hooding under any circumstances may be
4       thought to be inhumane?
5   A. Yes.
6   Q. So what was the advice that you received on that first
7       question? You say it was inconclusive.
8   A. I received advice from commander legal that -- as I
9       recall it, he gave his own view that the use of sandbag
10      hooping was not legal, but that blindfolding was in
11      another way: goggles, for example. But I was also
12      briefed, again by commander legal, that there were
13      contrary legal opinions about this and there were
14      contrary opinions about which laws applied in the
15      circumstances we were in.
16      As I recall it, those were the legal opinions coming
17      from the legal adviser at the Prisoner of War Handling
18      Organisation and from the National Contingent
19      Headquarters.
20   Q. So that's why you say that the advice was inconclusive?
21   A. Yes.
22   Q. Just to be clear about it, Colonel Mercer, you say, was
23      saying that it would be all right, legally, if you like,
24      to deprive a prisoner of sight for security purposes --
25   A. I think he said that, but I -- he certainly said hooding
wasn't legal in the way that it was, but I think, as I recall, he said depriving of sight in a properly controlled manner for the reasons stated would be okay.

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

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

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

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

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

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

Q. I understand. I think we understand.

A. I accept that, because I think I have -- Colonel Mercer was reporting to me both his own opinion and he was
reporting to me what other lawyers were reporting from other places and I have rather conflated that. I agree that, as stated like that, it doesn't record correctly what Colonel Mercer, I think, said to me.

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

Q. -- about the legal question?
A. Yes.

Q. On the second question, the presentational issue, if I can put it that way in shorthand anyway, you had a strong view about that anyway, did you?
A. Yes, because I didn't think it fitted the type of operation that we were trying to do, that we needed to be acting decently at all times to Iraqi soldiers -- all Iraqis. Our argument wasn't with them, it was with the regime, and I -- we had taken a lot of time and trouble -- we, the coalition, had taken a lot of time and trouble -- to make that distinction and we broadcast and leafleted throughout February and March, before the invasion, on that point.

Q. Media photographs, for example, of hooded prisoners was going to be adverse publicity to the hearts and minds war which you wanted to win?
A. Correct. If Iraqis in Basra that I had not yet gone into had seen pictures like that, they would be more
likely to be hostile to us arriving.

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

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

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

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

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

Q. When you say "stop using hooding in that manner", what
does that mean?

A. Stop using hooding.

Q. Altogether?

A. Yes. Yes.

Q. For all purposes?

A. Yes.

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

A. Yes.

Q. Could your order, in the way that you gave it and in the circumstances that you gave it, have been interpreted as an order that was applicable only to what had happened at the JFIT at Umm Qasr?

A. It could have been. Equally, the JFIT could have said that as a joint asset they are not under my command and therefore it doesn't apply to them.

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

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

Q. I am really asking you about the circumstances in which you gave the order, the terms in which you gave it, to whom you gave it and whether it is possible, in those circumstances, that your order may have been, as it were, misinterpreted, arising as it did, as we understand, from the detail of what you had seen at Umm Qasr.
A. It certainly arose from that. My intention was to stop hooding and I gave out the order for it to stop and I expected it to stop.

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

A. Chief of staff, yes.

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

A. Yes.

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

A. Yes.

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

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

Was that the order that you gave to the chief of
staff or did you give him what I may call the plain unvarnished "no hooding" order?

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

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

A. In my time.

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

A. It was coming on the legal chain, but it was being reported to me by Colonel Mercer because these -- we were in separate geographical places, so he was fairly
reporting his view and other legal views. And within
the intelligence community there was also a difference
of opinion as to doctrine, training and practice.
Q. So was there, coming from the intelligence community, as
you put it, the suggestion that this --
A. Elements of it.
Q. Elements of it that this might be a procedure which
would be needed in the future?
A. Yes, to be quite honest, I can't remember who it was
because that person, as I recall, wasn't addressing
themselves directly to me, but through intermediaries.
Q. Now, as far as you were concerned, then, your chief of
staff would have cascaded that order down?
A. Yes.
Q. Did you know, at the time of issuing that order, that
there were troops on the ground who, at least so far as
they told this Inquiry, believed that it was a standard
operating procedure to hood prisoners at the point of
capture?
A. I didn't know at the time.
Q. But you know that now?
A. I now know it, yes.
Q. If that were the case -- and it is really why I asked
you the question some little time ago now -- it would
have been desirable, wouldn't it, if that standard
operating procedure were being changed from "You may
hood at the point of capture" to "You may not hood at
all" -- it would have been desirable that that should
have been cascaded down in a form which was unmistakable
and therefore perhaps desirably in writing?

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

Q. Well, that is another issue.

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

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

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

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

A. Yes, if I had known that.

Q. It may be thought surprising --

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

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

A. It might have been.

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

A. What was the question again?

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

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

Q. Well, that is another matter too, I understand. But do
you not find it surprising, if it were going on as
a regular operating procedure, that you didn't know
about it?
A. I didn't see it and I -- I didn't see prisoners being
handled, other than in the prisoner of war handling
organisation.
Q. If members of your staff had seen it, would you have
expected them to bring hooding to your attention?
A. Oh, yes, if anybody -- if people -- certainly after
I had given the order, I would expect people to have
made sure that the order was being complied with and to
have taken action appropriately if the order was not
being complied with.
Q. Just dealing with that latter point, if you can help us
or comment at all: it would appear to the Inquiry from
all the evidence that has now been heard that your order
is likely to have been given on or about 3 April. If it
is the case that subsequently -- and again the Inquiry
has heard quite a lot of evidence -- that order appears
not to have been carried through by soldiers on the
ground at least in a number of instances, that is to say
the order was not being complied with, and there is the
suggestion that the order had not been received, indeed,
by some units, how could that have come about and whose
responsibility would it be?
A. Well, the communication within the division -- my orders and the procedures within division are my responsibility. I agree with you, I have seen evidence that has been shown to me that in some cases my order has not got through. Equally I have seen evidence where my order has got through. So I would suggest that the order has gone through patchily. That is regrettable. I accept full responsibility for that.

Q. Where does --

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

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

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

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

A. Correct, at the time.

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

A. Yes.

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

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

Q. Yes.

A. We had looked at the lessons learnt in that operation and the key point was to make sure that the Prisoner of War Handling Organisation was factored in early and that you had sufficient forces to be able to deal with the numbers of prisoners that you were likely to receive.

That was actually probably my biggest concern about the
Prisoner of War Handling Organisation.

Q. As we looked at those documents earlier on.
A. Indeed.

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

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

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

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

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

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

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

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

A. Yes.

Q. "... discussion took place among the lawyers at division
and NCC about hooding, but nothing was brought to my
attention about the decision I had made."

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

A. No.

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

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

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

A. It was being discussed. I didn't need to raise it
because I knew it was being discussed by the legal
because I was told what the legal advisers at various
levels were saying and I was aware that the legal debate
was going on at the higher level.

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

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

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

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

Q. I understand that. I am certainly not going to suggest
that your order was in any way illegal. But your
understanding was that the debate was ongoing, both on
the practical side, if you like, and on the legal side,
and your expectation was that, if necessary, that would
go up to ministers and/or the AG?

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

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

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

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

A. I had left theatre.

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

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

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

"Under no circumstances should their faces be
covered ..."

This is in reference to prisoners who were taken.

"... as this might impair breathing."

Do you see that?

A. Yes.

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

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

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

A. Until I heard about Baha Mousa in September.

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

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

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

A. If there was any death caused by us -- and certainly in custody -- I would have ensured that it was investigated. Indeed, in the preparation for this,
I have seen various bits of evidence and investigations have been directed and that is right and proper.

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

A. Not within the division, no.

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

A. Yes.

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

A. No, not about prisoner handling. There had been -- the only issue that -- and I can't remember if I talked to him about it because it might have been settled by then. There was one issue, but it wasn't about handling, it was about whether, in fact, we should have some independent legal authority reviewing whether somebody was to be kept in detention, effectively in internment, and whether you should have an independent person doing that, which I thought was a good idea. But that -- I can't remember the timing, but in the end that idea did not prevail and it was left, in fact, in the GOC's
Q. Now you have moved over, as we have seen, in May, to the DCJO role. You became aware in that role, did you, of the death of Baha Mousa in custody?

A. Yes.

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

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

Q. You obviously knew of his death.

A. Yes.

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

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

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

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

Q. What was your reaction to learning that Baha Mousa had
died in the custody of British soldiers?

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

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

A. No.

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

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

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

You refer in some detail -- and I record it because your statement will be an exhibit, as you know, exhibited on the Inquiry's website -- to this matter at paragraphs 78 to 84 of your statement, where you set out your analysis -- I am not going to take you through it
in line-by-line detail, General, but you there set out your analysis of the questions that you were asked by the committee and indeed the answers that you gave.

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

A. Correct.

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

A. Correct.

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

A. Correct.

Q. Thank you.

Finally just these points, then, please: looking
back, do you think that, in making your order on or about 3 April, you should have made it without any caveat whatsoever, "Hooding was banned for all purposes"?

A. Hooding was banned.

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

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

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

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

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

Yes, Mr Singh.

Questions by MR SINGH

MR SINGH: Sir, thank you.

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

A. Yes.

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

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

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

Just one question arising from that sentence first, please. When you say you know that, are you there giving your knowledge when you wrote this statement or was that something that you were aware of in 2003?
A. It was certainly my knowledge when I wrote the statement. I think, at the time, I knew that they were illegal. I am not necessarily sure I could tell you under which law they were illegal, but I knew they were illegal because, as a young officer, I had served in Northern Ireland -- I didn't get involved in any of these issues that were going on -- but I knew that UK had been found wanting in this area and a ruling had come out, so I knew that.

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

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

Q. I see. Can I ask, please -- turning to a different topic -- if we can have a document on the screen, MOD011447. This appears, on the face of it, to be a document from commander legal, as we see at the
bottom -- that was Colonel Mercer -- dated 29 March 2003, and it appears, on the face of it, to be addressed to you as GOC. Do you see that?

A. Yes.

Q. Is it your evidence to the Inquiry that you did not see this at the time?

A. I don't recall seeing it.

Q. Can we just look at paragraph 6 for a moment, where Colonel Mercer says that he visited the JFIT and witnessed a number of prisoners of war who were hooded and in various stress positions and that he was informed that this was in accordance with British Army doctrine on tactical questioning. That doesn't jog any memory of yours?

A. No.

Q. If you had seen that at the time, General, what would your reaction have been?

A. Seen this document?

Q. Yes.

A. Well, I would have entered a discussion again.

Q. And if you had been told that there were stress positions that Colonel Mercer had seen at JFIT, what would you have done about it?

A. If I had been told there were stress positions being used, I would have got a clarification from the
organisation concerned and then I would have gone up to
the National Contingent Headquarters, because the
JFIT -- joint -- is a force that operates under their
authority.

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

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

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

A. That's correct.
Q. Can you help the Inquiry, please, with what your relationship on a day-to-day basis was with NCC? Would there have been regular contact?

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

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

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

It is not entirely clear, at least on the face of the document, who is the author of this document. We don't have a signature at the end on the next page. But
what we do see in the second paragraph on the first page
is it says:

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

Have you seen this document before, sir?
A. In preparation for being at the Inquiry. I don't recall
seeing it at the time.

Q. You are not the author of this document?
A. I don't know.

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

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

Does that jog your memory at all, sir?
A. No. My memory as to whether I wrote this?

Q. Yes.
A. No, I have no memory of writing it. It might well have
been written for me and I might well have -- I'm not
saying I didn't write it, but I don't recall it.

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

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

MR SINGH: I understand.

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

Q. Were you at PJHQ by this time?

A. Yes.

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

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

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

Q. Of course.

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

Q. I see. Can I move to a different topic, please, which
is later on, when you heard of the death of Baha Mousa. By that time, as I think you have just told us, you were at PJHQ.

A. Yes.

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

A. Yes.

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

A. Yes.

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

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

The Inquiry has heard -- I don't need to go to it unless you would like me to -- from Colonel Clapham giving oral evidence, that in the discussions about hooding after the death of Baha Mousa, there were three significant players. He said that they were himself, Colonel Duncan and you. Would you describe yourself as a significant player in those discussions?
Q. Can we please look at the email which he is there referring to, which we can see at MOD022183? As is often the case, General, the emails are, of course, in reverse chronological order, so to get the first one, we actually look at the bottom of that page and then have to go over the page to see it. Can we just, first of all, see in the -- forgive me, if we can go back a page of the screen -- to see who it was copied to, this bottom email. It is dated 17 September and do you see in the third line of the "cc" section that there is a reference to "PJHQ", "DCJO", "Ops MAS"? Was that your military assistant?

A. Yes.

Q. Thank you. Have you read this email?

A. Yes, in preparation for appearing today.

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

A. Yes. Yes.

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

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

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

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

Q. Yes.

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

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

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

A. No, they meet.

Q. Where do they meet, sir?

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

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

A. Some of them met at my level --
Q. Some of them did?

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

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

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

Q. Presumably, General, the phenomenon of soldiers putting hoods over a prisoner's head immediately after capture would not be of direct interest to the intelligence community, would it, because that is a security matter? You have explained that for certain security reasons, at the point of capture, your view is that it can be legitimate to put a hood on somebody's head. Have I understood that correctly?
1 A. Well, it isn't now.
2 Q. No, no, but at the time --
3 A. At the time --
4 Q. -- before your ban.
5 A. At the time -- to be quite honest I hadn't thought of
6 that issue --
7 Q. I see.
8 A. -- at the time, at the point of capture. I hadn't
9 thought of that issue at the point of capture.
10 Q. I understand. But what I am really trying to
11 understand, General, if you wouldn't mind helping me, is
12 why the intelligence community would have doctrine,
13 training and practice to do with hooding.
14 A. Because they handle prisoners of war and they get
15 involved in the questioning of them.
16 MR SINGH: I see. Thank you, General. Those are my
17 questions.
18 THE CHAIRMAN: I want to break at about quarter past. It
19 would be nice to think that we could complete this
20 witness' evidence by then, but we will see.
21 Ms Edington?
22 MS EDINGTON: Sir, I have no questions. My topics have been
23 covered by others adequately, thank you.
24 THE CHAIRMAN: Thank you. Sorry, Ms Dobbin, I should have
25 asked you first.
Questions by MS DOBBIN

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

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

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

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

THE CHAIRMAN: Thank you. Mr Evans?

Questions by MR EVANS

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MR EVANS: Thank you, Sir.

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

A. Yes.

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

A. When I visited the Black Watch -- and this was before combat operations started -- they gave me a briefing and they drew a cartoon figure of a man and they said -- inside the head they put all the various organisations which represented Saddam Hussein's regime and they said, "That's what we are -- we've got to remove the head whilst controlling the arms", which represented the armed forces, the police and the other security apparatus, "so that we can then come back and apply first aid to the heart, lungs and so forth, and get this
man back on his feet, even though we have taken off his
head". And I thought that was a brilliant way of
telling me that they understood what we were trying to
do conceptually.

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

Q. Turning to another topic, you told us of the Iraqi
prisoner you saw hooded at the prisoner of war facility
and you said that there were documents in evidence which
he was being led past. Can you just explain what you
did see in that respect?
A. As I recall it, he was being led past, and on a table
there were bits of paper, maps.

Q. Can you remember this? Did you see this incident at the
prisoner of war handling facility or at the JFIT?
A. I can't remember.

Q. Do you have any recollection of visiting the JFIT
specifically on that day or not?
A. I have no recollection and I would have thought I would
have recalled it if I had been there.

Q. When you gave your verbal order to ban hooding at the
beginning of April 2003, did you have any reason to
doubt that it would be disseminated in the normal way
via your chief of staff?
A. No, it was normal, routine.
Q. Would you have regarded dissemination over the radio net as an adequate and appropriate way of disseminating the order?
A. Yes.
Q. May we have paragraph 54 of your witness statement on screen, please? You were taken to a document produced by Colonel Mercer which you said you didn't see. Do you remember the document that demonstrates stress positions?
A. Yes.
Q. Was it your practice, as you say here, to initial documents that you had seen?
A. Yes.
Q. Was there an initial on the document that was produced to you?
A. No.
THE CHAIRMAN: Well, that doesn't mean to say that he didn't see a document with an initial on it. I don't think that carries us very much further. I dare say you will make that comment at some other stage.
MR EVANS: Indeed. May I put it this way? Did Colonel Mercer ever tell you that stress positions had been used at the JFIT?
A. I don't recall it.

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

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

Does that remain your evidence to the Inquiry today?

A. Yes.

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

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

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

A. I think the order -- my decision was at the end of March. At the end of March, my whole focus was on
achieving the mission, which was securing the flank as the American armed forces moved north towards Baghdad. We had to hold some vital ground to achieve that. We had to hold the oil infrastructure, which we and the Americans had captured, and I was being asked down the American chain of command, "Are you holding the oil infrastructure?" -- we got almost that daily question, and we did, of course.

