

File No: TA4-01429

Toronto: December 7, 2004

## **IMMIGRATION AND REFUGEE BOARD**

JEREMY DEAN HINZMAN  
NGA THI NGUYEN  
LIAM HINZMAN

CLAIMANTS

PRESIDING MEMBER: B. Goodman

J. House FOR THE CLAIMANTS

REFUGEE PROTECTION OFFICER: K. Dragaitis

MINISTER'S COUNSEL: J. Chisholm

CASE OFFICER: Rye

PRESIDING MEMBER: Okay, good morning everyone and welcome again. Those of you who are here for the first time welcome to you. This is the resumption of a hearing into the claims for Convention refugee status and refugee protection of Jeremy Hinzman, his wife Nga Nguyen, and their son, Liam Hinzman.

Yesterday we designated Mr. Hinzman to represent the interests of Liam and counsel indicated that Liam preferred to be with his mother and if he's quiet he can stay and if he's not then Nguyen has decided that she'll take him out of the room at the appropriate time and bring him back. I indicated to her at that time of course as a party she's entitled to be here throughout the entire proceedings. She indicated that she was content that -- could you turn off your cell phones please now? Thank you. That she was content that Mr. Hinzman was here and that he would inform her as to what had happened in her absence.

In addition of course the tapes are available and ultimately it may be that transcripts will be available as they were for the pre-hearing conference. For those of you who were again not here yesterday my name is Brian Goodman and I'm the member of the Refugee Protection Division of the Immigration and Refugee Board who has been assigned to hear and determine these claims.

Counsel for Mr. Hinzman is Jeffry House. Counsel for the Minister is Janet Chisholm and they're both assisted by counsel as well and we also have with us our Refugee Protection Officer, Kristina Dragaitis. Today is the 7<sup>th</sup> day of December for the purposes of the record, 2004.

To recap from yesterday briefly we dealt with some preliminary matters. After doing that I entered the Exhibits, the documents that had been submitted in advance of the hearing as Exhibits and Ms. Dragaitis completed her examination of Mr. Hinzman in accordance with the order of questioning that is provided for in Guideline 7 and in light of the withdrawal yesterday of Mr. House's motion that he be permitted to proceed first with the questioning. We will proceed in the normal way and that is that Ms. Chisholm will now have the opportunity to question Mr. Hinzman and I'm sure I don't need to remind you that you continue to be under the affirmation to tell the truth that you were yesterday.

COUNSEL: Before my friend begins her cross-examination, Mr. Member, yesterday there did arise the question of Mr. Hinzman having attended the Fayetteville meeting of the Quakers, and the Toronto meeting, and the question arose about documentary evidence. In the interim I do have a fax which was sent to me from the Quaker House in Fayetteville as well as an original letter and copies from the Religious Society of Friends or Quakers here in Toronto. I wonder if it would be appropriate that those be entered as Exhibits at this time?

PRESIDING MEMBER: Well, notwithstanding their lateness I will admit them because they're clearly relevant to this claim. Once again, Mr. House, I'm sorry to continue to try and hammer this home to you but it's very important that any documents that are intended to be relied on be submitted at least 20 days prior to the hearing and that's something that you've know about if you were aware of the rules --  
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COUNSEL: Right.

PRESIDING MEMBER: --- from whenever and certainly in relation to these claims from the time that the PIF's were signed at least.

COUNSEL: So may I ---

PRESIDING MEMBER: Yes, you may.

COUNSEL: --- provide you with a copy and I'll hand copies to my friends.

PRESIDING MEMBER: Thank you. And just for the -- once again so that people who are here and are unaware of our procedure understand why it's important to disclose documents in advance, is that it gives all of us an opportunity, which is only fair, to familiarize ourselves with the documents prior to having to deal with them and to prepare to ask any questions about the documents. So receiving documents on the eve of the hearing or at the hearing, while it's sometimes not possible to avoid, for example I mentioned yesterday the recent articles about Fallujah which appeared as late as the end of November, that documents about the religious beliefs and affiliations of Mr. Hinzman clearly ought to have been submitted to the Board long before now.