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

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

Q. Finally this: where physically was the division at the end of March/early April 2003?
A. The headquarters?
Q. Yes.
A. It was in the desert.
Q. And you were living effectively out of vehicles at that stage?
A. Yes.
MR EVANS: Yes, thank you very much, Sir.
THE CHAIRMAN: Mr Elias?
MR ELIAS: No further questions. Thank you, Sir.
Questions by THE CHAIRMAN
THE CHAIRMAN: Just the one thing I want to ask you, General, is this: around about the time that you were going into Iraq, if anybody had said to you, "Is there a danger of soldiers beating up people whom they have captured?", what would you have said?
A. I'd have said "No, because they know it's wrong". There will always be some people who break the law, but the vast majority of soldiers know the law and they also know what the right thing to do is, and that we have a system of a rank structure and supervision, particularly with the NCOs, and where things go wrong and people start operating improperly, that should be corrected on the spot.
THE CHAIRMAN: Yes. I see.
Thank you very much for coming to the Inquiry.
Those are all the questions that we have for you. I am grateful to you for coming and I am grateful to you for providing all the evidence that you have and taking the time to read into it before coming here.

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

MR ELIAS: Thank you, Sir.

(11.14 am)

(A short break)

(11.28 pm)

THE CHAIRMAN: Yes, Mr Moss.

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

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

A. Sir.

GRAEME CAMERON MAXWELL LAMB (affirmed)

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

A. Thank you, Sir.

Questions by MR MOSS

MR MOSS: General, can you start by giving the Inquiry your
full name, please?

A. Graeme Cameron Maxwell Lamb.

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

A. That's correct.

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

A. That's correct.

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

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

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

A. Yes.

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

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

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

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

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

A. That's correct, sir.

Q. Thank you. As the Inquiry has heard already, you had a dual role, did you not, because as well as being the general officer commanding 3 (UK) Division, you were also commanding the Multinational Division (South-East),
of which 3 UK was the largest contingent?

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

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

A. That is correct. I am retired.

Q. Having left with the rank of lieutenant general?

A. That's correct.

Q. Thank you. May I turn then, please, to your training? You tell us that, in terms of the general training you received in the law of armed conflict and the Geneva Conventions, the clear underlying message that you received was that prisoners should be treated humanely; is that right?

A. That is absolutely correct.

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

A. I probably finished my last periods of general Geneva Convention LOAC training in the 1970s. During that time, then, one would have covered quite specifically what the rules and regulations were, but of course, in
1970, I was also deployed in -- in the 1970s deployed in Northern Ireland, and so the issues that you raised why were known.

Q. You tell us in your statement that you were aware of the Heath ruling, for example; is that right?
A. Of ...?
Q. The Heath ruling.
A. Yes, I did.
Q. Thank you. If we could look at paragraph 13 of your statement, please, at BMI04911. You tell us there that the only times that you have come across hooding and stress positions and white noise and sleep deprivation was in the course of resistance to interrogation training which you were, yourself, involved in; is that right?
A. This is not the only time I have come across these. This is the only time I experienced it.
Q. Yes. You say that you were reminded of those matters in resistance to interrogation training that you had before going to various wars and operations, a bit further on in paragraph 13; is that right?
A. Correct. This training was about resisting what I would consider to be the inhumane treatment. Before I went on operations and/or to the various campaigns and wars that I have been involved in, then one was reminded of the
resistance to interrogation, of which some of the
techniques had changed over time.

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

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

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

A. Absolutely, sir.

Q. Can you remember -- please don't guess -- one way or the
other whether there was a specific warning to that
effect?
A. No, I can't recall that.

Q. Can I turn then, please, away from resistance to interrogation training to look at your own understanding of the extent to which, if any, the conditioning techniques -- the five techniques -- might be used by British forces against prisoners that they had taken.

If we just look at paragraphs 20 and 21 of your statement, please, at BMI04914, you set out there the techniques in question: deprivation of sight, subjection to stress positions, discomforting levels of noise, deprivation of food and drink, deprivation of sleep pending tactical questioning or interrogation. Those were the techniques that we are looking at, of course.

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

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

Q. I think you suggest in your statement that it was more nuanced to sight deprivation and whether that may be permitted. Were there some circumstances in which, as you understood it, sight deprivation would be legitimate?
A. Yes, I believe it is the case when it is safeguarding the individuals who are at the point of arrest or in a processing of the individual. It is safeguarding of our secure surroundings inside camps and finally, and of equal importance, is intimidation from those the individual would have been arrested with, who may well, by either comment or by just a visual sign, make it clear that they would intimidate the individual.

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

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

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

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

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

A. Correct.

Q. Had you come across any suggestion that sight
deprivation could legitimately be used as an aid to interrogation?

A. No, I think that would be inappropriate.

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

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

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

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

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

A. I think the guidance was -- it is fairly clear in both LOAC and the Geneva Convention -- and the guidance that was given is that it was about acting humanely. It is about not abusing either physically or the mental -- to
cause physical or mental harm. They are the drivers in how one then conducts and looks towards these conditions.

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

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

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

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

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

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

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

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

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

"... ideally, hoods would not be used, but if there
were no blacked-out goggles or blindfolds, then
providing that care was taken that a person was able to
breathe, a hood could, in my view, be used for a short
period of time where necessary for security purposes."

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

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

A. Sorry, Sir.

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

A. My apologies.

THE CHAIRMAN: It is a common fault or a common
characteristic, if I may say.
MR MOSS: You have given the reasons why the sight deprivation may be necessary. Forgive me if it is an obvious question, but why is it that you say that ideally hoods would not be used as the means to deprive prisoners of their sight?

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

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

A. No.

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

A. That would have been a fair and good judgment. It
wasn't, as I am aware, before the Baha Mousa and the 2003 invasion, something which was discussed and you had ready available blacked-out goggles for this particular need.

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

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

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

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

Q. Thank you. May I turn then, please, to your role and to the chain of command and matters related to it? You explain in your statement that, as the general officer
commanding, your role was one of leading the campaign,
but you describe it as being an obligation for you to
set the direction, to set the policy, for the division.
Is that right?
A. That's correct.
Q. With, as you describe it, the detail being taken care of
by the relevant staff officers, headed by your chief of
staff?
A. That is correct, sir.
Q. Now, your chief of staff, now General Barrons, when he
came to the Inquiry, explained that in terms of his
work, particularly at handover and when he first took up
post, was made more difficult by the added complexities
of the multinational aspects of the division.
Presumably those issues significantly affected you as
well as the GOC.
A. Yes.
Q. Perhaps just in a brief synopsis, can you help us to
understand what additional complexities and work for you
the multinational element brought to your role?
A. It meant that I had, as I recall, 11 different nations
which required, therefore, for me to both meet their
presidents, prime ministers and chiefs of staff, for me
to go and visit the troops in question to ensure that
they understood what the mission, our role, was. It
required an understanding of their own peculiar national
capabilities and weaknesses, so that I could ensure the
force was postured in a way that made best sense to the
unfolding and uncertain circumstances that we found
ourselves in.

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

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

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

I would get out in order to try and see -- and seize
opportunities, understand where problems and/or concerns
were arising and to be able to discuss the evolving and
unfolding campaign as we found ourselves down in the
south, sir.

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

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

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

Q. Thank you. The chain of command you have already
touched upon. For you, I think, essentially two chains
of command -- is that right -- the coalition chain of
command to General Sanchez, but your UK chain of command
would have been to General Reith as the CJO.

A. That's correct.

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

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

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

A. I mean, there is a generic responsibility across all the
branches of command that the directive is as applicable
to them in any one branch, so, for instance, the
personnel branch J1 -- G1, whatever you want to call
it -- in the intelligence branch at G2 and J2 and G3
would all have understood and read that directive and
the implications as it affected them. Who was
particularly -- who had the point responsibility on
detainee and intervention, then that is what my
statement refers to.

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

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

Q. Did you have any sense yourself, General, at the time,
that matters relating to apparently prisoner handling and internment might be confused as between the responsibilities of different staff branches?

A. No.

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

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

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

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

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

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

Q. Thank you.

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

A. That is often the case, Sir, and in my particular case, because I was coming back having been fairly busy beforehand, the idea of us not having two generals in the one space -- we only had one bed. I mean there are some simple logistics and associates. There is only one close protection team; there is only one set of telephones and computers. So the idea of sitting and spending days on each other's lap would be unreasonable. But the fact is that you rely upon your staff, you have
confidence in them, you have built and spent time with them, you know them and they, therefore, in fact have the running system in place and one merely goes to pick out what are the key events as they are occurring and some issues on personality, sir.

THE CHAIRMAN: Yes.

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

A. It was not in my recollection.

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

A. That is correct, sir.

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

A. Again, that is correct, sir.

Q. The Inquiry has been told that Colonel Barrons, as he was -- General Barrons -- was made aware during the handover that he received that there had been a prohibition on hooding during Op Telic 1. I think it is right, isn't it, that that's not something of which you were aware -- a specific prohibition on hooding --
at any time prior to Baha Mousa's death?

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

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

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

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

What would you say about that?

A. That would assume that people knew what my views were
and the issue was not raised to me.

Q. Having dealt with your handover, could we look just briefly at the context of operations on Op Telic 2?

I will do so briefly because, if I may say so, it is set out in your statement and indeed in the earlier statements that you have made and also, to a large extent, in your evidence to the Iraqi Inquiry with which this Inquiry is familiar.

Just so that we have the thrust of it, may we look at paragraph 7, please, of your statement, BMI04909?

You say there, General, that at the time of the handover, taking over from 1st Division, that there was a general optimism, tinged, as you put it, with concern about how things might turn out. You go on to explain, don't you -- without taking you to every line of this statement -- that the reality was that things started to unravel quite quickly once you had taken over.

A. That is correct.

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

A. Yes.

Q. -- and no doubt interlinked with difficulties in the infrastructure. And you describe the problems of
civilian unrest as having both the criminal aspects
to it, but also an increase in attacks against security
force personnel. Would that be right?

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

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

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

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

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

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

"Our troops increasingly found themselves having to
operate in an extremely dangerous security environment,
in adverse physical conditions and at full stretch. It
was absolutely uncompromising. We were facing
a deteriorating situation of enormous complexity and we
were so far short of being able to solve the problems
that we were all operating at full capacity in difficult
and crude conditions."

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

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

A. That is correct. I can't recall the figures, but if
they are the ones I gave, I would have drawn them on the
basis of fact. So the security situation was
exponentially lifting and becoming increasingly
dangerous. At the same time what I wasn't going to do
was pull more British young men and women in until we began to try and understand why the situation was collapsing and, therefore, to try and understand what solution was needed, rather than just calling for more troops.

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

Q. Having at least touched upon the context of the operations, can I turn, then, to orders and instructions from Op Telic 2 in relation to prisoner handling please? If we look at paragraph 15 of your statement, please,

A. That is correct, sir.

Q. You go on to say -- we needn't look it up -- but you see the process by which the detail, once the general policy had been set -- leaving the detail of such orders and instruction as being part of the mission command
A. Yes, and, of course, in the military, an order is just that. It is not a suggestion, it is not for comment, it is an order. It is to be complied with. Fact.

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

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

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

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

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

Q. Again, under "Prisoners of war", in (d), the guidance which you asked the Inquiry to look at as an example of
this I think one can see on the right-hand side of the page:

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

Then:

"General guidance on the processing of treatment ...

is as follows.

"(1) Treat humanely at all times."

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

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

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

Q. Now in terms of orders going into further detail and whether that was necessary or appropriate, can we turn to that? We should look, please, at your paragraph 16 at BMI04913. You say there, towards the end of the paragraph, that to you it is obvious that "...

subjecting prisoners to the conditioning techniques in which the Inquiry is interested (excluding hooding for security purposes) would be in breach of general
That is the order we have just looked at.

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

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

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

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

You make the point that that was a duty that everyone in the chain of command under you had as well.
You go on to say that, from your position as GOC, you believe there were sufficiently clear orders and guidance given to commanders below you in terms of the approach to take to prisoner handling and treatment; is that right?

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

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

A. I am, sir.

Q. You may know that that led to a verbal order, as General Brims was telling the Inquiry this morning, and later FRAGO 152 and a brigade level order with a wider prohibition on covering prisoners' faces. Again I think you will be aware of those matters now, although you
were not at the time; would that be right?

A. That is correct, sir.

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

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

So that is possibly where the information would have -- it would not necessarily have flowed from the 1st Division's conduct of operations to the -- where we
found ourselves in 3rd Division in the middle of the year, sir.

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

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

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

A. I have no idea what the passage of information from the
1 st Division to the 3rd Division was. I would expect, upon the conditions that I found myself in, which was a developing insurgency in the south, that the deprivation of sight was a necessary act.

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

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

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

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

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

A. It would have required a dialogue between the chief of
staff and the various troop-contributing nations to see
where there would be a difficulty, if there was one,
with that order then being given. That is why the
importance of the humanity, "protect from physical and
mental harm", was such an important message in the
orders that were given because they were unambiguous and
presented absolute clarity in how I expected the
individual nations to handle detainees and internees,
sir.

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

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

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

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

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

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

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

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

"Although I was not personally involved in the drafting of ... [this], this suggests that the detail of handling was not considered to be a problem at the time,
Can we just be clear about that? Do you have any recollection at all about the process of FRAGO 005 being drafted or the thinking that went into it?

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

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

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

Q. The reason, General, why I raise that with you and why it is of interest and relevance to the Inquiry is that Colonel Barnett -- the divisional legal adviser who, of course, you will remember -- has given evidence to the
Inquiry to the effect that he originally intended to put into FRAGO 5 detail both on the prisoner handling procedures and on tactical questioning procedures, but that he received advice from the other staff branches to the effect of: it would either make the document too long or, if the procedures were condensed, there was a risk of inaccuracy feeding in in terms of what those procedures were. For that reason he decided not to give the more tactical level detail of those procedures.

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

A. No.

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

A. I think I would have taken a judgment as to the reason why it needed to be included. The observation that Colonel Barnett made or the staff branches, that this would be too long -- and don't forget everybody was working at a fairly -- at a very high tempo. You know we were working about a 20-hour day as a sort of -- not
abnormal -- so if you include another four or five
pages, then it doesn't sound like much here in this
room, but actually, to busy staff trying to get
information down on communication systems that weren't
necessarily the best that were available and then for
those to understand it and cascade it down their own
chain of command, with everything else that was going
on, a judgment would have been taken. If it was
a serious issue, then it would have been included.

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

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

A. I would have checked with the chief of staff that he was
comfortable and content with it. I would have checked
with Colonel Barnett that he was comfortable on the
legal aspect and he was content. I would have then,
Q. In terms of the omission -- and I stress if it were an omission -- of any reference to the hooding prohibition being contained within that order, I think it is right, as you have told us, that from a personal point of view you weren't even aware of the hooding prohibition even in late August 2003.

A. That is correct.

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

A. Correct.

Q. Did you have an understanding -- forgive me, General, for putting it in that way -- of how the tactical
questioners fitted into the chain of command to whom they would have reported and what the reporting lines were?

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

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

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

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

Q. If more detailed instruction was to be given on TQ'ing
aspects, from which branch and from which formation headquarters would you expect it to have been given?

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

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

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

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

Can I turn now to a slightly different matter, which is simply your awareness of prisoner handling techniques in theatre. You have told us, General, about getting
out on the ground and seeing troops and going on patrol.

Did you see prisoners who had been captured or prisoners actually being captured at any time when you were out on the ground?

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

Q. Yes.

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

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

A. No, sir.

Q. Did you visit the battlegroup detention facilities themselves?

A. No, sir.

Q. When you saw prisoners at the TIF, were they blindfolded or hooded?
A. No, they were in a controlled area, controlled
environment, that was what you would expect:
buildings -- we had to, I think, replace the first one
with a -- because of ICRC recommendations -- with an
improved structure --

Q. Yes.

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

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

A. No.

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

A. Not that I recall.

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

A. No, and if I had, with anything else, then I would have
pursued that course of action. It did not come to my
attention, therefore I did not.
Q. Thank you. May I turn then, just briefly, to Baha Mousa's death itself and the immediate aftermath of it? If we look, please, at paragraph 34 of your statement, you tell us there, in paragraphs 33 and 34, that your recollection is of learning of his death after a morning meeting. Is that likely to have been, do you think, the Tuesday morning, 16 September, immediately after Baha Mousa's death?

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

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

A. I mean, my conversation -- and I can't recall the exact detail -- with General Moore was that a young man had died in our custody in detention and, therefore, the next comment was that an investigation would immediately
start and there would be no holds barred to an SIB investigating it and finding out what had occurred.

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

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

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

A. The details were not presented to me. I was aware that he had died in detention. At that point in time my professional view was, in fact, what was important was that the SIB and the inquiry find out what happened without any interference from me or pressure in order to find out, in effect, the facts of the case and if there was disciplinary action and an investigation, then it
should do so in a fair and forthright manner.

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

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

Q. On the evidence that the Inquiry has seen, certainly two headlines that appear to have come out from the immediate lessons learned was that there was no policy
on tactical questioning that was visible in theatre --
do you remember that coming up?

A. I cannot recall that.

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

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

Q. Thank you.

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

A. I have, sir.

Q. -- in recent hours or days.

We see that it is a submission going up to the
Secretary of State on 10 September 2003. As you will be
familiar with now, this was a document that was addressing options for the review of internment, whether internment would be reviewed by military officers or by a lay panel or indeed by a panel of independent judges or lawyers.

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

A. Correct.

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

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

A. Again, I can't remember the exact detail of this, but that would follow with -- my level, what I considered to be, that -- that review and overview of our legal procedures from where I sat as GOC, the delegated
authorities and direction and orders had been given.
I was looking across the TIF and then this issue which
rested on my soldiers, which was an internee staying
beyond 28 days and me having to justify that on the
basis of intelligence and evidence given to me by, in
this case, Colonel Barnett and then making a judgment --
my view was that after six months or whatever it was,
that this is not a thing that a soldier should be doing.
It should be handed across to people who really truly
understand the intricacies and nuances of the law,
rather than me making some judgment in the best cause on
the information and evidence that I had presented.