COUNSEL: I have one more matter, Mr. Chair, Mr. Member. One of the items that you admitted was a short newspaper article from The Raleigh News Observer which was published April 29<sup>th</sup>, 2004 and which my friend indicated to me that she's relying on. It's titled 82<sup>nd</sup> Regroups at Home. You had asked me to Google, if we can use that word, ---

PRESIDING MEMBER: I think you had indicated that you had Googled.

COUNSEL: I -- yes, okay.

PRESIDING MEMBER: But we don't argue about who told who to Google. Who Googled who.

COUNSEL: I'm really glad actually. So I did Google and I have somewhere here the most recent information. Here it is. Fort Bragg Soldiers Leave for Iraq Duty. That is December 5<sup>th</sup> and 6<sup>th</sup>. If I may provide you with a copy of that?

PRESIDING MEMBER: Yes, thank you.

COUNSEL: And I have copies for my friends as well.

PRESIDING MEMBER: Excellent. Thank you for doing that, Mr. House, I appreciate it.

COUNSEL: Right.

PRESIDING MEMBER: And that certainly confirms the information that I indicated that I had heard and seen, that the 82<sup>nd</sup> Airborne had been mobilized again to go back to Iraq having served one term of duty.

COUNSEL: I'll just hand this to my friends, although I think they're aware of them.

PRESIDING MEMBER: Bless you.

RPO: Thank you.

PRESIDING MEMBER: It seems that we're all under the weather.

COUNSEL: There's one more matter, Mr. Chair, which is this.

PRESIDING MEMBER: Before you -- does it relate to Exhibits?

COUNSEL: Yes.

PRESIDING MEMBER: Okay.

COUNSEL: My friend's Exhibit that I've just referred to which was published April 29<sup>th</sup> and modified May 24<sup>th</sup> and she provided it to me I believe on December 2<sup>nd</sup>, was really my first indication that Ms. Chisholm, as I apprehend her position, is going to be arguing that there's some sort of distinction in kind between for example the 82<sup>nd</sup> Airborne and the Marine unit that Staff Sergeant Massey commanded and she said something to that effect yesterday.

In the course of Googling I came upon two reports involving what I would call atrocities. Someone else might call mistaken slaughter of civilians by the 82<sup>nd</sup> Airborne. These are reports by Human Rights Watch. They are dated June and October 2003 and I would ask that those be made Exhibits as well.

Generally speaking, Human Rights Watch information I believe is available to the Board, but in any event, in my submission it would be important not to allow the implication to go forward that there is some sort of distinction in kind between the Marines and the 82<sup>nd</sup> Airborne when there's substantial evidence which would suggest otherwise. So, I'm asking that you accept these two reports from the Human Rights Watch.

PRESIDING MEMBER: Thank you. I'll hear from Ms. Chisholm.

MINISTER'S COUNSEL: Obviously I haven't seen the reports, so I can't comment on them. The reports aren't recent and I'm not clear as to why -- I mean, when I brought forward my reports it was in response to the witness that was being brought forward, Sergeant Massey, who was going to testify as to specific activities that he had engaged in. I wanted to get an idea of what the 82<sup>nd</sup> Airborne had been involved in during the periods when Mr. Hinzman was set to go to Iraq and

the article that I submitted specifically relates to the period that he was set to be deployed which was January 2004 till April 2004.

I can't make much more comment other than to say that I haven't seen the reports, I don't know what they contain and I don't know if I will need a chance to respond to them and in terms of my comments about the distinction between Mr. Massey being a Marines, and Mr. Hinzman's duties, that's my position. It doesn't mean that, Mr. Member, you're going to accept that position and it also doesn't mean that his information isn't going to be probative or not probative.