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

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

Q. Al Skeini, perhaps.

A. There was a young soldier who was being -- it had been
suggested he had murdered an Iraqi and I think this may
well have been a witness statement to that.
Q. All right. In some senses perhaps the precise background does not matter. I wanted to go for this just to look at a few aspects of it. If we turn, please, to MOD048611, you had been dealing in the previous paragraphs, General, with the operational demands and so on, about which you have already given your evidence.

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

A. What they had done is, in particular, had come and asked me permission whether they could set up a police support unit because the police had just been re-- had taken from where they had been with the old regime and re-brought back in and it caused some angst and difficulty with the local population. This was trying to improve and give them training and some substance. The initiative, in my view, was a good one and entirely appropriate. That is where this came from, along with the neighbourhood watch scheme which was adopted across the division, sir.
Q. So those were initiatives from 1 QLR that, as it were, had caught your eye; would that be right?
A. That is correct.
Q. Over the page we see, in testament to Colonel Mendonca, you stating that it is very important to understand the volume of his responsibilities and you go on in paragraph 16 to detail your assessment of him. That included, didn't it, a yearly appraisal which we see at paragraph 18 in respect of Colonel Mendonca? Do you see that there --
A. I do, sir.
Q. -- that you would have been the countersigning officer, "an exceptional tour of duty" and so on. I am not going to read it all out. If we go over the page, we see that you had raised his potential for two-rank promotion to "exceptional". Forgive me putting it this way, but presumably, General, for a man of your experience, that is not an annual appraisal that you would have given lightly to a unit commander?
A. That is correct. My view was that Colonel Mendonca had, as I said, in the most difficult and dangerous operational circumstances, done extraordinarily well, and I stood by that position because, at the time when there was a suggestion that whether he might or might not get a gallantry award -- because obviously that was
then being looked at after the death of Baha Mousa as
that investigation unfolded -- my view was very clear,
that that was pending. But from his performance in the
field of battle and on combat operations, he had led
well and, as I articulated in that, a DSO is not lightly
given, sir.

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

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

A. Can you repeat that question slowly?

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

A. I would not have suggested serious concerns. I would
have expected that officer to have taken the judgment
and the direction and the orders he had been given about
humane treatment about physical and mental abuse, and 
therefore a stress position as unacceptable to me would 
be also unacceptable to them.

Q. And that means order that they be stopped, does it?
A. And order that in fact they be stopped, yes.

Q. So far as hooding is concerned, if hooding was known to 
have been used not as a security precaution but as part 
of a conditioning process prior to tactical questioning, 
would you similarly have expected an officer who knew 
that to have intervened and to have stopped that?
A. Yes, because I think the guidance was clear about 
humanity. In this case, if it was being used for 
something it should not have been, it would be 
inappropriate.

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

Thank you, Sir. Those are my questions.

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

Questions by MS HETHERINGTON

MS HETHERINGTON: General, just one topic for you which 
follows on from what you have just been asked about. 
You were just taken back to paragraph 16 of your 
statement, where you say that it was obvious to you that 
the conditioning techniques being used on prisoners
would be in breach of the general principles of humanity and LOAC. That, as I understand it, is why you were content that the direction based on those general principles was adequate.

A. Correct, ma'am.

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

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

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

A. No, that is why we have a chain of command, and the assumption is that in fact that that direction and orders, guidance, the way I expressed myself and see things, runs all the way down through, in this case, the
brigade commander, the battalion commanders, the company commanders, and they would then take this and have that responsibility. It would not change in them acting properly and humanely.

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

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

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

THE CHAIRMAN: Yes, go on.

MS HETHERINGTON: You explained that you were acting as the review authority for internment at the time. Can I just ask whether, in that role or otherwise, you became aware
of breaches of the time limit for transfer of detainees to the TIF by battlegroups?

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

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

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

My judgment on the intelligence, as I saw it, was one of experience rather than one of turning around and saying, "Tell me exactly what the raw point of this intelligence was". There just was not enough time in
the day or my inclination, on the basis, to follow that
call the way down the line, hence the reason that I felt
it appropriate that an independent body come out and
take those responsibilities from me, on the basis that
I was comfortable with the judgments I was taking.
I was not competent entirely and properly trained to be
able to in fact take such judgments on internment.

MS HETHERINGTON: Thank you very much, General.

    Thank you, Sir.

THE CHAIRMAN: Thank you. Ms Dobbin?

Questions by MS DOBBIN

MS DOBBIN: Thank you, Sir.

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

A. Can you speak up a little?

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

    Upon reflection and standing at this distance, how
do you think that that operational context affected prisoner handling?

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

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

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

Were they all slightly compressed and therefore did we have time -- for instance I had 11 nations: Should I have reviewed every single legal procedure across those 11 nations in order to have a full understanding of how they conduct tactical questioning, how they do prisoner handling and all the rest? Of course I should.
Did I have time to do that? No.

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

A. No, no.

MS DOBBIN: Thank you.

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

THE CHAIRMAN: Mr Evans?

MR EVANS: No questions, thank you, Sir.

THE CHAIRMAN: Mr Moss?

MR MOSS: No, thank you, Sir.

Questions by THE CHAIRMAN

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

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

A. No, Sir, not in any way.

THE CHAIRMAN: No.

A. It has a bearing --

THE CHAIRMAN: Yes.

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

THE CHAIRMAN: Yes. Very well.

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

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

A. Thank you.

(12.55 pm)

(The short adjournment)

(1.55 pm)

THE CHAIRMAN: Yes.


Mr Hemming, please.

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

MARTIN JOHN HEMMING (sworn)

THE CHAIRMAN: Yes, do sit down, Mr Hemming. If you would be kind enough to speak into the microphone, we will hear you. The acoustics, otherwise, are not all that good.
MR ELIAS: Would you give the Inquiry your full name, please?
A. It's Martin John Hemming.
Q. Mr Hemming, if you look to a folder to your right hand, you should find within it a copy of your statement to this Inquiry. If we look at the last page of it, please -- two statements, indeed -- the last page of the first at BMI08483, would you confirm that your signature appears above the date of 28 May?
A. Yes.
Q. 2010. Then the second statement, BMI08488, a short statement, again does your signature above that date?
A. Yes.
Q. When you signed those statements, were you attesting to the Inquiry that the contents of them were true to the best of your knowledge and belief?
A. I was.
Q. Thank you very much. Then everyone has had the opportunity to read those statements, Mr Hemming, and, if I may say so, they are comprehensive in the ground they cover and I don't propose to ask you very many questions at all, but certainly not to cover ground that is well dealt with in your statement.
I am going to turn to one or two topics, if I may.

First of all I will begin just by running briefly with you through your career history, if you like. You tell us you were called to the bar in 1972.

A. Yes.

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

A. That's right.

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

A. That is correct.

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

A. That is true.

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

A. That's right.

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

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes, it would have been.

Q. Now as I say, I just want to touch upon one or two issues largely covered in your statement: prisoner handling issues arising from the conflict in Iraq, did you give legal advice, as you recall, in that period 2003/2004 relating to prisoner handling issues?

A. Not on the physical treatment of prisoners and I don't remember other advice actually.

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

A. Yes.

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

A. Yes.

Q. -- handling aspects?

A. Yes.

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

A. No. As I say in my statement, I was aware of the position that was being taken by Vivien Rose, I think, in around about September 2003 in relation to the principle that it was possible to hood for security purposes lawfully.

Q. I am going to come back to that, if I may, in just
a moment or two.

A. Yes.

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

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

A. Yes.

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

A. Yes.

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

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

Q. So these were matters that were triggering that thought process leading to the advice being sought --
Q. -- in early 2003?
A. As I remember, we always realised that we were going to need to cover the ECHR bases.
Q. Thank you.

Quite a separate point: did you have any hand directly in the provision of information for Parliamentary questions, the answers thereto, the background notes?
A. Not that I remember. Certainly we would not have been providing, as it were, information about the facts of what happened in any given instance.
Q. You are just dropping your voice a little.
A. Sorry, we would not have been providing information about the facts of what was happening in theatre, for example. That would be coming from the people who had the sources.
Q. That would be coming perhaps not --
A. PJHQ to theatre, I would expect, yes.
Q. Yes.

But in similar vein, could I ask you, please, to look with me at two paragraphs of the statement from the then minister, Geoffrey Hoon? Can we have on the screen, please, BMI08529, paragraph 24, first of all, where Mr Hoon says this:
"I have been asked by the Inquiry to give an account of what I knew, what I was told, the knowledge I had and other discussions or communications that took place in relation to the banning of hooding by the CJO ... in October 2003. The letter from the CJO ... was issued over one month after the death of Baha Mousa. During this period there were discussions about what action to take. I certainly recall that following the death there were numerous discussions in the department with General Reith, the chiefs of the general staff, the Permanent Secretary ... and Martin Hemming about the lawfulness of hooding."

A. Yes.

Q. Do you recall that?

A. I don’t remember any particular conversation with the Defence Secretary over hooding. I have seen his statement. I note that he says his understanding was that it could be lawful to hood for security purposes, which, if he had asked me, is what I would have said was my view. But I don’t remember any meetings actually with the chiefs of staff or the permanent secretary or indeed John Reith where it was discussed with me.

Q. Perhaps more importantly, do you have any recollection, Mr Hemming, of giving the minister your view, your advice, about the lawfulness of hooding?
1 A. I do not have any recollection of discussing hooding.
2 Q. Can we go to paragraph 26 in the same statement --
3 A. Yes.
4 Q. -- where the then minister is saying he learnt at the
time of these discussions the detail of the Heath
ruling, although he had been aware of it in general
terms. He says four lines up from the bottom, at the
end of the line:

"It was during these discussions that I was advised
that hooding was considered to be legal, albeit for
operational security purposes only, and that this was
a view shared by other countries in the coalition."
5 A. Yes.
6 Q. My question to you is simply to ask whether you recall
that being your advice to him.
7 A. I don't recall that was my advice to him. Whether or
not other lawyers had meetings with him, I don't know.
8 Q. I was going to come to hooding next, so let's deal
with it from this document, as it were.
9 A. Okay.
10 Q. That would have been your advice, if asked at the time,
would it, that hooding was considered to be legal,
albeit for operational security purposes only?
11 A. Provided it did not cross into being inhumane, yes.
12 Q. You were aware, were you, of that ban on hooding that is
referred to there by the minister in or about October 2003?

A. I think I must have been.

Q. Did you have a view at that time as to whether hooding in itself was humane or not?

A. I think my view was that provided the hoods were applied for security reasons in a way which did not cross the boundary into being inhumane, it was obviously humane, yes.

Q. So -- may I put it this way -- what does that mean?

A. I think it means I don't think hooding for security reasons was axiomatically inhumane. It would depend upon the circumstances, the conditions, the individual, the length of time, all those sorts of considerations.

Q. So it may be in certain circumstances that hooding, as it were, from the first moment, could be inhumane, but in other circumstances you would say it may not be?

A. Perhaps not from the first moment, but very close to the first moment I suspect it could be inhumane.

Q. That is the advice that you would have given if you were asked to give it in that sort of detail?

A. If I had been asked, that's what I would have said was my view, yes.

Q. Do you think, looking back on it, Mr Hemming -- perhaps with hindsight -- that hooding in fact, whatever the
circumstances, is inhumane?

A. No, I don't think -- I don't think I do agree that it is -- axiomatically inhumane is what you are saying, I think.

Q. Yes.

A. No, I don't agree.

Q. Had you ever experienced a sandbag over your head?

A. No, I hadn't.

Q. Would it have mattered whether it was a sandbag or some other bag as to --

A. Well -- sorry.

Q. Please, you were going to answer.

A. My assumption is a sandbag, it's -- air can move through it, so the likelihood of restricting breathing is obviously much reduced compared with using a plastic bag.

Q. Could we have a look, please, at a document we find at MOD020228? I think this may be the document you were referring to or at least part of the chain of documents that you were referring to a little earlier.

If we start at the bottom, because these are emails that, as it were, run up the page, if you follow me.

A. All right.

Q. 13 May at the bottom, addressed to Martin and Vivien re hooding. If we just go over the page, we can see the
author, Ari. Who was that?

A. That was the then PJHQ legal adviser. I think she had been there five or six weeks at that point.

Q. So as you can see under the heading "hooding", addressed to you and to Vivien.

A. Yes.

Q. "As you are aware this issue is has caused some concern over the last day or so ..."

This is now 13 May 2004. As I put it to other witnesses in the past, the balloon was going up, as it were, as to certain practices in Iraq so far as the media were concerned at this stage, as you may recall.

"... I am writing to seek your guidance on whether the AG should be engaged to provide a clear legal guidance on the following points as the issue causes us some difficulty at an operational level.

"1. Is hooding unlawful per se; or.

"2. Is it permissible in limited circumstances.

"What concerns me is that hooding has been used in various theatres for as a practical method and for a limited purpose namely.

"A temporary measure whilst the person was in transit.

"For force protection and protect the route to the facility, et cetera."
"For his own security.

"To protect a HUMINT, where that was applicable.

"I have sought clarification and await a response on the question of whether or not hooding was used for the purposes of disorientating a prisoner, in which case it clearly violates ECHR jurisprudence and would therefore amount to 'inhuman and degrading treatment'."

Pausing there, would you have agreed that hooding used for that purpose, disorientating a prisoner, would clearly violate the law?

A. I think it would run a very serious risk of doing it, yes.

Q. If we go over the page, please, I just want to go to the last paragraph on the page, beginning:

"In the circumstances I wonder whether it is time to revisit this issue and seek clear guidance so that troops deployed, now or in the future, know exactly what the position is and equally it allows us to give a clear steer as legal advisers. In the meantime guidance will be issued by the appropriate bodies to the forces to the effect that no hooding is permissible until we receive clear guidance on it.

"I would welcome your thoughts on this as soon as possible."

Going back to the previous page, then, please, we
see the response from Vivien Rose, which begins:

"I would not be in favour of asking the AG at this point."

She goes on:

"I understand that the practice has now finally been stopped in Iraq at least so the answer to the question is presumably academic for the period from now on. We do not know where the current public debate about it will end -- and we do not want to push the AG into taking a position in the abstract that we and he may then regret in the light of some later claim or allegation."

Did you see that exchange?

A. I don't remember seeing the email back to Ari, although I say in my statement I think it is quite likely Vivien would have talked to me about the issue of going to the Attorney, yes.

Q. And you agree, did you, with the proposition that the matter should not be, as it were, staffed up to the Attorney General?

A. I would have agreed not to go to the Attorney at that time.

Q. Why?

A. Well, at that time -- I mean it was an academic question. I think I say in my statement that there was
a submission, which I think was copied to me, which I have seen in the papers, from Stuart Kistruck, telling ministers that hooding had been banned in all operational theatres, including Afghanistan and Bosnia, so everywhere that British forces were in operations hooding had been banned, and, in those circumstances, I would not have gone to the Attorney. If it had come back on agenda, then things would have been different and we could have gone to the Attorney to talk about it at that stage.

Actually, on something like this, I would have wanted to go to the Attorney with a legal view and with a practical proposition. Given the difficulties with hooding, you would expect to be going to the Attorney if you were seeking to argue that hooding was lawful, with the necessary precautions and safeguards to avoid it being used in an inhumane way.

Q. So you took, did you, the line that because hooding was no longer on the agenda for use, it was now ordered not to be used --

A. Yes.

Q. -- that was, as it were, the end of the matter?

A. It was academic for the time being. If it was to be revived, then things might be different. The other point which would have been in my mind was the
ministerial code which has passages on consulting the
Attorney General. I think at this time it was a rather
longer passage in the ministerial code than it now is,
but the key element of going to the Attorney is you go
in good time, before the Government is committed to an
important position having legal ramifications. And the
Government had actually just banned hooding completely
everywhere, so it wasn't on the agenda.

There is one other point which I should mention at
this time as well, which would certainly have been in
Vivien's mind. There was a great deal going on with the
Attorney. This was point at which we were dealing with
the negotiation in New York of the follow-on -- or the
Security Council resolution which was put in place --
I think it was adopted around about 8 or 9 June and it
came into force at the end of June. I have a pretty
strong recollection that the issues which were arising
there about the legal position post 30 June were issues
which were also engaging the Attorney and they were very
busy.

Q. So the Attorney was a busy man?
A. Certainly.

Q. Were you aware at this time, Mr Hemming, of differences
of opinion, not only amongst the lawyers about the
lawfulness or otherwise of hooding in itself, but also
differences of opinion amongst soldiers as to whether
hooding was required as a practical measure in certain
circumstances?

A. I don't think I was. I have seen in the papers an email
from Nick Clapham and some medical evidence around about
the same time. I had not seen that, I don't think,
before preparing for the Inquiry.

Q. Presumably -- forgive me -- if you had been aware that
those were issues that were being debated --

A. Yes.

Q. -- I put it in shorthand of course -- practical
considerations as to whether hooding was or might be
required for the future --

A. Yes.

Q. -- you might not have so readily regarded it as a matter
that was dead and buried?

A. Well, I don't think I regarded it as a matter that was
dead and buried in any event. I know from the papers
there was a review. When I did my statement, I had
little recollection. But now I have seen a much fuller
set of papers I think it is probable I knew that the
review was going on.

It strikes me that the natural thing to do, had that
review ended in something going to ministers or to the
CDS which recommended using hooding for security
purposes -- that's the point at which I would be pretty confident, given what was happening, that ministers would themselves have said to me, "I think we would like to see what the Attorney says", particularly since a Parliamentary statement would have been planned and where there would have been a lot of interest in the question.

But at the time that I agree with Vivien that we didn't need to go to the Attorney, it was an academic question because it had been banned by order everywhere that British forces were operating.

Q. It might be said, nonetheless, that you should have taken a view in legal terms that hooding was inhumane and therefore unlawful, whatever the circumstances were. What would you say to that?

A. I think it is a question you asked me previously, "Is it axiomatically inhumane?" and I don't agree that it is. I think it would depend upon the circumstances in which it is being used.

Q. I understand that. But it was not a matter about which you thought you ought to take further, if you like higher, advice?

A. The situation was one where it was completely banned, so --

Q. I follow.
A. -- it was academic.

Q. Then just two other matters, please, from me. The first is simply to record this, because I don't want to go into the detail of it. Your second statement deals with matters relating to Colonel Mercer --

A. Yes.

Q. -- and matters that he has raised about conduct alleged to have been carried out by you following the court martial.

A. Yes.

Q. In that statement you deal with those issues and you deal with them fully and -- can I put it straightforwardly -- you refute his account of the matter and say that he is mistaken.

A. On what he said about me, yes.

Q. I do not propose to deal with it further. Your statement, of course, is there, your second statement, and no doubt will be referred to by those who want to know more.

Finally, may I take you, please, to what is a document we find at MOD053828? It is dated 17 May 2004. You can see to whom it is sent. You can see the subject, "Draft Cabinet colleague's paper", of low importance it is said. I just want to refer you, please, to the handwriting towards the foot of the page.
Do you see there is the reference there, "Martin Hemming is content", as it seems to say.

A. Yes.

Q. I just want to take you three pages in at MOD053831, please. At the very foot of the page, Mr Hemming, in the last paragraph, the last two lines:

"There is, however, no evidence that hooding was used at any time during tactical questioning or interrogations in Iraq."

Do you see that?

A. Yes.

Q. Was it your understanding of the law and would you have so advised that hooding for the purposes of tactical questioning was unlawful?

A. Yes.

Q. Just so that we are clear about it, that means, does it, not only hooding if it were ever practised during tactical questioning, but in preparation for it?

A. Yes.

Q. That would be unlawful too?

A. Yes.

Q. I don't know whether you recall the document or whether you recall seeing it or indeed whether you were content, as that handwritten note indicates, but do you recall seeing the document or a document saying what is said
here, "No evidence that hooding was used at any time
during tactical questioning or interrogations in Iraq"?
A. I have no strong recollection of reading it, though,
having seen the note, it looks as though I said
something about it.
Q. Were you in fact ever aware, not least from the
circumstances of the Baha Mousa case and his own
death --
A. Yes.
Q. -- that hooding does appear to have been used prior to
tactical questioning on a number of detainees?
A. Prior to or during? Sorry.
Q. Sorry?
A. Do you mean prior to or during?
Q. I mean prior to --
A. Yes.
Q. -- but in preparation for, if you like.
A. I say in my statement that I was aware -- I am not
entirely sure how -- that hooding formed part of the
circumstances of the Baha Mousa case, but I didn't know
how it had been used, as it were.
Q. You didn't ever know that in fact it was hooding used
prior to tactical questioning and apparently for that
purpose?
A. No. My understanding of the connection with the
intelligence corps tactical questioners I am very
certain I derived reading the court martial papers.

MR ELIAS: Thank you very much.

THE CHAIRMAN: Yes, I expect you will be asked a few more
questions by other counsel, Mr Hemming.

Mr Singh?

Questions by MR SINGH

MR SINGH: Sir, thank you. Mr Hemming, a few moments ago,
in answer to a question from Mr Elias, you said that
hooding for the purpose of disorientation would, if
I recall your answer correctly --

A. I don't think I mentioned hooding for disorientation.

Q. Let me finish the question, if you don't mind.

A. Sorry.

Q. Let me put it this way: if a person were hooded for the
purpose of disorientation, is it your view that that
would carry very serious risks of being unlawful?

A. If it is for disorientation in relation to
interrogation, yes.

Q. Only very serious risks? Is there any doubt about it?

A. No, I don't think there is any doubt about it.

Q. It is clearly unlawful, isn't it?

A. I think it is probably clearly unlawful, yes.

Q. If you had been made aware -- and I would like really to
know, please, about your state of mind in 2003 and
2004 -- that hooding had been used in Iraq for the purpose of disorientation, what would your reaction have been?

A. I would have asked more questions.

Q. If a lawyer had said that to you or brought it to your attention, what would your reaction to them have been?

A. I would have asked questions about the statement, how it had arisen.

Q. Can we look at a document, please, at MOD020214? This, you will see -- the main email at least on this page -- is dated 12 May 2004. Do you see that?

A. Yes.

Q. It is from LAl1S, which the Inquiry understands to be Rachel Quick, and we see Rachel's name at the bottom, don't we?

A. Yes.

Q. It is sent to a couple of addresses. The first one is your email address, isn't it?

A. Yes.

Q. It is addressed to, by name at least -- the second email address, someone called "Humphrey". Is that Humphrey Morrison, do you know?

A. I think it must be, yes.

Q. Rachel Quick says in this that she has spoken to PJHQ J2 intelligence and they have explained hooding is not
permitted per se, nor trained upon as an interrogation
tactic. We can see what she says in the rest of that
paragraph, including what she describes as the "bad
news".

There is some initial confusion in theatre over what
type of blindfold was permitted to be used upon capture,
and we can all see the rest of that. Then she has
a little sub-heading, do you see, "Why do prisoners need
to be blindfolded?"

A. Yes.

Q. And she says:

"There are a number of reasons, including the
scenario I explained to protect the ID of the HUMINT
source. Other reasons include, blindfolding the
prisoner on capture to subdue them. It has also been
used as a tactic to disorientate the prisoner -- it
apparently makes them more amenable to interrogation."

Did you see this at the time?

A. I have no recollection of seeing this.

Q. Does that mean that you did not see it or you just do
not have any recollection one way or the other?

A. It means I don't remember seeing it.

Q. If you had seen it, Mr Hemming, what questions would you
have asked of Rachel Quick?

A. I would have asked her what the source was, what it was
Q. Anything else?
A. Well, I think my starting point would be to ask her to explain where this had come from.

Q. You were asked some questions a moment ago by Mr Elias about the email exchanges with Vivien Rose and Ari. Can we please just go back to those for a moment at MOD020228? You agreed, as I understand it, with the first sentence of Vivien's email, that the question is presumably academic for the period from now on.

Did you agree or do you agree with the next reason that she gives for not consulting the Attorney General, namely that, "We do not know where the current public debate about it will end -- and we do not want to push the AG into taking a position in the abstract that we and he may then regret in the light of some later claim or allegation".

A. No, I would not actually have agreed with that.

Q. Sorry, sir, I'm --

A. No, I would not have agreed with that, no. In fact, I think actually, had we gone to the Attorney at that time, there was considerable prospect he would have agreed with our position.

Q. What about what she says towards the end of the second paragraph?
"The chances of getting an answer out of the AG in anything quicker than months is nil in my view."

A. Yes.

Q. Would that have been a good reason not to consult the Attorney on an important point of law?

A. I don't know whether she is saying that was the reason why she wasn't consulting. I don't think that was her view. But it was actually in practical terms -- because I have already mentioned the amount of business going on at that time, the Attorney's office was extremely busy and they, like any organisation, had to prioritise, and an academic question, which -- I don't know whether we are agreed -- would probably have gone to the lower end of the pile. So I think it was a fairly rational assessment about the prospects of getting an outcome --

Q. Yes.

A. -- quickly.

Q. You said more than once, as she does, that the question had become academic, but it had only been banned very recently in all theatres at this point because it had been, in fact, banned only in Iraq initially in late 2003; isn't that right?

A. I understand so. I gather -- I saw Sir John Reith's evidence where he said the failure to ban elsewhere, in September I think he said, was an oversight.
Q. Yes, and the Inquiry has heard some evidence to the effect that in fact, even after the Prime Minister had made a statement in the middle of May 2004 that there had been a ban, it then transpired that even in Iraq special forces had continued to use it and it was only banned just after the Prime Minister's statement; do you recall that?

A. Yes.

Q. So by the time of this email, 17 May 2004, it has only just been banned in all theatres and it has been banned as a matter of policy, hasn't it, not as a matter of law?

A. Yes.

Q. So given what you know through your many years of experience of military life, that orders can change quickly if necessary because developments can be very fast on the ground, can't they -- given that, wouldn't it have been sensible, precisely because there was now the luxury of some time, to take the Attorney's view on the legality once and for all?

A. Well, I mean, what I had seen at that time was a very unequivocal statement being made to the Defence Secretary that it had been banned third time round -- it had been banned, then re-banned and then re-re-banned -- been banned in all operational theatres.
unequivocally. I think reference might have been made to the problem with the SF. And also, having seen the review work that went on subsequently, I rather doubt it was something that was simply going to change overnight.

Q. Can I move to a different topic, please? In February 2004, are you aware that in that month the ICRC --

A. Yes.

Q. -- produced a report about Iraq --

A. Yes.

Q. -- including, the UK's activities there?

A. The coalition forces'.

Q. Including the UK's activity there.

A. It did, yes, but it did not discriminate between the UK and the US in the report.

Q. You saw that report, didn't you?

A. I saw the report in -- I think I read the report in -- when it was leaked by the Wall Street Journal in May.

Q. Can we see a document, please, at MOD053398? Towards the bottom of that is an email from Ari again. There is a thing addressed to you. The heading is "ICRC report". When you say, on 5 March, "Ari, I think it would be useful to see it", what were you referring to?

A. The report.

Q. Did you not see it at that time?

A. No, I don't think I did.
Q. Can we see, please, MOD053397? Here we have an email of 8 March 2004 from somebody at the bottom signing off as "Neil". Do you know who that is?

A. I think it is Neil Brown, the lawyer at PJHQ at that time.

Q. Indeed. We have heard evidence from Commodore Brown. It seems to be addressed to Martin and Vivien.

"As Arvinder has mentioned, the ICRC report is being faxed to you this morning."

A. Yes.

Q. Was that done?

A. I think it was done.

Q. So was it in March 2004 that you read the ICRC report --

A. No, I don't think it was.

Q. Why not?

A. If you carry on, I think you will find a minute from Vivien to me.

Q. Well, if need be --

A. Well, I can explain.

Q. Yes, please do.

A. When the Wall Street Journal leaked the report, which I think was on 7 May, there was a certain amount of concern in the department about the knowledge that ministers had had. It is obvious from the note that I am referring to that I asked Vivien to tell me what
had happened to the report with us. Having seen
Vivien's note, it is entirely consistent with neither
she nor I thinking that I had seen it.

Q. So was it on or around 7 May that you read it?
A. Well, I would have read it shortly after it was leaked,
yes.

Q. To the best of your recollection, the date that you gave
a moment ago was around 7 May; is that right?
A. I think that is the date it was leaked in the Wall
Street Journal. Quite when it surfaced in here I don't
know.

Q. Can we look at just one extract of that report? The
cover page we see at MOD012243. The relevant extract is
at MOD012257.

THE CHAIRMAN: Is this your last topic, Mr Singh, because we
are getting close to time.

MR SINGH: Yes, I am sorry about that, Sir. I am afraid
I do have a few other topics.

THE CHAIRMAN: Well please be as quick as possible because,
as you know, we have a long day.

MR SINGH: I do appreciate the situation, Sir.

Paragraph 32 on MOD012257, please.

A. Yes.

Q. "On 1 April ..."

Obviously that is 2003 because this report is from

"... the ICRC informed orally the political adviser ..."

The Inquiry knows that person to have the cipher of "S034".

"... of the commander of British armed forces at ... central command ..."

That is Air Chief Marshal Burridge. Then a little further on in the same paragraph, do you see:

"This intervention had the immediate effect to stop the systematic use of hoods and flexi-cuffs in the interrogation section of Umm Qasr."

Do you remember reading that at the time?

A. Well, I read it.

Q. All right.

A. I would have read it, yes.

Q. There is a memorandum from S034 that the Inquiry has seen many times, but if I can just quickly --

A. Yes.

Q. -- ask you to see it so you can see what the question is going to be about. It is MOD050815. It is dated 11 May 2004.

A. Yes.

Q. I will not go to it in the interests of time, unless I am asked to, but at MOD050816, in the first half of
that page Mr Hemming [sic] deals with the concepts of
hooding and what is there called "harsh treatment",
including stress positions.

A. Yes.

Q. Do you recall seeing this?
A. I don't recall seeing this minute, no.

Q. Can I just go to MOD050812 please? There is a series of
emails on that page and, from the email addresses at
least, it does appear to have been copied. Then if we
go to the next page, at MOD050813, we do see that your
email address appears about --
A. No, that is not my address.

Q. "MODLA-Hd PS" --
A. Yes.

Q. -- who is that?
A. At that time, my personal secretary.

Q. And did they not show it to you?
A. I don't remember seeing it. In fact, at that time,
I was existing with agency secretaries, so I am not
100 per cent sure it was not a sort of period when
I haven't got one. But I don't remember seeing the
minute, although I recognise that quite a lot of the
content --

Q. Yes.

A. -- is in the ministerial paper for Cabinet colleagues.
Q. Indeed. Just on that, you were asked some questions about a document which begins at MOD053828. I just want to ask one supplementary question about this. This is where you expressed your contentment with the draft paper which then follows. One passage you were not asked to look at I would like to go to at MOD053832. In that final paragraph, the first sentence reads:

"There is no firm evidence that the hooding of prisoners at the prisoner of war camp joint force interrogation team facility during major combat operations went beyond the normal use for arrest/transit activity."

That just was not accurate, was it?

A. I think there was other material in here which also dealt with the complaints at Umm Qasr, though, beyond this paragraph.

Q. No doubt if there is other material that the Inquiry should know about --

A. In this paper, I thought. I thought there was other material in this paper.

Q. No doubt you will be taken to it if there is.

THE CHAIRMAN: Well, we can look at that.

MR SINGH: Indeed. Finally, Sir, I do have some questions I need to ask this witness about the MoD manual because he is one of the people who read it. I have asked
questions of others about that. If you are otherwise content for me to take it as read what I would ask this witness --

THE CHAIRMAN: Well, I suspect that I am quite content to take it as read.

MR SINGH: Sir, as long as we can proceed on that basis. I think you know the submission we are going to make in due course.

THE CHAIRMAN: I do indeed, yes.

MR GARNHAM: Well, Sir, except if it is to found a criticism of this witness, in which case it should be put to him so that he can deal with it.

THE CHAIRMAN: Well, can we reach this position, that you can put compendiously any proposed criticism or possible criticism of him in relation to it. That would be a sensible and fair way to do it.

MR SINGH: Yes, yes. Mr Hemming, dealing with this as quickly as I can, what this question concerns is the joint service manual of the law of armed conflict. You recall that that was finally published in 2004, but had gone through various drafts which were available, in fact, in Iraq in 2003. You are described in, I think, the preface to that book or manual as being, along with Sir Michael Wood, one of the senior legal advisers to the Government who read the entirety of the text. Is
that right?
A. I'm not sure I read the bit on prize law that carefully, but I read the bits I knew something about.
Q. There are two passages in particular. If necessary we will go to them, but perhaps I can do it compendiously, as the chair has asked me to do.
Do you remember that it does refer to the ECHR in passing at 11.19?
A. You would have to remind me of what the reference is.
Q. We will just get that for you.
A. It is not Bancovich, is it?
Q. Yes, it is the footnote reference to Bancovich, exactly. It is MOD036556. Now you and I know, Mr Hemming, don't you, that to those who are specialist lawyers in this field, the term "law of armed conflict" has a technical specific meaning which does not necessarily mean the entirety of the law that relates to armed conflict. Would that be fair?
A. I think so.
Q. Yes. It is often used by lawyers, isn't it, to contrast with international human rights law because there is a body of law known as "international humanitarian law", which is different?
A. Yes.
Q. Yes. This book, you and other people decided, is this
right, should only deal with the law of armed conflict
in the technical sense of international humanitarian
law?

A. Well, I was not part of the editorial board. I didn't
decide on its content.

Q. In this passage there is a brief reference to human
rights law, but do you think that it should at least
have alerted the reader that if they wished to obtain
more detailed guidance as to the content of human rights
law, they are going to have to look at more specialist
books?

A. I suppose it could have said that, yes. But it wasn't
intended, I don't think, to be given to every soldier.

THE CHAIRMAN: I don't want to stop you, Mr Singh, but it is
not absolutely to the forefront of the issues I am going
to have to decide.

MR SINGH: Could I ask one final question, which is about
the blindfolding passage?

THE CHAIRMAN: One final one.

MR SINGH: Certainly, Sir. Could we have, please,
MOD036434? This is paragraph 8.34.2. Do you see there
it says, "Blindfolding and segregation may be necessary
in the interests of security ..."

A. Yes.

Q. "... but these discomforts ... must be truly justified
and be for as short a period as possible."

If we go back to the previous page, just to see the
beginning of that paragraph, do you see it has the
heading "Interrogation"?