This information was provided simply as a reference to give me an idea as to what Mr. Hinzman would have been expected to do and without seeing those reports I can't make any comment further other than to say that they are late, they are last minute, and while I don't object to small things such as an article here or there, substantive reports at the very last minute are very difficult for me to respond to and they put everyone in a very difficult position.

COUNSEL: If I could just respond briefly. For reasons unknown to me -- and I'd be glad to give my friend a copy of these if it's helpful to her right now even independent of the question of whether they're admitted. Would you like to have one in front of you?

MINISTER'S COUNSEL: Yes, please.

RPO: Thank you.

COUNSEL: Mr. Chair, first of all if you look at volume 2 of my materials at tab 4 you will see that there's a report at page 110 entitled, Hearts and Minds Report on Post-War Civilian Deaths in Baghdad Caused by U.S. Forces, September 2003, and that is one of the two reports that I am referring to here.

The reason that I am asking that this additional material be put in the record is that for some reason unknown to me at tab 4, the report that I included, jumps from page 17 to -- sorry, from page 18 which is at page 120 of the material, volume 2, from page 18 to page 49, and although the 82<sup>nd</sup> Airborne is discussed briefly at page 117 and also at page 14 of -- that is page 116 of the book, volume 2, there is reference to

the 82<sup>nd</sup> Airborne there and to killing of civilians, but the full report for some reason didn't get into the materials and it includes further information about the 82<sup>nd</sup> Airborne and its activities. I believe this is in Fallujah and my friend, with great respect, my friend has raised the suggestion that there's some distinction in kind between the U.S. Marines and the 82<sup>nd</sup> Airborne.

In my submission that was a recent suggestion by her. She's not required to tell me anything about her position until the hearing begins, but it's of little comfort to me that you might not accept her position. In my submission these are relevant materials. They were raised by her, rather the question was directly raised by her, and in my submission it would be completely inappropriate for you to base your decision on a make-nice story from the Charlotte Raleigh Observer which was published in April and not have the reports from the Human Rights Watch which are directly relevant.

So, the second report is one that also involves the 82<sup>nd</sup> Airborne and it's not one that I was aware of when I prepared the materials, although you can see there's 26 separate reports. So, I did miss this one and I apologize, but I think you should have it for the purpose of making a fair decision in this case. So that's the basis on which I ask that these reports be admitted.

PRESIDING MEMBER: Ms. Dragaitis,  
any observations?

RPO: I don't have any comments.

MINISTER'S COUNSEL: Mr. Member, I'm wondering if we could set the question about the admissibility of this document aside? I may not oppose it if I have a chance to review it thoroughly and see, you know, what is contained and what isn't, but it's really hard for me with two minutes notice to say whether or not I'm going to oppose it or not. I'm wondering if maybe we could bring up this question again after the morning break and then that will give me a time to thoroughly review the material and see what's there and what isn't.

COUNSEL: I don't object to that.

PRESIDING MEMBER: If I admit it needless to say Ms. Chisholm and Ms. Dragaitis must be given sufficient time ---

COUNSEL: Certainly.

PRESIDING MEMBER: --- to review the documents if I admit them and to prepare themselves ---

COUNSEL: Absolutely.

PRESIDING MEMBER: --- and I would allow Ms. Dragaitis the opportunity to ask questions in relation to the documents. In fact, that will be the case for any of the documents that are submitted following the completion of her investigation -- of her questioning. We are an informal tribunal and in many ways it's not like a court, so when this happens there are ways to deal with it ---

COUNSEL: Thank you.

PRESIDING MEMBER: --- and let me say that I've reviewed the materials that each of you has filed in advance of the hearing very carefully. Among the materials filed by you, Mr. House, in the legal material is a decision of the Honourable Mr. Justice Housley (ph) and Mr. J. Barnes, Vice President. This is a British decision of the Immigration Appeal Tribunal.

COUNSEL: Is this the most recent?

PRESIDING MEMBER: Yes, it is.

COUNSEL: Yes.