A. Yes.

Q. Was that a sensible thing to have that passage in
a section headed "Interrogation"?

A. Well, as I understand, it is lifted completely from the
manual the ICRC recommend to states to adopt in their
own model manual of military law.

MR SINGH: Sir, we can make submissions about whether that
is to do with interrogation. Sir, thank you for your
patience.

THE CHAIRMAN: Thank you.

Ms Edington, do you want to ask any questions?

Questions by MS EDINGTON

MS EDINGTON: Sir, please, if I may.

THE CHAIRMAN: Ms Edington, I am not really wanting to go
into the dispute between Mr Hemming and your client.

MS EDINGTON: Sir, I wonder if I might --

THE CHAIRMAN: I just don't see it as terribly relevant to
the issues I have to deal with.

MS EDINGTON: Sir, I hear what you say, but of course
Colonel Mercer has given oral evidence and that --

THE CHAIRMAN: But it just is not at the forefront or indeed
anywhere near it of the issues I have to deal with and I
don't see any way in which I can resolve it either.

MS EDINGTON: In which case, I am grateful for that
indication, Sir. Thank you. I have no questions.

THE CHAIRMAN: Thank you. Mr Garnham?

Questions by MR GARNHAM

MR GARNHAM: Thank you, Sir.

Four topics please. You were asked by Mr Elias
about the discussions that followed the death of
Baha Mousa in September and October 2003 resulting in
the order banning hooding.

A. Yes.

Q. Do you have any recollection of what you were primarily
engaged upon at that time?

A. I have an extremely strong recollection of what I was
doing to the exclusion of almost everything else. It
was the Hutton Inquiry.

Q. What stage of the Hutton Inquiry were we at in September
2003?

A. By September we were in the middle of evidence. In fact
I did check up on the Hutton Inquiry website, the week
when Baha Mousa died, I think the deputy chief of the
defence intelligence gave evidence, Richard Hatfield,
the personnel director, gave evidence, Andrew Gilligan
was giving evidence and I think the following Monday
Geoff Hoon was giving evidence as well, and I think I spent the whole weekend in the office.

Q. Thank you. Second question: did you ever understand from anything you came across during 2003 and 2004 that hooding had ever been used during the process of tactical questioning?

A. No.

Q. Third topic: may we have on the screen, please, MOD020228? The bottom email is dated 13 May. That is the day after the email to which Mr Singh took you in which Rachel Quick refers to hooding being used for disorientation.

A. Yes.

Q. Can we go back to the bottom of that page, please, and look at the last paragraph. This is from Ari and is addressed to you and Vivien. It indicates that she sought clarification and awaits a response --

A. Yes.

Q. -- on whether or not it is used for the purpose of disorientating, in which case "... it clearly violates ECHR jurisprudence and would therefore amount to 'inhuman and degrading treatment'". Do you recollect seeing that?

A. I am not sure I saw it.

Q. Would your view be different from Ari’s on that topic?
A.  No, no.

Q.  Thank you.  Lastly, please, may I have back on the screen MOD053832, which is part of the report to Cabinet colleagues to which Mr Singh took you a moment ago.  He read to you the first sentence referring to the lack of firm evidence about hooding at the JFIT facility during combat operations went beyond normal use.

A.  Yes.

Q.  He did not read the next sentence, which says:

"Anecdotally there may have been problems stemming from the very large number of PWs in civilian clothing being held at the facility designed for military prisoners.  There were very limited facilities for separating prisoners so it appears hooding was used on prisoners held at the centre."

Did you know to what that related?

A.  I am not sure I did know what it related to, but it seems to be talking about the JFIT.

MR GARNHAM:  Thank you very much.  Thank you, Sir.

THE CHAIRMAN:  Yes, Mr Elias.

Further questions by MR ELIAS

MR ELIAS:  Just one matter to clarify.  Can we just go back to an answer you gave to your own counsel at [draft] transcript page 167 today, please, line 18?  Just so we are clear about it, Mr Hemming, the second question:
"Did you ever understand from anything you came across during 2003 and 2004 that hooding had ever been used during the process of tactical questioning?

"Answer: No."

A. Yes.

Q. Did the process of tactical questioning include periods in custody prior to tactical questioning?

A. I'm sorry, I am not -- I don't entirely understand the question.

Q. I want to know what you meant --

A. Oh.

Q. -- when you agreed with that proposition that you never understood from anything you came across that hooding had ever been used during the process of tactical questioning. What did you understand by "the process of tactical questioning"?

A. The actual conduct of questioning.

Q. Does that include the period, if you like, in a detention facility, before questioning or between questioning sessions?

A. I suppose it could include that, yes.

Q. Did you ever learn that prisoners were being kept hooded before tactical questioning sessions themselves?

A. Well, from what I saw of S034's report that was put into the ministerial briefing, it is implicit there, isn't
it, that people were being hooded at the JFIT in
relation to questioning?
Q. And you understood that?
A. I think so, if I had thought about it.
Q. So your answer to Mr Garnham related to the tactical
questioning session itself?
A. Yes, I think so.
MR ELIAS: I follow. Thank you.
THE CHAIRMAN: Yes. Very well.

That is all the questions that we have for you,
Mr Hemming. Thank you very much. Thank you for giving
evidence and preparing for it and the like, and I am
very grateful to you for coming here and you are now
free to go. Thank you.

Now, before we get to the next witness, we have
a read only witness?

MR ELIAS: We have, Sir, a supplementary statement that was
submitted to the core participants yesterday. May I ask
Mr Halliday to deal with that?

THE CHAIRMAN: Yes.

Summary of supplementary witness statement of GAVIN DAVIES
MR HALLIDAY: Yes, Sir, it is the supplementary statement of
Gavin Davies. You will recall that he was the SO2 legal
adviser at the NCC.
THE CHAIRMAN: I do.
MR HALLIDAY: He gave oral evidence to the Inquiry on 29 March of this year.

THE CHAIRMAN: Yes.

MR HALLIDAY: After that, following your ruling that the Attorney General's advice on applicability of the ECHR remains privileged, the Inquiry asked Lieutenant Colonel Davies to provide a short supplementary statement. In that statement he confirms that he did read the Attorney's advice. He also says that his own view was that during his time in theatre, the ECHR did not apply in Iraq; that the lex specialis for the conflict was the law of armed conflict and not human rights law and that human rights law would become applicable at some stage when sufficient control was exercised over Iraq by coalition forces.

He states that even if he had taken the opposite view and concluded that the ECHR did apply during his time in Iraq, that would not have changed his views on the standards to be applied to prisoners.

Supplementary witness statement of GAVIN DAVIES
Witness Name: Lt Colonel Gavin Davies

Statement No: 2
Exhibits: None
Dated: 09 June 2010

THE BAHIA MOUSA PUBLIC INQUIRY

Witness Statement of Lt Colonel Gavin Davies

I, Lt Colonel Gavin Davies will say as follows:

1. I make this statement in response to the Inquiry's Rule 9 Request dated 27 April 2010 for a second witness statement dealing with certain issues surrounding advice given by the Attorney General in 2003. I seek here to cover everything it raises to the best of my ability and recollection.

2. I have been asked to confirm whether or not I have ever read the Attorney General's 2003 advice on the application of the European Convention on Human Rights (ECHR). I can confirm that I have read that advice.

3. I have also been asked what my own view was as the application of the ECHR in Iraq in 2003. During my period of deployed service on Op TELIC 1, I believed
that the Lex Specialis for the conflict was the Law of Armed Conflict and not Human Rights Law. I considered that Human Rights Law would become applicable at some stage during the course of the conflict when sufficient control was exercised over Iraq to be able to apply it.

4. I have been asked to describe what impact the ECHR had on the prisoner handling issues that I was involved in. As explained above, I did not believe that the ECHR applied during my time in theatre. I would add that even if I had taken the opposite view it would not have changed my views on the standards to be applied to prisoners.

5. I have been asked whether I ever discussed with (then) Commander Neil Brown the content, or reason for the content, of his email of 2004 (please see MOD020204). At the time of that email, I no longer worked for Commander Brown, having moved to the Operational Law Branch in June 2003. I was not aware of its content until it was shown to me in the course of this Inquiry and have never discussed the content of his email with him.

6. The Inquiry has also asked me whether I was involved in any discussions as to the applicability of ECHR to events in Iraq in 2003 and if so, with whom. I cannot recall any specific discussions on this
subject, although it is possible that some may have
taken place on an informal basis.

Statement of Truth

I believe that the facts stated in this witness
statement are true.

Signed: Gavin Davies.

Dated: 09 June 2010.

THE CHAIRMAN: Thank you very much.

Now we will have our next witness.

MR ELIAS: Sir, I wonder if it would be convenient, if we
are going to take a break, to take it now.

THE CHAIRMAN: I don't mind. If you think that is sensible,
then we will do it.

MR ELIAS: I am grateful.

THE CHAIRMAN: Ten minutes please.

(2.55 pm)

(A short break)

(3.05 pm)

MR ELIAS: Sir, may I call Geoffrey Hoon, please, Mr Hoon.

THE CHAIRMAN: Yes. Mr Hoon, would you stand please to take
the oath?

GEOFFREY WILLIAM HOON (affirmed)

THE CHAIRMAN: Thank you very much. Do sit down. Make
yourself as comfortable as you can sitting in the
witness-box. I am sure we will be able to hear you
anyway, but if you could speak into the microphone,
I would be extremely grateful.

Yes.

Questions by MR ELIAS

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

A. Geoffrey William Hoon.

Q. Mr Hoon, would you take a folder, which I hope is to your right hand, which should have a copy of your statement to the Inquiry within it, and look to the last page of that statement. It is our BMI08538. Would you confirm, please, that your signature appears above the date of 21 May of this year?

A. Yes, it does.

Q. When you signed that statement, were you attesting that the contents of it were true to the best of your knowledge and belief?

A. That is the position, yes.

Q. We have all had an opportunity to read that statement. As I think you know, it stands as part, anyway, of your evidence to this Inquiry and I don't propose by any means to take you through it line by line, but rather to go through certain aspects of the evidence you may be able to give to assist the Inquiry just a little further?
May I begin by looking very briefly at your career history? You set it out in paragraph 2. I need not have it put on the screen. You tell us that you were called to the Bar in 1978. You studied law and became a law lecturer at the University of Leeds until 1982. You held a post as a visiting professor of law at the university of Louisville, Kentucky, 1979 to 1980, after which you practised common law at the Bar for two years before being elected a member of the European Parliament in 1984.

A. That's correct.

Q. You served, you tell us, in Brussels and Strasbourg for ten years and at the 1992 general election you were elected to the House of Commons as an MP, a position which you held until the last election, when you stepped down.

A. That's right.

Q. You tell us that in Parliament you held the posts of opposition whip in 1994, shadow spokesman on trade and industry in 1995 and, following the 1997 election, you became Parliamentary Under-Secretary of State at the Lord Chancellor's department, promoted to the rank of Minister of State in the same department in 1998. You briefly served in the Foreign and Commonwealth Office before, in 1999, being appointed Secretary of State for
Defence, a post which you held until 2005 --

A. That is correct.

Q. -- the general election at that stage, after which you took over the role of leader of the House of Commons.

A. That's right.

Q. It is obviously in relation to your Secretary of State at the Ministry of Defence that the Inquiry particularly wishes to hear from you.

Your responsibilities in that role, you tell us --

can we have a look, please, at paragraph 4 of your statement, at BMI08522? Perhaps paragraphs 4, 5 and 6 help us with a little of the picture. You tell us that your key advisers at the Ministry of Defence were Adam Ingram, from whom, of course, the Inquiry has heard, Armed Forces Minister, the Permanent Secretary, Kevin Tebbitt, and General Reith, then the chief of joint operations.

You say you also regularly consulted the chief of the defence staff, the chief of the general staff, and, in addition, as you say at the end of that paragraph, "... Martin Hemming, the legal adviser to the Ministry, regularly provided guidance on numerous legal matters".

A. Could I just make clear that key advisers to the subject matter of this Inquiry, there were a vast range of other responsibilities where I would have had other and
different key advisers.

Q. I understand.

You say -- and I think Mr Ingram confirmed it when he gave evidence -- in paragraph 5 of your statement, that:

"Adam Ingram took the lead on a day-to-day basis for issues relating to the armed forces ...", including prisoner handling matters.

A. That's right.

Q. You also refer in paragraph 6 to staff in the private office who provided you with advice. Peter Watkins was your principal private secretary at the time and Martin Williams was the military adviser, was he, seconded, as you say, from the Royal Navy?

A. Again, if I can make clear, that was in relation to the issues subject to this Inquiry. There were other members of the private office who would have other responsibilities.

Q. So those were the two who would have had responsibilities in relation to prisoner handling, putting it broadly?

A. That is correct.

Q. Thank you. May I ask you just a little then, please, about Iraq and the conflict there and indeed the stabilisation or peace-keeping phase of that operation?
Were you aware that British troops were hooding prisoners in Iraq?

A. Only after the death of Baha Mousa.

Q. So you had no knowledge of it before?

A. No.

Q. Obviously -- and a number of witnesses have told us this and perhaps you would agree -- hooding of prisoners, not least because of the hay, if you like, which the media were likely to make of such an issue, was a sensitive matter.

A. It certainly became one, yes.

Q. If your department -- members of your department -- had, through their work, come to know that hooding was being employed by soldiers in Iraq, used on prisoners, indeed, from some of the evidence the Inquiry has heard, that hooding was a standard operating procedure at the point of capture, for example, is that not something which you would have expected to have been told about?

A. In the sense that it was a standard operating procedure, then no because, up and until the death of Baha Mousa, this was not a sensitive issue. This was not an issue that I -- was raised with me or I needed to be informed about.

Q. You tell the Inquiry in your statement that you weren't aware of concerns raised by the ICRC in March/April
2003.

A. I was not.

Q. You were not aware of those, were you -- those concerns, that is to say -- until after the death of Baha Mousa?

A. I was certainly aware of them after the death of Baha Mousa, but in truth I don't believe that I became aware that the ICRC raised these issues actually until I was preparing for this Inquiry.

Q. Again, if a witness who has the cipher S034 -- I think you know to whom I am referring --

A. I do.

Q. -- had contacted your private office with information about an ICRC complaint to the effect that hoods had been used, amongst other things, would you have expected to have learnt about that?

A. I would, but, to be fair to the witness, whose evidence I have read, it would depend on the terms on which she communicated that information to my private office. I, as I make clear in my statement, do not recall having been informed about that directly. I have taken the opportunity of checking with the members of my then private office. They cannot recall such a conversation.

It is perfectly possible -- and it seems to be consistent with the terms in which witness S034 gave evidence -- that she communicated this information in
such a way as to indicate that the problem had been resolved and therefore no action need be taken.

Q. But given that it had the sensitivities and the possibility of media exposure, for example, would it not have been something that you would have wanted to know about?

A. Well, again, to repeat what I have just said, I think it rather depends upon the terms in which she communicated that information, assuming she did do so. If she said, "This was a real problem for the Government, for the Ministry of Defence and action that needs to be taken", then certainly I would have expected to have been told about that.

If, in contrast -- I think this is the impact of her evidence as I understand it -- she said, "Actually these issues have been raised, but they have been resolved in the field, the ICRC are now content with what has happened", I can conceive that a private secretary might judge that that was a matter that had been dealt with and did not need to be recorded. But certainly, if I can make it plain, this was not recorded, there is no note of this telephone call and no information was communicated to me about it.

Q. Now you were made aware of hooding, you tell us, after the death of Baha Mousa.
A. It is clear from the initial report about his death that he had been hooded and that was, as I think became clear later, a contributory factor in his death.

Q. When you learnt, no doubt, then quite close to the time of his death, because this would have been a matter reported directly to you at the time -- is that right?

A. That's right, or as soon as after as the information was available, yes.

Q. Of course. But we are talking about hours or a day, aren't we?

A. Yes.

Q. As soon as you learnt of the death of Baha Mousa and the potential involvement, if you like, of hooding in his death, what was your reaction to that?

A. Well, I was clearly deeply shocked that a man had died in such circumstances at the hands, apparently, of British soldiers. It is a matter that needed a thorough investigation and one was begun almost immediately.

Q. What was your reaction to learning that he had been hooded?

A. I was shocked. It was not something that could have been acceptable in those particular circumstances. I regarded the hooding at the time as part of the abuse to which this unfortunate man had been subjected.

Q. Did you have a view at the time, Mr Hoon, as to whether
hooding as a practice on prisoners was or was not acceptable in any circumstances?

A. At the time, that is the point at which I had been told about his death and received written information about it, I think it is fair to say that I was generally aware, from my general knowledge, that hooding was part of a set of practices that had been banned in the 1970s arising out of investigations in Northern Ireland. So I would not have expected hooding to be part of any questioning or interrogation of prisoners in Iraq or elsewhere. But clearly, in the course of the discussions I had arising out of the death of Baha Mousa, I learned about hooding for limited purposes in the course of moving prisoners around, in the course of transit.

Q. So that means, does it, that after the death, in the course of discussions about his death and hooding, you then learned that hooding was, in fact, used for what sometimes in shorthand has been referred to as "operational security reasons"?

A. We discussed the circumstances of what is meant by "operational security reasons". That was both to protect information about the disposition of British forces in the immediate aftermath of a conflict -- I think it is fair to say as well, in relation to Iraq,
that quite often when these matters were discussed, one
of the issues that was mentioned more than once to me
was the need from time to time to protect informers, to
protect people who were helpful to British forces, from
potential threats from their fellow countrymen and,
therefore, it was not solely to do with operational
security in terms of the security of British forces; it
was also to do with the security of individual
prisoners.