PRESIDING MEMBER: And it's at tab 10. And at some point each of you will be making submissions in relation to, among other things, this decision and the weight I ought to attach to it given that of course it's not a Canadian decision, but the issue of the claimant's personal involvement in the actions is at the heart of this case, of this case that I'm referring to, and in that respect I refer you to the paragraph numbered 5 on page 2.

"The qualification to the test propounded in B," which was an earlier case decided by the



Immigration Appeal Tribunal, "is reflected in paragraph 37 of Justice Potter's judgement. The words, "in which he may be required to participate" should be used instead of, "with which he may be associated" because that emphasized," and then there's a quote from B, "that the grounds should be limited to reasonable fear on the part of the objector that he will be personally involved in such acts as opposed to a more generalized assertion of fear or opinion based on reported examples of individual excesses of the kind which almost inevitably occur in the course of armed conflict, but which are not such as to amount to the multiple commission of inhumane acts pursuant to or in furtherance of a state policy of authorization or indifference."

The reason I raise this case is that it's a case that you submitted and it's a case that does raise the issue of the personal participation of the claimant in the acts and also the issue of whether the acts were in furtherance of a state policy of authorization or indifference.

COUNSEL: Yes. If ---

PRESIDING MEMBER: Which was one of the arguments that you had made. That there was a systemic ---

COUNSEL: Yes.

PRESIDING MEMBER: --- approach that was, as I understand your argument, precipitated in part by the Memorandum of Law that was prepared at the request of the current Attorney General of the United States and that that coloured the way that the military from the United States conducted themselves, not only in Iraq but in other places like Guatanamo Bay.

COUNSEL: That certainly -- you've extrapolated from the materials, but I think in general correctly. That is the essence of a position that I'm going to be putting to you, sir. I might just say that with respect to the decision that you're referring to which I believe was published October 29<sup>th</sup>, 2004 or rather it may even be that it's never been published in any reports, I simply handed that on to Ms. Chisholm and put it in my materials because I think it is a relevant decision and I feel that I have an obligation to provide you with all the relevant law even if there may be some areas where I think Canadian law is a little bit different, as I do in this case, and as I will be submitting to you.

So, I hope that my having included it doesn't preclude me from arguing that it's slightly different than Canadian law.

PRESIDING MEMBER: No, absolutely not. I mean as I say, at the appropriate time I'll hear submissions about it. The point I'm making is that clearly the issue of personal participation of the claimant in the acts that he would have been required to engage in had he continued to serve is an issue in that case.

Here's my suggestion, Ms. Chisholm. I mean, while I think the cases are clear and my recollection is that Mr. House agreed at our pre-hearing and in his submissions that the relevant time to determine whether Mr. Hinzman is a conscientious objector is at the time that he deserted, but the cases are also clear that that doesn't mean that you necessarily exclude any evidence as to what happened afterwards. That it is relevant to the extent that it informs, and I see counsel nodding, it informs the decision to desert and can be therefore understood. The decision can be understood in that context and clearly Mr. Hinzman deserted before the world became aware of what happened in the prison, for example.

So, what I propose to do is to admit the document at this time because I don't believe that your review of it will lead you to conclude that it's not relevant. Once again, I think the issue is the weight to be attached to the material in the article for the reasons that I suggest. I will, however, allow you all the time you need and Ms. Dragaitis to review the articles so that you can prepare yourself in the event that you wish to ask questions about the articles.

I think it doesn't make a lot of sense to give you time to review the articles, to make arguments on it, on their relevance, but not give you sufficient time to review the articles, to prepare yourself for examination or cross-examination with respect to the articles.

MINISTER'S COUNSEL: If that's the case, if -- I don't have a problem with that, I mean obviously I'm not suggesting it's irrelevant, I can't say. It was the lateness I was concerned about and if I'm given time to prepare that will overcome my concerns in that regard. So if I'm in a position where I can continue on with the questions I had for Mr. Hinzman

this morning and then either -- well, I don't even know if an hour at lunch would be enough, but have Mr. House continue with his questions after I have finished and then if questions arise specifically out of these reports then if I'm given the opportunity to pose those to Mr. Hinzman I don't have a problem with your suggestion.

PRESIDING MEMBER: Thank you. Well let me say that I don't think that you should be required to spend your lunch hour reading materials that were submitted late and that ought to have been submitted earlier. As I say, the issue was clearly raised in one of the cases submitted by Mr. Hinzman -- by Mr. House on behalf of Mr. Hinzman.

On the other hand, they're relevant as he argues, and given that they're relevant I will admit them, but I don't -- as I say, I don't think that you should pay the penalty of missing your lunch hour because he submitted the articles late and so what I would do is to give you an appropriate period of time outside of the lunch hour for you to review them either this evening and then you can, as you say, have the opportunity to examine him, Mr. Hinzman, on the articles if you wish to and that goes for Ms. Dragaitis as well, after Mr. House has examined him and of course, Mr. House, you would be entitled then to respond. Okay?

COUNSEL: Okay.

PRESIDING MEMBER: Is that a ---

COUNSEL: I remain flexible and we'll see what develops, but I'm glad to do it that way if that seems the appropriate way.

PRESIDING MEMBER: Well, I would do the same for you.

COUNSEL: I have no doubt that you would.

PRESIDING MEMBER: I would ensure that you had sufficient time to see ---

COUNSEL: I know you would.

PRESIDING MEMBER: --- anything that was submitted late as well.

COUNSEL: Right.

PRESIDING MEMBER: So what I'll do is admit the documents.

COUNSEL: Right.

PRESIDING MEMBER: Thank you. So let's number the documents now. Yesterday we got up to C-7. So C-8 -- I'm just looking at where we are. C-8 will be the letter from Darlene Hopkins, Clerk, on behalf of the Fayetteville Monthly Meeting. This letter is dated January 6<sup>th</sup>, 2004.

MINISTER'S COUNSEL: Is that January? First month 6 2004? Because it was sent December 6<sup>th</sup>, that's my only question.

COUNSEL: We don't know.

MINISTER'S COUNSEL: Okay.

CLAIMANT #1: It says first month 6 2004. First month, Ms. Chisholm, is referring to January.

MINISTER'S COUNSEL: It's referring to January?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: Okay. Thanks. I thought so, but I wasn't clear.

PRESIDING MEMBER: So that will be -- why don't we do it this way. That will be C-8.1 and then the letter from the Toronto Monthly Meeting of the Religious Society of Friends Quakers, written by Anne Mitchell, Co-Clerk for the Toronto Meeting, dated December 6<sup>th</sup>, 2004, yesterday, will be admitted as C-8.2.

The article from NBC News taken from the Internet by Mr. House, Fort Bragg Soldiers Leave for Iraq Duty, will be admitted as Exhibit C-9. The report, Hearts and Minds, Human Rights Watch Report, Hearts and Minds Post-War

Civilian Deaths in Baghdad Caused by U.S. Forces, dated October 2003 will be admitted as Exhibit C-10.

RPO: Sir, do we have two C-9's?  
Sorry, I have C-8 as the letter from Lafayette. C-9 is the Toronto Monthly Meeting.

PRESIDING MEMBER: No.

RPO: Oh, point 1 and point 2,  
sorry.

PRESIDING MEMBER: Point 1 and  
point 2.

RPO: Thank you.

PRESIDING MEMBER: So C-10 will be the Hearts and Minds article from the Human Rights Watch and C-10 (sic) will be the Human Rights Watch Report headed, Violent Response to the U.S. Army in El-Fallujah, dated June 2003.

COUNSEL: Sorry, could I ask, what was the Hearts and Minds?

PRESIDING MEMBER: C-10.

COUNSEL: And then the next one, the Violent Response?

PRESIDING MEMBER: C-11.

COUNSEL: C-11. Thank you.