Q. Understanding that, when you had these discussions about
hooding and the purposes for which it may be used, did
you give consideration as to whether hooding was itself
humane?

A. Sorry, I missed the last word.

Q. Humane.

A. Humane. I think it is fair to say that I gave -- we had
discussions about whether hooding itself was lawful and
that was clearly my main concern. The extent to which
something is humane is clearly relevant to its
lawfulness, but the advice that I was given throughout
these discussions was that it was lawful for the
purposes that we have just discussed, for the purposes
of limited security in the immediate aftermath of
a conflict. It was clearly not lawful for any other
purpose.
Q. So what is the answer to my question? Did you yourself
give consideration to whether the practice was itself
humane?
A. I had certain responsibilities and those
responsibilities were to do with ensuring that British
forces behaved in a lawful way. My own personal view as
to whether this was or was not humane I am not sure was
strictly relevant to the job that I was doing at the
time.
Q. But it perhaps may be relevant, might it, if you wanted
to, as it were, drive the argument in a particular
direction?
A. If I take your question as a hypothetical, if I had
personally come to the view that this was inhumane,
would I have then decided, as a matter of policy, that
the Ministry of Defence should, for example, ban hooding
in accordance with my personal view? That might have
been a possibility, but I do not think it would have
been good practice for the Minister of Defence or any
other Government department to simply change its policy
in relation to the particular views of the particular
Secretary of State at the time.
Q. Mr Hoon, that is not quite my suggestion either.
I simply ask whether you had a view and, if you did,
whether you used it in order to seek to influence
officials or lawyers.

A. If you will forgive me, I rather thought I did answer your question and --

Q. Well, what was your view?

A. If I may just finish. One further point is that we were part of an international coalition and, therefore, whatever view was taken in the United Kingdom necessarily was also affected by views of international and European law taken by our partners in that coalition. So when troops work very closely with forces from other countries, it is important that there is a consistent and settled view of the coalition. My understanding was that, for the purposes that we have just discussed, hooding was lawful, but for only those purposes.

Q. And you yourself did not have a view about whether it was indeed humane or not?

A. Well, I have a range of personal views and I am freer today to express them than before, but I don't think at the time I particularly took a view about this, other than the legal view that I thought was the right thing to do as Secretary of State for Defence.

Q. The legal view being given to you, that it was lawful for these operational security purposes, who gave you that advice?
A. Certainly in my statement I had assumed that that view came from Martin Hemming. Having just listened to him giving his evidence and describe what he was engaged in, particularly in September 2003, it may well be, because I saw Mr Hemming on a pretty regular basis in the five and a half years that I was in the Ministry of Defence, that I simply view him as the generic legal adviser. But certainly in the course of discussions about hooding and its lawfulness, the view was very clearly expressed on more than one occasion from the Department's lawyers that, for the purposes that we have discussed and I have described, hooding was, in those limited circumstances, lawful.

Q. Was it your understanding that that was a consistent view that you were being given by all those who advised on this point?

A. That was certainly my understanding and a consensus view also shared by our coalition partners.

Q. Can we have a look then please -- just staying with this period at about the death of Baha Mousa -- at a document which I think you tell the Inquiry you did see. It is at MOD048699. It will come on the screen, Mr Hoon, alongside you.

It is dated 16 September 2003. It is a document that you can see from the heading relates to a death and
an Iraqi child seriously injured. I obviously do not want to go into that aspect. The "death of one detainee" is the death of Baha Mousa. You would have seen this document?

A. I have seen that document, yes.

Q. The top right-hand corner, that is Martin William's note, "Secretary of State to note, MW"?

A. Yes, it, is yes.

Q. If we go over the page, please, just to see what your state of knowledge would have been if you had read the document, at paragraph 5, we can see, can't we -- I don't want to read it out unless you tell me that you don't recall it -- that there is reference to the acts of Baha Mousa struggling, slipping his hood, the guards replacing his hood, his pulse being checked and, three minutes later, the guard suspecting that he might not be breathing, leading on very shortly to his death.

You would have been aware then, would you, that the suggestion was that Baha Mousa had been hooded more or less up to the time of his death?

A. Certainly I was aware that hooding was an issue in his death and that was why I was both shocked and concerned that that should have happened.

Q. If we read towards the end of the paragraph, we can see: "At this point the individual had been in custody
for a total of 36 hours. He had spent 23 hours and 40 minutes of this hooded, albeit not continually."

That presumably would have been a great shock to you, that someone could have been kept hooded for anything like that period of time.

A. Not only shocked, but clearly something quite wrong. As I said earlier, I regarded that as part of the abuse that Baha Mousa had been subjected to.

Q. Were you aware at this time or at about this time that, quite apart from the hooding, Baha Mousa had also sustained quite serious injury?

A. I think -- although it doesn't specifically say so in this particular document, I think there was a further document some two days later that made it plain that he had apparently been subjected to a very severe beating and that that may, highly likely, have been the cause of his death.

Q. When you learnt from that document that maybe hooding had had some part to play in the death of a prisoner and, from that account, that a prisoner had been hooded for, albeit a few minutes [sic], 24 hours out of a 36-hour custody detention, did you take the view that that was something which therefore called for some review of the practices in Iraq?

A. I think there were two aspects to it: firstly to ensure
that there was a proper and thorough investigation of
the circumstances leading to Baha Mousa's death and the
Royal Military Police SIB were tasked to investigate
those circumstances; secondly, there were also
significant discussions with senior members of the
military, particularly General Reith, but also other
members of the Department, about what action should be
taken in relation to this death and the use of hooding
by British soldiers in this way.

Q. Did you, as it were, initiate that inquiry or know that
it was going on?

A. Well, as far as the SIB were concerned, that's a matter
that proceeded fairly automatically, I think it is fair
to say --

Q. Well, that is a separate investigation, isn't it?

A. Yes, it is.

Q. I understand that you would not, like everyone else,
have wanted to get involved in that. It would not have
been proper. But in relation to the more general
issue --

A. It would not have been proper for me to get engaged, but
had it have not happened, then I would have certainly
asked questions as to why not. But it did happen and it
necessarily required that ministers and others did not
comment on the particular circumstances until the
As far as the second aspect is concerned, obviously I wanted to know from senior members of the military what exactly was going on as far as hooding itself was concerned. Why was this man hooded for so long? What were the circumstances? Why was hooding being used? Was it being used for purposes that were, for example, against the law?

Q. If we have a look, please, at paragraph 24 of your statement to this Inquiry, at BMI08529, you tell us in that paragraph -- the second line -- about discussions. You begin to tell us about discussions that took place in relation to the banning of hooding by the CJO, General Reith, in October 2003. You refer to the fact that the letter from the CJO banning hooding was issued a month after the death of Baha Mousa or thereabouts. But you say this:

"During this period there were discussions about what action to take."

Those discussions involved you, amongst others?

A. Yes, they did, yes, and I am sure Adam Ingram would have had his own discussions, although he and I certainly talked about this. There was -- I believed it was important, given the circumstances that you have set out, that I understood precisely what was going on in
terms of the fact that this man had been hooded for such
an appalling period, and that -- those investigations
provided quite a lot of information about the use of
hooding that I had not previously been made aware of,
including, for example, the fact that hooding had been
banned previously by General Brims and, for some
unaccountable reason, that banning had not been
continued.

Q. Hooding had re emerged, as it were?
A. Yes, and I don't think I have either then or since seen
any particular explanation as to why his order in April
or May was not continued through the summer.

Q. Just staying with paragraph 24, just to record, Mr Hoon,
the numerous discussions you suggest were in the
Department with General Reith, chiefs of the general
staff, the Permanent Secretary, Mr Hemming. You say
they were about the lawfulness of hooding and there are
also regular discussions with Adam Ingram. You would
have discussed the legal issues involved with him and
there obviously were, from what you say there, a number
of meetings about these issues.

A. Yes, although, can I make plain, this cast were not
always assembled for all of the meetings --

Q. Understood.
A. -- so these would be perhaps bilateral meetings.
I might talk about these issues perhaps with Adam Ingram, perhaps with the Permanent Secretary, perhaps with General Reith. So there would not all be all of us sitting around and having a formal discussion.

Q. I understand. You tell us at paragraph 26 -- can we just go to that please -- that at about the same time, as I understand it, you would have learnt the details of the Heath ruling, although, as you say, you had already been aware of it in general terms. You say there was a debate as to the extent to which it was lawful to hood for security purposes, such as during the transit of prisoners or for the security of prisoners and soldiers.

"In the course of these discussions I can remember that the military placed a great deal of emphasis on the use of hooding to protect prisoners where for example it was necessary to protect the identity of informers. It was during these discussions that I was advised that hooding was considered to be legal, albeit for operational security purposes only and that this was a view shared [as you have told us in your evidence] by other countries in the coalition."

A. That's right.

Q. Were you aware in these discussions that perhaps there were two sides of the argument, both in relation to whether hooding was lawful and in relation to whether
hooding was necessary as a practical operating or operational tool, if you like?

A. When you say "two sides", if we are focusing only on the limited circumstances in which it was, I was told, lawful to hood prisoners, then I do not recall anyone at that stage ever saying that there was any doubt about the lawfulness of this practice in those limited circumstances.

Q. You were never aware of anyone taking the view that hooding was unlawful, as it were, come what may?

A. I was not -- it was never suggested to me that hooding per se was unlawful and that hooding per se was contrary either to the European Convention or to more general principles of international law.

Q. Did you understand that, if you like, on the soldiering side, there were, to some extent, two sides of the argument, those who said, "We don't need hooding at all" and those who said, "We must retain it because it may be necessary in certain operational circumstances"?

A. I think it is clear that, for the military on the ground, in an operation, there must be a judgment made at the point at which hooding for security reasons is no longer necessary, in the sense that either the situation is so under control that there is no longer a threat from the enemy or where informers or others are accepted
as cooperating with coalition forces and, therefore,
there is no requirement to protect their identity. But
that is a judgment made by military commanders on the
ground, it would seem to me.

Q. At all events, in the light of the discussions which you
refer to in those two paragraphs in particular, you
didn't feel that the time had come for the matter, as it
were, to be sent up to the Attorney to take his advice
as to the lawfulness or otherwise of the practice?

A. No, because the advice that I was being given about the
law was very clear. Normally my experience of asking
the Attorney General for advice is where there is some
significant doubt. I was not given any reason to
suspect that there was any significant doubt about the
advice that I was being given.

Q. You have told us that you were made aware of the fact
that there had been a ban earlier in 2003, that hooding
had apparently re-emerged and you refer to this in
paragraph 25 of your statement. Could we just have
a look at that, please, where you say this in the first
three lines:

"I remember I was informed that hooding had first
been banned by General Brims ... but the practice had
re-emerged in Op Telic 2, a development that I was not
happy about."
What did you do about that?

A. Well, that led to the conversations with General Reith in particular, but in time the decision that he took to, in a sense, repeat the banning order that General Brims had previously made.

Q. Now the Inquiry has heard evidence that the banning order made in October 2003 was Iraq-specific and it wasn't until May 2004 that the ban was extended to all theatres in which UK forces were operating.

A. Well, I think in a sense it is worse than that because I discovered in the early part of May 2004 that actually special forces were continuing hooding even in Iraq, so it required a third effort to ensure that even in Iraq itself hooding was banned entirely.

Q. You weren't aware of the fact, were you, that it was Iraq-specific in October and not worldwide, as it were?

A. I think all of our discussions were focused on Iraq and on the operations there. So I am not suggesting that I expected it to have been a worldwide ban. It was specifically about the problems that we had experienced in Iraq and the use of hooding in those circumstances.

Q. So when the ban was forthcoming in October of 2003, did you understand that the ban was introduced because of what had happened to Baha Mousa or for other reasons?

A. I think it is fair to say that it was a combination both
of the circumstances of Baha Mousa's death and the fact
that, consistent with what General Brims had decided in
April/May earlier in the year, there was no longer any
specific operational requirement for it. The advantage
of the latter was, of course, that that was consistent
with the legal advice that I had been given and
consistent with the operational practice of British
armed forces.

Q. Were you ever told in any detail what change in
operational circumstances had arisen that meant that
hooding was no longer -- it was no longer necessary to
employ it?

A. Well I think I have outlined in very general terms what
I would have expected to happen, which is that
a judgment would be made by the commander on the ground
as to the security circumstances, both as far as British
forces were concerned and indeed in those limited
circumstances where they might seek to protect the
identity of, as I say, an informer. That is an
operational judgment that I would expect the commander
to make at a certain stage in the operation.

Q. The Inquiry has heard now quite a lot of evidence,
Mr Hoon, that substituting hoods with blacked-out
goggles or even conceivably blindfolds was an option for
deprivation of sight. Was there any distinction to be
drawn in the effectiveness in your mind of the use of
goggles or blindfolds as against hooding?

A. I think only in relation to that second and more limited
category, where an individual was an informer, was seen
to be helping British forces. I mentioned earlier that
that was raised with me on more than one occasion by
members of the military. There were particular
difficulties in the early part of operations in southern
Iraq about local militia still loyal to Saddam Hussein
taking revenge on people, for example, who had been seen
to cheer British troops. So there were real concerns
about the threat to individuals.

Q. So hooding for their own protection would be something
that you would have regarded as being perhaps
a necessary tool which the use of goggles or blindfolds
could not achieve?

A. Well, I am giving you a -- you asked me a specific
question about whether, in all circumstances, goggles
could have replaced hooding, and I am simply giving you
one example of where that might not have been the case,
because the goggles might not have protected the
identity of person in question. But I accept these are
very tightly defined, very limited circumstances and
ones that would only pertain, perhaps, in the very early
part of an operation.
Q. Could I move on then, please, just to two or three other matters? Were you ever aware -- was it ever brought to your attention -- that there may be any deficiency in the guidance, the written guidance, being given to troops on the ground as to how they should handle prisoners?

A. Not at the time. But I think it is clear from the work of this Inquiry and what I have read that this Inquiry has demonstrated that there were some deficiencies in that work and I think it is right that those issues should be exposed in the way that the Inquiry has been able to do so.

Q. But you were not made aware of those deficiencies at the time?

A. Not at all.

Q. Now that you do know the position, as you indicate you do, was that not something that ought to have been brought to your attention?

A. It is quite a difficult question to answer in the sense that it was not drawn to my attention. I can't entirely answer for the people who, if I put it this way, failed to draw it to my attention because that assumes some knowledge about this deficiency somewhere within the Department.

Q. If we assume that there was such knowledge --
A. Well, what I am saying is that I don't know, which is why I am having difficulty in answering your question. I do not know whether there was such a deficiency at the time. What I can categorically say is that these issues were never, ever drawn to my attention at the time.

Q. May I just ask you a little, please, about responses to letters that were sent to you as a Member of Parliament, as the Secretary of State? Could I just take you to one or two examples as to the responses that went out anyway in your name? Can we have a look, please, at a document which is at MOD051009? If we go to the very end of it, three pages further on please. Thank you very much.

I think you have seen the document before, but you can see it says "Signed on original, Geoffrey Hoon".

A. It would be helpful if it could be made larger on my screen, please. Thank you.

Q. We can see, can't we, that it is addressed to The Honourable Nicholas Soames MP and it is dated 18 May 2004 and would seem to be a response to a letter from him of 11 May.

I just want to ask you, please, about a paragraph on the second page, the bottom paragraph. Can we enlarge that? Thank you.

You would not have drafted these letters initially, would you?
A. No, they would have been drafted in the relevant part of the Department.

Q. Before signing them, you would have satisfied yourself that the content represented your state of knowledge and what you ultimately wanted to say?

A. Yes.

Q. You say this in this paragraph:

"The policy on hooding is quite straightforward. We regard the use of hoods during interrogation as contrary to the Geneva Conventions ..."

Just pausing there -- and you may have heard my questions to the previous witness -- did you understand hooding during interrogation, that is to say whilst being questioned, as being contrary to the Geneva Conventions?

A. Yes.

Q. What about hooding, as it were, in preparation for questions?

A. If the purpose of hooding was to prepare for questioning, to -- the word sometimes that I have seen used is "condition" or "disorientate" or in any other way affect the mind of the person being questioned, then I would regard that as being unlawful and wrong.

Q. So when you used the language here, "We regard the use of hoods during interrogation as contrary to the
Geneva Conventions", you might well have said "for the purposes of interrogation"?
A. I might well have said that.
Q. That's what you would have meant, in effect?
A. Yes.
Q. I follow.

"This technique has never been part of the standard operating procedure on Operation Telic. The Defence, Intelligence and Security Centre explicitly teaches instructors not to use this technique. However there are some circumstances in which hooding prisoners can legitimately be used during their capture to conceal sensitive information such as the disposition of friendly forces."

That records what you have told the Inquiry, doesn't it, in essence?
A. Yes, it does.
Q. You go on to say this:

"We always recognised that it was desirable to cease the practice as quickly as possible and commanders on the ground judged that we could safely do so by May last year."

"We always recognised that it was desirable to cease the practice ..." of hooding. Was that right?
A. Bearing in mind that this is a year after the events,
but certainly that was the Department's view of hooding for purposes of transit of the prisoners, and I think it is wholly consistent with what I have just told the Inquiry in response to your questions.