PRESIDING MEMBER: Or we could if you want do it in the other order because ---

COUNSEL: No, that's fine.

PRESIDING MEMBER: --- the other one is earlier. June.

COUNSEL: I don't think it matters, sir.

PRESIDING MEMBER: Thank you. I take it there are no more preliminary matters before Ms. Chisholm begins her examination?

CLAIMANT #1: Sir, may I ask that I use the washroom before she proceeds?

PRESIDING MEMBER: Sure. Let's take a five minute break, washroom break. Okay, we're back on record. Now, for those of you who weren't here yesterday and those of you who were, please make sure that your cell phones are turned off. It's very distracting to counsel and to the parties and to me and frankly disrespectful, even more so than if it happened in a movie theatre because this is a very important hearing and it deserves our full attention and the fact that the hearing is public ought not to disrupt the importance of receiving the evidence in a calm and orderly way.

Also for those of you who weren't here I indicated that I would - yesterday, that I would have a break and I would let you know when that break would be so that those of you who are from the media would have the opportunity if you wish to file reports and others, both young and old, could have a break for other reasons. That break will be around 15 minutes and, Ms. Chisholm, around 20 to 11:00 do you think?

MINISTER'S COUNSEL: When we will break for lunch?

PRESIDING MEMBER: Pardon me?

MINISTER'S COUNSEL: When would we break for lunch? I'd like to make it about halfway in between lunch and ---

PRESIDING MEMBER: About 1:00.

MINISTER'S COUNSEL: If we're going to break about 1:00 maybe we could break at 11:00 or 11:15 because otherwise it's a very long stretch from 11:00 to 1:00 for both myself and for the claimant.

PRESIDING MEMBER: That's fine. Are you okay with that, Mr. House?

COUNSEL: Yes.

PRESIDING MEMBER: Okay. So, you choose, Ms. Chisholm, 11:00 or 11:15?

MINISTER'S COUNSEL: Eleven I think is fine.

PRESIDING MEMBER: Okay. So we'll break at 11:00. I hope that gives sufficient time for the media representatives that are here to file their reports. The other thing that I mentioned yesterday was that those of you who are in the room now I would expect that you would stay until 11 o'clock because it is very disruptive if we have people coming and going and unless it's an absolute emergency I would please ask you to respect Mr. Hinzman and his family's right to have a calm and orderly hearing that's not disruptive and those of you who were here yesterday I think for the most part respected that.

So now I'm going to ask Ms. Chisholm to examine Mr. Hinzman.

MINISTER'S COUNSEL: Yes, thank you. Do you need some water or anything?

CLAIMANT #1: Got plenty, thanks.

MINISTER'S COUNSEL: All right. So, I'm just going to ask -- I want to ask you a few follow up questions first about things that I wasn't quite clear on yesterday. So you went over -- it seems like you had quite extensive training in different areas. You talked about being a grenadier. Can you tell me what that is?

CLAIMANT #1: A grenadier is a slot on a rifle team. As I said yesterday, a platoon is made up three line squads and a weapons squad and in the line squads there are two teams and that consists of a team leader, an automatic rifleman, a grenadier and if there's enough manpower another rifleman and a grenadier essentially is, I have an M-4 which is a basic rifle and then on the bottom of that there's a tube that I can place grenades in and launch them. It's a grenade launcher and so, yes, that's what that is.

MINISTER'S COUNSEL: And when exactly were you a grenadier?

CLAIMANT #1: That was my first job when I was put into my platoon.

PRESIDING MEMBER: So could you give us ---

CLAIMANT #1: Oh, and the specific time? From August of 2001 until, when I was made the RTO. Until the early summer of 2002 when I became the platoon's radio operator.

MINISTER'S COUNSEL: Okay. So, August 2001 to summer 2002 you're a grenadier?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: And how long were you a radio operator?

CLAIMANT #1: From early summer of 2002, I don't remember the exact time, until I turned in my conscientious objector application in August of 2002.