Q. I don't quite understand that, Mr Hoon, if you will forgive me.

"We always recognised that it was desirable to cease the practice ..."

As I understand your evidence, you were not even aware it was happening until after the death of Baha Mousa.

A. I am writing a letter on behalf of the Ministry of Defence as Secretary of State and it is clear from the language that I am using that I am not writing in a personal capacity; I am writing on behalf of the Department and that is why the letter had been sent to me. It is important to distinguish my personal position and my personal knowledge from the responsibilities I had to write on behalf of the Department.

Q. Where on behalf of the Department do we see any suggestion that it had always been the Department's view that hooding would cease as soon as possible?

A. Because the law, as we have discussed, requires that hooding may only be used for circumstances of security to protect British forces and British information.
Clearly, once those security circumstances have come to an end, it would be desirable to cease the practice because thereafter there could not be any lawful jurisdiction for it.

Q. If we look, then, at MOD050968. This is another letter to Nicholas Soames, a little later, 25 May now. Again it is signed by you. I appreciate and I certainly do not make the point that you were dealing with the matter personally; you were writing, as it were, on behalf of the Department as the minister. But you say this in the last paragraph:

"Local commanders took decisions to cease the hoarding of detainees when they believed the circumstances permitted."

What was your understanding about that? What was it that had occurred, for example, in April 2003, when General Brims gave his order, the one that it seemed did not have full effect -- what was it that happened then, as you understood it, that had changed the circumstances on the ground that hooding was no longer required?

A. Bearing in mind that I only learned about this in the period after Baha Mousa's death, but my understanding was that General Brims had seen some prisoners hooded, that he judged that it was no longer necessary for that practice to continue on security grounds and that he
ordered that it should stop.

Q. That would have been your understanding at the time of writing that letter, would it?

A. It was my understanding from September 2003 onwards, so certainly it was still my understanding in 2004, yes.

Q. Finally in this regard, can we look, please, at a letter we find at MOD050534? It is dated 23 June 2004, written to The Right Honourable John Denham MP and again signed by you, in relation to a letter, as we can see from the first paragraph -- could we enlarge that -- written on 28 May, on behalf of his constituents, about recent allegations of human rights abuses in Iraq. If we just go over the page, please, to the first full paragraph there:

"You also mentioned that [your constituent] ... is particularly concerned over the use of hooding on Iraqi detainees. Hooding, as a temporary means of detaining and transporting prisoners, was used earlier during operations in Iraq. This was in line with UK policy as we believe that, where there is a strong operational rationale, this is acceptable under the terms of the Geneva Conventions. However, hooding has not been used during interrogations."

By that you would have meant, would you, not used for the purposes of interrogation?
A. Yes.

Q. That is what you were writing in June 2004. Can we have a look at another document, please, at MOD048704? You see the date is 18 September and I think it is a document that you were referring to just a little earlier. This is the document to which you were referring a little earlier, isn't it?

A. Yes I think it was.

Q. The update --

A. The update.

Q. -- on the Baha Mousa death. As we can see, in the top right-hand corner, whose handwriting is that? It is addressed to you, isn't it?

"Secretary of State.

"This could be very messy.

"Two soldiers have been arrested.

"Minister (Armed Forces) ..."

Mr Ingram, that would be, wouldn't it?

"... will deal as lead minister."

A. Almost certainly Martin Williams, my military assistant.

Q. So it follows that you would have obviously read this at the time it came through. What you were told in this document on 18 September, if we go over the page, please, to paragraph 5, under "Medical update":

"One of the individuals who had been detained
died on the night of 15 September whilst still in ...
custody ..."

Well, you knew that. Then halfway through the paragraph:

"A second individual was admitted to 33 Field Hospital at Shaibah ... with acute renal failure, believed to be as a result of trauma."

And there is reference in that paragraph to a third individual taken to Field Hospital "... with circumferential soft tissue injuries to the abdomen with some blistering. The individual has been treated and is now mobile".

So you would have been aware of fact that at least there were allegations of assault in relation to these detainees --

A. Yes.

Q. -- on 18 September?

A. Yes.

Q. If we go on to paragraph 7 please:

"In this instance [this is in relation to the death of Baha Mousa] the tactical questioning ... of the suspects was conducted by two intelligence corps staff sergeants, both fully trained in tactical questioning. It would appear that the hooding of the suspects took place on the advice of one of the staff sergeants."
However, there is currently no documentation in theatre covering tactical questioning procedures. MND(SE) are reviewing this urgently.

When you read that, did it occur to you that the hooding appeared to be part of the tactical questioning process?

A. This letter was written three days or thereabouts after the death of Baha Mousa. There was almost certainly, by then, the start of a detailed investigation into why and how he had died. That was a matter for the SIB and I was content for them to pursue that investigation and it is important that they should do so free of any of my views or thoughts or suspicions.

I don't believe, with the benefit of the reading that I have made since then -- not least of the evidence put to this Inquiry -- that actually that sentence was borne out in reality. I have not seen any evidence to suggest that there was advice from one of the staff sergeants that these prisoners should be hooded. Therefore that is why I think it is important that the SIB's inquiries should be allowed to continue and to conclude before I made any judgments about what action should be taken.

Q. That is not quite the point of my question to you. What I am really putting to you, Mr Hoon, is that on
18 September the issue had been raised, hadn't it, through that paragraph, that perhaps a prisoner, who it happens had subsequently died, had been hooded in the tactical questioning process. It raised that question, didn't it?

A. I repeat, that was written three days after Baha Mousa's death. It led to a detailed investigation. This was not the result of any kind of an investigation at all, other than a very preliminary one. That detailed investigation took many months to report and it seems to me right and proper that the SIB should have had that opportunity before I made any judgments about what had or had not occurred.

Q. That is the point I am putting to you, you see. In that letter we just looked at that you were writing in June of 2004, you confidently asserted that hooding had not played a part in any questioning of detainees in Iraq.

A. And that remains my understanding and I have not seen any evidence of this Inquiry or elsewhere that there was either tactical questioning or interrogation -- given the difference in the way in which those two words are used by the army -- to suggest otherwise.

Q. You are not aware, are you, that out of the Baha Mousa detainees a number of them were hooded prior to and following tactical questioning?
A. I am aware of that, of course, but I am not aware of any suggestion that they were hooded in the course of either tactical questioning or interrogation, which I think is the point that you were making.

Q. No, no, I thought we had clarified that. "In the course of" includes, doesn't it, "in preparation for"?

A. I am sorry to go over the same ground again, but when you put that to me before, I made clear that if the intention was to hood someone for the purpose of questioning, that would be wrong. I am not aware that there is specific evidence to say that prisoners were hooded specifically to prepare them for questioning.

Q. I shall not take the matter further. The Inquiry has heard your evidence on that.

A. Well, I think I thought that probably from the beginning, not just at the end.

Q. But that was your final decision, although, in fact,
I think it was never brought into practice, was it?

A. Well, I saw a submission which gave various options. The one that seemed to me to be right, both legally and in terms of what was necessary, was one that involved a significant independent judicial element and I supported that.

The submission was not put into practice straightaway because of advice that I received from other colleagues in Government, that this was not the right time to take that decision, but it was put into effect shortly after.

Q. It was put into effect shortly after?

A. Well, as far as I was concerned, my decision was put into effect shortly after. It was then communicated to other members of the Government.

Q. Finally I just want to ask you questions about two pieces of video film footage. The Inquiry is aware of the Sky News footage showing hooded prisoners in Iraq dating from 5 April 2003, apparently broadcast then. Were you aware of that at the time?

A. No.

Q. Wasn't that matter brought to your attention?

A. No.

Q. Does it surprise you, if there were, as it were, in the public domain, film of that kind, that it was not
brought to your attention and you didn't see it

yourself?

A. No, because until the death of Baha Mousa it was not
an issue.

Q. So it would not have been a matter to have concerned you

even if you had seen it?

A. I have seen the film since in preparation for the work

of this Inquiry. I can't say anyone who viewed that

film would particularly like what they saw. I think,

having seen it, I might have taken the same view that

I think General Brim probably took when he saw groups of

prisoners, that this was not something that -- unless it

could be strongly justified for operational security

reasons -- was acceptable.

Q. Finally, I am going to ask you, please, to look just at

a short passage of video, taken by someone unknown, on

14 September 2003, from within the TDF, within the

temporary detention facility, involving Mr Payne, who

subsequently went to court martial, and the detainees

who were arrested as a result of Operation Salerno. May

I ask you just to have a look at that, please, on the

screen? It will be played for you now and lasts for

about a minute.

(Video played)

MR ELIAS: Mr Hoon, as you are probably aware, that film, it
is thought by the Inquiry, was taken at about 12 noon on
the Sunday, within three or four hours of the arrest of
these detainees, including Baha Mousa, and therefore is
a film taken --

A. If you will forgive me, I had not seen that film before.

THE CHAIRMAN: You hadn't seen it?

A. No.

MR ELIAS: And you have never seen it --

A. I have not seen any reference to it before.

Q. -- broadcast unaware?

A. Not to the best of my knowledge, no.

Q. Having seen it, may I ask you this? You were Secretary
of State at the time and I just want to give you the
opportunity to give your reaction to what you see there
happening to detainees, which included Baha Mousa.

A. Well, it looks -- if it is what it appears to be, it
looks pretty appalling. Clearly, if British soldiers
are engaged in that, it is reprehensible. I have to
say, though, that there have been occasions in Iraq
where pictures were faked in order to create certain
impressions and, without knowing more detail about the
provenance of that particular piece of film, I am not
sure entirely that it would be particularly wise of me
to comment further. If it is what it appears to be --

Q. Can I simply interrupt you to say this -- I don't think
there is any issue about it and nobody has taken it --
that the persons depicted in that film are not only the
detainees, as identified essentially by themselves, the
soldier who is involved in the treatment is
Donald Payne, who has given evidence to this Inquiry and
indicates that that is himself, and it would therefore
appear without doubt, we would submit, to be evidence of
the detainees in questions as treated by Mr Payne on
that Sunday.

MR GARNHAM: I rise only to say this. Counsel to the
Inquiry have been scrupulous thus far in not providing
material to witnesses of which they have had no notice.
I doubt that Mr Hoon will have great difficulty in
dealing with this, but it should be made clear that he
has had no previous notice and we, for example, have not
shown him this video.

THE CHAIRMAN: No, I see.

MR GARNHAM: This comes to him entirely afresh.

THE CHAIRMAN: I had not appreciated that he had not seen
it. Indeed, this is the first time I have known that he
has not seen it. But I obviously take into account the
fact that it is the first time that he has seen it.

MR GARNHAM: Sir, I do not for one moment suggest that
questions should not be asked of Mr Hoon in his
position, even though he has not had forewarning of it.
But it is right, Sir, that you should know that, unlike every other document and piece of film, we had no notice that this was going to be put to Mr Hoon.

THE CHAIRMAN: All right. Thank you.

MR ELIAS: Sir, if an apology is necessary, I make it, but we made an assumption -- obviously it was erroneous -- but I put it to him not to ask questions, but to simply ask, "What is your reaction, having seen it, you having been Secretary of State at the time?" It was simply for that purpose.

A. I make clear that if that does show British soldiers engaged in abusing Iraqi prisoners, that is wrong and unacceptable.

MR ELIAS: Thank you very much.

THE CHAIRMAN: Yes. There may be questions from other counsel, Mr Hoon.

Mr Singh?

Questions by MR SINGH

MR SINGH: Sir, thank you.

Mr Hoon, can I ask to you look at a document with me which begins at MOD012243? Do you see that is the cover page of the ICR's report dated February 2004?

A. Yes.

Q. When did you first see that report?

A. I think I first heard about it when it was leaked in the

Q. Did you read it?

A. I certainly was well aware of its contents. I am not sure that I read every single word of it.

Q. I understand. But you were well aware of its contents?

A. I was aware that there was a report.

Q. Can we look, please, at MOD012257 and, in particular, the top of that page, paragraph 32. The report states that:

"On 1st April [that is 2003 as the Inquiry knows] the ICRC informed orally the political adviser [and that is the person you and I know as 'S034'] of the commander of British Armed Forces at the coalition forces central command in Doha [that is Air Chief Marshal Burridge at the time] about methods of ill-treatment used by military intelligence personnel to interrogate persons deprived of their liberty at the internment camp at Umm Qasr. This intervention had the immediate effect to stop the systematic use of hoods and flexi-cuffs in the interrogation section of Umm Qasr."

Can we then look, please, Mr Hoon, at a Parliamentary answer at MOD050349? This is from the top of Hansard, do you see, on 12 October 2004? Do you see that, sir? We can blow it up if it is not clear on the screen. I appreciate it is small. The very top in
the centre of the page, 12 October 2004.

A. We seem to have a question about the Eurofighter Typhoon.

Q. If we can have magnified the very top of that page where the date appears in the middle. Do you see that?

THE CHAIRMAN: 12 October?

A. Still the same question.

MR SINGH: The date is 12 October 2004. I just want to confirm that you can see the date.

A. I can see the date of 12 October 2004, yes.

Q. Thank you. If we can then look, please, in the right-hand column under the heading "UN operations" -- can we have that magnified please? The question from Mr Harry Cohen MP:

"To ask the Secretary of State for Defence ... whether the routine hooding of prisoners in UK facilities in Iraq was contrary to instructions ..."

And then you can read, Mr Hoon, the rest of the question. Your answer, Mr Hoon, was:

"Prisoners held in UK detention facilities in Iraq have not, at any time, been routinely hooded."

Was that true?

A. Yes.

Q. Even if the light of the ICRC report?

A. Yes.
Q. Why do you say that?

A. Because first of all I was not aware of that 2003 ICRC report, I think, actually, until preparing for this Inquiry. But leaving that aside, as I understand that report, it was concerned about a small number of prisoners who were hooded; it was not the generality of prisoners who were hooded and therefore prisoners were not hooded routinely. There were specific security reasons for hooding particular prisoners, as I understand it.

Q. Mr Hoon, I am going to ask you to think very carefully about your answers because I asked you a moment ago when you had seen the report of the ICRC.

A. Sorry, the report you showed me was the 2004 report.

Q. Yes.

A. You are now referring to the 2003 report.

Q. No, no, forgive me, Mr Hoon --

THE CHAIRMAN: Just a minute. We are now getting into an argument about the whole thing. Let's be clear about it, Mr Singh. You are putting to him the report that he said was leaked; is that right?

MR SINGH: Yes, Sir, that is right. That is right. It is dated 2004. You saw it, you told us, in May 2004, or at least were aware of its contents; is that correct, sir?

A. I was aware of content of the 2004 report.
Q. Yes. Although the report is dated February 2004, the period to which it relates, Mr Hoon, is 1 April 2003. That is the date that it is talking about. So it is not a 2003 report. Forgive me if I did not make that clear to you a moment ago. I see you nodding. Do you understand now --

A. I see what you are getting at, yes.

Q. -- it is the same report. In the light of what you knew about the content of that report, do you maintain, Mr Hoon, that when you told a Member of Parliament in the House that prisoners held in detention facilities in Iraq have not at any time been routinely hooded, that that was true?

A. Yes. My understanding of the 2004 report was that it was concerned with, in particular, the death of Baha Mousa, it was concerned with another incident and a third, I think to do with a car, and that was what I understood the 2004 report to have dealt with.

Both in relation to each of those issues contained in the 2004 report and the reference back to 2003, my understanding was that the Ministry of Defence in particular judged that these were matters that were either resolved to the satisfaction of the ICRC or had been dealt with satisfactorily in the processes that were by then underway. So I still maintain that that
answer was wholly consistent with both my understanding at the time and indeed the practice of the Ministry of Defence.

MR SINGH: Well, sir, you have seen what the report says and I will come back to this in submission.

THE CHAIRMAN: Yes.

MR SINGH: Can I ask you, please, to look at another Parliamentary answer given by the Minister for the Armed Forces at MOD050379. We can just see the date is 28 June 2004. In the middle of right-hand column under a heading "Interrogation techniques", Mr McNamara MP asks the Secretary of State for Defence when he was first informed that UK forces in Iraq were practising the banned interrogation technique of hooding prisoners.

I appreciate, Mr Hoon, that it was not you who gave the answer, but on your behalf the answer was given by the Minister of State, Mr Ingram, and the answer he gave was:

"We are not aware of any incidents in which United Kingdom interrogators are alleged to have used hooding as an interrogation technique."

Was Mr Ingram wrong about that?

A. That was my understanding at the time and it remains my understanding today.

Q. And that remains your understanding, does it, Mr Hoon,
in spite of the fact that Mr Elias has taken you to a number of documents -- particularly on 18 September 2003 -- which we can go back to if you wish to be reminded of it --

A. I am familiar with it.

Q. You are familiar with it. And your answer remains the same, does it?

A. My answer is that that document was written within 72 hours of the death of Baha Mousa. It was a preliminary account of what could only have been a preliminary investigation and that, when that investigation concluded, I am not aware that there was a specific suggestion that interrogators or questioners had used hooding as a technique in part of their questions and interrogation and that remains my understanding today.

Q. Your evidence is, Mr Hoon, is it, that you were not aware and are not aware even today of that even being alleged?

A. Well, I have seen some inevitable speculation from time to time in the press, but there is nothing to suggest that those responsible for either questioning or interrogation used hooding as an interrogation technique.