MINISTER'S COUNSEL: And then August 2002 you had non-combatant duties ---

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: --- until you left for Afghanistan?

CLAIMANT #1: And those non-combatant duties continued in Afghanistan.

MINISTER'S COUNSEL: So you had non-combatant duties in total from August 2002 until?

CLAIMANT #1: Our redeployment from Afghanistan.

MINISTER'S COUNSEL: So that was in?

CLAIMANT #1: Which was July. July 17<sup>th</sup> or ---



MINISTER'S COUNSEL: July 2003?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: And then in July 2003 what were your duties?

CLAIMANT #1: Upon our redeployment I was assigned to the operations section of my company which is administrative stuff, but it's still in the company and then I was, about a month later, assigned to be the unit's armourer.

PRESIDING MEMBER: I'm sorry, to be the what?

CLAIMANT #1: The unit's armourer, sir.

PRESIDING MEMBER: Right.

MINISTER'S COUNSEL: So is that like the equivalent of what we might call a Quartermaster?

CLAIMANT #1: No, no.

MINISTER'S COUNSEL: Do you know what I mean by that?

CLAIMANT #1: I was still -- I still went on training operations and everything else. I just had the additional duty of being responsible for my company's weapons systems in terms of security protocol and maintenance, administration and there's a lot of paperwork in the army, especially in weapons.

MINISTER'S COUNSEL: So that would not take away from -- being the armourer would not detract from combatant duties?

CLAIMANT #1: No.

MINISTER'S COUNSEL: It's just an additional kind of parallel function?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: Were you ever trained on the Geneva Convention?

CLAIMANT #1: Not in any depth.

MINISTER'S COUNSEL: Okay. Yesterday -- I just wanted to follow up because yesterday you said or perhaps it was in your PIF, you said that you were told if you were given an illegal order you were not to obey it?

CLAIMANT #1: That was in basic training and I mean we didn't learn like all the Geneva Conventions verbatim or specifically, but they said that it's a matter of -- that the Geneva -- that it's a matter of principle at the time we were told, that if you were given an unlawful or illegal order that it's your duty to disobey it.

MINISTER'S COUNSEL: And did they ever discuss with you what would constitute an unlawful order?

CLAIMANT #1: Not in any depth during training. I think at the time they discussed that they didn't really want us questioning what they told us and that would have -- no.

MINISTER'S COUNSEL: So, were you ever told -- were you ever told what you should do if you were given an illegal order? Like, was there specific protocol?

CLAIMANT #1: You're supposed to -- I can just -- you're not supposed to carry it out. There's not a bureaucratic process that you go through on the battlefields to disobey an order, you just don't do it.

PRESIDING MEMBER: Then I take it that your Commanding Officer would have to decide whether or not to bring charges against you or court martial you for insubordination?

CLAIMANT #1: Undoubtedly, sir. If you disobeyed even an illegal order they would take measures against you and the onus would be on you to prove that it was ---

PRESIDING MEMBER: An illegal order.

CLAIMANT #1: Right, or unlawful.

MINISTER'S COUNSEL: So, do you know anyone who -- had you ever discussed with your colleagues or do you know anyone who had refused an order on the grounds of legality?

CLAIMANT #1: No. I mean the example that we were often given in basic training was Mei Li (ph) from Vietnam and about how the troops who carried out the Lieutenant's orders to reek havoc on the villager -- pardon, sir?

PRESIDING MEMBER: Lieutenant Cally (ph) you're talking about?

CLAIMANT #1: Lieutenant Cally, yes. He now sells watches in downtown Columbus where our basic training was, but they often referred to that.

MINISTER'S COUNSEL: So just for the purposes of the record Mei Li involved attacks, intentional attacks on civilians?

CLAIMANT #1: Yes, that's correct.

MINISTER'S COUNSEL: And so that was given as an example of an order you were bound to disobey?

CLAIMANT #1: Right.

PRESIDING MEMBER: Just to complete this, do you know what happened to Lieutenant Cally?