Q. The final topic, Mr Hoon, I would like to ask you about:
Mr Elias asked you a few questions about the procedure for having an independent review of the internees and you helpfully set out in summary your view as it was in 2003. I will be as brief about this as I can, Sir.

THE CHAIRMAN: Yes, that is all right.

MR SINGH: Just to put the issue in context, in the summer of 2003 -- it may help, Mr Hoon, if I can remind you of a document which is at MOD054914. This is dated 15 July 2003. If we go three pages on to MOD054916, we see that your name appears at the end of the document. Do you see that? Thank you.

Without going through this document in detail, Mr Hoon, would it be a fair summary of it to say that you were suggesting for consideration by your colleagues in Government that the Government should pursue the option of establishing an independent board of specially appointed lawyers, judges and lay members and that it might be very similar to the way in which the Special Immigration Appeals Commission operated?

A. That's right, yes.

Q. There is an email which the Inquiry has seen at MOD053331, which bears the date of 15 August 2003. The person who signs it off as "Vivien" the Inquiry knows to be Vivien Rose. She is talking about having spoken to Jon Chorley. I am sure you remember Jon Chorley.
A. Yes.

Q. She states that:

"He confirmed that the Secretary of State had rejected the submission on this on the grounds that taking the steps proposed might prejudice our delicate negotiations with the US over the British G bay ..." That the Inquiry understands is a reference to Guantanamo Bay detainees.

"John discussed this very informally with Cathy Adams of the Law Officers Secretariat in the fringes of a meeting and she said she did not think that the [Attorney General] would agree with that analysis -- on the contrary it would help our case with the US if we were able to point to the fact that we were devoting time and effort to setting up a fairer system for our detainees."

Mr Hoon, was that, in fact, an accurate recording of your views as Secretary of State, that you were opposed to the idea of the new independent system or were you in fact in favour of it?

A. On the contrary, I was very strongly in favour of it. The reason for the delay was, as I think I explained to Counsel for the Inquiry, that there was some concerns expressed by colleagues -- senior colleagues in Government -- about the possible impact of such
a decision in July on delicate negotiations in relation to Guantanamo Bay. Nevertheless, at the first opportunity, once that delicacy had passed, I sent out the letter to my Cabinet colleagues, I think probably early in September.

Q. Yes. The Inquiry has documents before it, which I hope it is not going to be necessary to go to, that suggest that the views certainly of the Home Secretary at the time, Mr Blunkett, the Lord Chancellor and Secretary of State for Justice, who was Lord Faulkner, and the Foreign Secretary, who was Jack Straw, all basically sided with you, if I can put it that way, Mr Hoon. So can you tell the Inquiry who the colleagues were who were opposed to this?

THE CHAIRMAN: Is that really a relevant consideration for me?

MR SINGH: Well, Sir, it is entirely a matter for you.

THE CHAIRMAN: Well, I can't at the moment see any relevance to it.

MR SINGH: I will move on, Sir, then.

Finally on this topic, Mr Hoon, there was, later in the year, as the Inquiry understands it from a document that we have now seen from Lord Faulkner in about October of that year, 2003, a slightly different suggestion that there would no longer be something based
on the Special Immigration Appeals Commission, but
rather a board which would be paper-based and sit in
London. Do you remember that proposal?

A. I don't think I have an independent recollection of it,
but I have certainly seen some of that documentation
since, yes.

Q. The Inquiry's understanding is that even that idea of
having a board was not in fact implemented. You said to
Mr Elias, I think, that in fact your idea of having an
independent review system was implemented at some stage.
Is that in fact accurate, do you recall now?

A. Well, we are now getting towards the end of 2004.
I left the Ministry of Defence, in practical terms, in
April 2005, so I am afraid my knowledge expires at that
point.

Q. Forgive me for interrupting you, Mr Hoon. The period we
are talking about is late 2003, not 2004. Does that
help you? It seems never to have been implemented, so
far as we know, but are you saying that it was
implemented?

A. My recollection is that it was, but, as I say, I am
perfectly willing to accept from you that it may not
have been.

MR SINGH: Sir, those are my questions.

THE CHAIRMAN: Thank you.
Ms Dobbin?

Questions by MS DOBBIN

MS DOBBIN: Mr Hoon, did you come to understand what security concerns may have led to the re-emergence of hooding during Operation Telic 2?

A. To the best of my understanding, it was not a question of security concerns re-emerging. It was simply that -- I think the word that has been used is that the order was lost, so I don't -- I don't think there was any particular change in circumstances. I am afraid I think it was simply an administrative failure.

MS DOBBIN: Thank you.

        Thank you, Sir.

THE CHAIRMAN: Mr Garnham?

Questions by MR GARNHAM

MR GARNHAM: Mr Hoon, did you understand, in 2003 and 2004, interrogation and tactical questioning to be distinct procedures?

A. Yes, I did.

Q. Were they used as separate things in army speak?

A. They certainly were in army speak, although I think for -- if I can put it this way, for the general public, for those who are used to hearing the words "questioning" and "interrogation", the army's distinction doesn't always fit with most people's
understanding of the use of the words, in the sense that "tactical questioning" is a process conducted essentially by a unit who have arrested a suspect and then taken him for preliminary questioning, whereas "interrogation", which in everyday language I think probably has connotations of something rather more sinister, is actually a rather more formal process conducted by trained interrogators.

Q. Did you understand hooding to be a technique being used as a matter of generality in Iraq to soften up those who would be questioned?

A. No, I do not.

Q. Did you understand it to be suggested that Baha Mousa was being interrogated at the time of his death?

A. No, I don't. He was clearly being subject to an appalling attack that resulted in him receiving 93 separate injuries.

Q. Did you understand that Baha Mousa and those he was detained with were being hooded as a preparation for tactical questioning?

A. Again, my understanding was that this man was subject to the most appalling attack and, as I have said, I think repeatedly, I regarded the fact that he was hooded as part of the abuse that he was subjected to.

Q. You received a briefing before appearing before the
Defence Committee in May 2003. I think that is right.
A. Yes.
Q. And you then appeared before that committee.
A. Yes.
Q. Do you recall whether hooding arose as an issue for the
Defence Committee in 2003?
A. It did not, and, indeed, the chairman of the Select
Committee apologised to members of the committee for not
having time to deal with these questions, I think
clearly indicating that this was not an issue that they
were concerned about because no issue relating to
hooding had by then arisen.
MR GARNHAM: Thank you very much. Thank you, Sir.
THE CHAIRMAN: Mr Elias?
Further questions by MR ELIAS
MR ELIAS: Just this by way of clarification, Mr Hoon: you
said unequivocally and a number of times that your
understanding was that hooding for the purpose of
interrogation or during interrogation was proscribed.
A. Yes.
Q. Does the same apply to hooding during or for the
purposes of tactical questioning?
A. Sorry, I mis-heard you.
Q. Does the same apply --
A. Yes, it does.
Q. So hooding for those purposes, whether it is tactical questioning or interrogation -- being two different processes, as you have agreed -- in either case your understanding was that hooding should not be used?

A. They are both equally wrong.

MR ELIAS: Thank you.

Questions by THE CHAIRMAN

THE CHAIRMAN: Before you go, Mr Hoon, can I ask you, please, to look back for a moment at the letter that you wrote to Mr Nicholas Soames on 18 May 2004 and the second page? You have been asked about it before, but I want to just see that I understand.

Can we put it on the screen? It is at MOD051010, perhaps the bottom paragraph -- that is it.

Now, the passage I want to ask you about is:

"However there are some circumstances in which hooding prisoners can legitimately be used during their capture to conceal sensitive information such as the disposition of friendly forces."

As I understand it, that was your understanding about it at some stage?

A. Yes.

THE CHAIRMAN: It is the next sentence that I want your help on:

"We always recognised that it was desirable to cease
the practice as quickly as possible and commanders on ground judged that we could safely do so by May last year."

Now I understand you are speaking there, as you say, for the Ministry of Defence. Did you by chance -- I imagine not -- have time to read what General Brims said this morning and what was in his evidence?

A. I am sorry, I have not, no.

THE CHAIRMAN: You haven't. Have you looked at what anybody else has said about that, for instance Colonel Mercer and others?

A. I haven't, no. I am not seen sure that I have ever discussed it with General Brims. I would have discussed it with General Reith in September/October 2003, but I don't recall ever having had a direct conversation with General Brims about it.

THE CHAIRMAN: No. Did you ever seek to get to the bottom of why he made his order?

A. Well, I -- as I have understood it, but obviously in retrospect it was because he saw some prisoners hooded, he did not like what he saw --

THE CHAIRMAN: Yes.

A. -- and felt that it was no longer operationally necessary for reasons of security and hence banned it.

THE CHAIRMAN: That is not quite the impression that
sentence gives, is it?

"We always recognised that it was desirable to cease
the practice as quickly as possible ..."

I do not know where you got that from, but you would
not have got that from General Brims, would you, or
anything he said?

A. I would have got it from whoever drafted the letter.

THE CHAIRMAN: Drafted the letter --

A. I am not in any way avoiding my responsibility for
sending it out.

THE CHAIRMAN: No, no, I am not suggesting that.

A. My view of that, subjecting it to as much close textual
analysis as I can, is that what I am saying is that the
law requires the commanding officer on the ground to
make a judgment to end hoarding as soon as it is no
longer operationally necessary. So, therefore, it is
desirable to cease the practice as quickly as possible
because, otherwise, once the operational security
reasons have gone, then it follows that hoarding would be
unlawful.

THE CHAIRMAN: But why would there not be operational
reasons -- if there had been in the first place, why
would there not be operational reasons throughout
Op Telic 1 and Op Telic 2?

A. Because essentially, as the frontline moves from
Umm Qasr north past Basra and beyond, the intelligence that might be useful to the enemy necessarily diminishes and, therefore, in the early phase of an operation, clearly how many British troops there are, where they are located, what kind of security arrangements exist, is valuable intelligence potentially for the enemy. Once the frontline has gone, once the resistance has been overcome, once enemy forces are dispersed and defeated, that is no longer an issue.

Similarly, in relation to the point about protecting the identity of potential informers, in the confused early period of particularly this kind of operation where there are people who are loyal to the regime, but who wear civilian clothes and who mix in with the civilian population, in the early period there will be operational security considerations that will diminish with time and really that is what that sentence says.

THE CHAIRMAN: So you are making a distinction between the combat phase and the so-called peace-keeping phase, where civilians or others who are insurgents may be picked up and they, therefore, in those circumstances, would not be hooded at all for security reasons?

A. I don't think, particularly in Iraq, for the reasons I mentioned, that there were elements of Saddam's security system that remained in place, even after the
frontline had moved through a particular area. I don't think modern operations -- and I think to some extent this is seen in Afghanistan as well -- are quite so neatly delineated between the war-fighting stage and the peace-keeping stage.

THE CHAIRMAN: Quite so.

A. I think modern experience demonstrates that there is a significant overlap and, therefore, the operational security justifications may continue for slightly longer, but nevertheless there will come a point -- which is what I think I am saying in that letter -- where those security reasons no longer permit hooping to continue.

THE CHAIRMAN: And that is what you thought with that paragraph you read, that somebody else had put it in?

A. Yes, yes.

THE CHAIRMAN: All right. Thank you very much and thank you for taking the time to come to the Inquiry and also for preparing your witness statement and reading the documents. I am very grateful to you for your evidence and, so far as the Inquiry is concerned -- that is me -- you are free to go now.

A. Thank you very much indeed.

THE CHAIRMAN: We have not quite finished, have we? We need to deal with some housekeeping matters. Stay if you
Discussion re housekeeping

MR ELIAS: Sir, may I deal with some housekeeping and timetabling matters?

THE CHAIRMAN: Please do.

MR ELIAS: Recording with unconcealed delight that I think we have now completed Module 3 oral evidence.

Firstly, Sir, may I say this: although the oral hearings on Module 3 have come to a close, it does not mean, of course, that the Inquiry will be stopping entirely the investigative side of its work in those areas. There is at least, as is known currently to the Inquiry, one further witness statement which will be sought arising out of evidence given to the Inquiry very recently.

There remains some document requests where the Inquiry is not yet satisfied that the end of the line, as it were, has been reached. To the extent that more documents may be found, they will be relevance- and redaction-checked, as has happened to all other documents, of course, in the usual way, and disclosed to core participants as soon as possible after receipt by us.

But in our assessment of that material, none of these areas are so significant that they could justify
putting off closing submissions. But no doubt, Sir, you will agree that if relevant documents or indeed statements emerge after closing submissions, core participants may be given the opportunity to comment further if that appears to be appropriate.

THE CHAIRMAN: Quite so.

MR ELIAS: Secondly, Sir, may I say this? Core participants should expect to receive, I hope towards the end of next week, a witness statement from the Deputy Solicitor to the Inquiry, Ms Eloquin. That will be similar in form and content to the statement provided by Ms Carnegie at the end of Module 2, in that it will set out some of the investigative steps taken by the Inquiry and will include, for example, reference to certain logs that have been checked and found to contain no relevant entries and certain potential witnesses who have been approached, from whom it was decided that no useful witness statement could be taken and therefore it was not appropriate to take one.

We want that information to be available to core participants before the deadline for submissions and we will endeavour to get the letter out as soon as possible. That letter will also exhibit the witness statement of Mr O'Brien, a witness who failed to attend, but in respect of whom the Inquiry understands there are
longstanding mental health issues.

Thirdly, may I take the opportunity -- and forgive
me for doing so -- to state publicly and underline the
timetable for closing submissions on Modules 1 to 3.
Core participants need to provide the Inquiry with any
closing submissions on Module 1 to 3 by no later than
4 pm on Friday 20 [sic] June, and, Sir, that date
cannot -- if the timetable is to be adhered to -- be
extended.

Following redaction checks by the Inquiry and MoD
over that weekend after their receipt, they will be
circulated to other core participants, but not yet
published more widely, at the close of play on Monday
28 June. Core participants will then have until 4 pm on
Friday 9 July to serve any further closing submissions
in reply.

As I say, Sir, I am afraid that those deadlines,
notwithstanding the heavy burdens that undoubtedly they
will put on core participants, are, as it were,
non-negotiable. Detailed guidance to ensure consistency
of referencing has already been provided and core
participants are requested, please, to adhere to these
and to contact the Inquiry team in case of any doubts.
Core participants should also expect to receive, later
in June, finalised schedules addressing the various
redactions that have been made to the Inquiry's
documentary evidence.

I am told by Mr Moss that I may have said Friday
20 June. If I did, it is Friday 25 June. I am not
cutting back five days on the date for submissions.
Forgive me.

Sir, you have indicated that you propose to sit from
Monday 19 July to Thursday 22 July to hear oral closing
submissions and, as everyone knows, I think a timetable
allocating timings to core participants has been
circulated. The timetable, as was said when it was sent
out, is necessarily provisional. We do not currently
think it will be necessary to sit on Friday the 23rd or
indeed in the week that follows, 26 to 29 July, but
those days remain held in reserve should they be needed.
By the end of those closing submissions, Sir, we expect
to announce more details about the Inquiry's Module 4
timings listed for October.

I know, Sir, that you wish to say a few words about
the progress of the Inquiry, but would you permit me to
say this on behalf of counsel and indeed the whole of
the Inquiry team, both front of house, as I sometimes
call it, and those who work very hard in the background?
We would all wish to underline again our gratitude
to core participants, to their legal teams, and indeed
to the witnesses who have attended, for the cooperation and particularly for the courtesy that we have all been shown in helping the Inquiry to keep to its stringent timetable.

THE CHAIRMAN: Thank you very much. I echo all those remarks about the progress of the Inquiry and the cooperation that we have had and I will say a bit more about that in a moment.

First, for those who are interested, a few statistics. We have had 103 sitting days since we started, of which eight were in the opening, so that is 95 days for hearing witnesses. The number of witnesses who have been called in the Inquiry to give evidence is 247 at present and I hope that it at least does not get above 250, although that would give us a nice round figure.

The number of witnesses whose statements have been read is 101. The number of pages referred to in evidence but excluding witness statements at the last count, which was before the last two witnesses gave evidence -- maybe even before the last four witnesses gave evidence -- is 8,698 pages. The number of documents or pages on the Concordance database is 10,675, and 66,024 pages on the Inquiry database.

There are 9,869 documents and 62,313 pages on the
core participants' database. The witness statements received to date are some 402.

I think that gives you some idea of the amount of ground that all of you -- and I don't just say the Inquiry team, but the whole lot of you -- have been concerned in. And I am, if I may say so, extremely grateful to everybody for the cooperation which they have shown and also for the patience. And I know well, from having seen just a modest number of the emails that come through, that a lot of the work has gone up into the night hours and I am extremely grateful to everybody for working so hard.

Without that hard work, without that cooperation, we would not have got to where we are at the moment. And I was thinking back on it, I think there is only one day that we overran, and that was one of the detainees who, for obvious reasons, took longer and we were more concerned in some senses about the evidence.

I would also like, if I may, to pay a special tribute to my team, that is to say Counsel to the Inquiry, to the, as Mr Elias calls it, the front of house and also the rear of house, if that is the right way of expressing it. Everybody has worked extremely hard and the hard work, I think, has paid off in producing a result of getting through evidence rather
more quickly than anybody might have understood it would take when first we started.

So with those notes of thanks, I look forward to receiving submissions on time.

MR ELIAS: Thank you, Sir.

THE CHAIRMAN: Thank you all very much.

(4.40 pm)

(The Inquiry adjourned until 10.00 am on Monday, 19 July 2010)
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