CLAIMANT #1: Lieutenant Cally went to jail for some time in a military prison, sir.

PRESIDING MEMBER: And do you know what he was sentenced to and what his sentence was for? What his length of his sentence was?

CLAIMANT #1: I don't know the length, but it was for some time, but I don't know. You probably know better than I do, sir.

COUNSEL: I believe he was pardoned by President Nixon at some point.

PRESIDING MEMBER: It was after he had served some substantial time in prison?

COUNSEL: I am not sure. I don't know if there's any evidence of that.

PRESIDING MEMBER: I'm asking you.

COUNSEL: My impression is that he was confined to base for a period of time. I don't know the timing of his actual pardon.

MINISTER'S COUNSEL: So, what I understand from what you said yesterday you don't object to all wars? Am I correct with that?

CLAIMANT #1: No, I wouldn't say that's correct. From my experience and training in the military I've come to the conclusion that, that war is wrong. I mean, the one thing I have said and will continue to say is if I'm put in the position if my house was burglarized or my camp was attacked I couldn't help but take measures to stop it, but I think that's outside of the guise of the war.

MINISTER'S COUNSEL: Do you agree that the U.S. had the right to keep an army or do you disagree with the existence of armies?

CLAIMANT #1: Well, I think the world would be a lot better place if we didn't have them, but practically countries are going to have armies.

MINISTER'S COUNSEL: And so from what you're saying just now you don't object to things that you would characterize as defensive missions or defensive actions?

CLAIMANT #1: In terms of myself personally, if I was put on the spot I would act.

MINISTER'S COUNSEL: And if you were in a combat role in a peacekeeping mission would that be something you would object to?

CLAIMANT #1: Given the training that I went through and the point, at what point I turned in my

conscientious objector application I would turn it in in peace time or in war time, it doesn't matter. I was at the point where I felt that taking part in offensive operations was not conducive to the moral code that I was developing.

MINISTER'S COUNSEL: But I'm using the example of peacekeeping, not an offensive mission. I'm wondering for example if you were sent to East Timor which is an area of the world where there are active peacekeepers there to promote the stability who may have to conduct offensive missions from time to time. Is that something, and I'm not saying you do that in East Timor, but it could potentially be something they have to do. Would you object to that?

CLAIMANT #1: Yes, I would object to taking part as a combatant.

MINISTER'S COUNSEL: But you said yesterday that you wouldn't object to participating in the army in general as a non-combatant?

CLAIMANT #1: Correct.

MINISTER'S COUNSEL: So, ---

CLAIMANT #1: I think there are non-combatant roles on peacekeeping operations as well.

MINISTER'S COUNSEL: Of course. So, for example you said you wouldn't object to being a medic?

CLAIMANT #1: No.

MINISTER'S COUNSEL: And that's in any kind of a mission like whether it be offensive or defensive? You personally wouldn't object to being a medic?

CLAIMANT #1: Correct. I just don't want to shoot people or kill people.

MINISTER'S COUNSEL: Do you know -- I know that you said yesterday that you're not a Buddhist in the strict sense?

CLAIMANT #1: Correct.

MINISTER'S COUNSEL: Are you a Quaker in the strict sense?

CLAIMANT #1: Quakers, there's two -- there's attenders and members and there's people who have been going to Quaker meetings for 20 years who aren't members and there's no written, written like Baptismal certificate you get that says you're a Quaker or anything like that. You can apply for membership in your meeting and generally I think once people start attending, a few years after if they feel led by the spirit to become a member of the meeting.

MINISTER'S COUNSEL: Sorry, you said there's members and what's the other class?

CLAIMANT #1: Attenders.

MINISTER'S COUNSEL: Attenders, okay. Sorry. So, you would have put yourself in the category of an attender, not a member?

CLAIMANT #1: Correct, and I'm still an attender and if I'm led in the future I will certainly apply for membership.

MINISTER'S COUNSEL: Just for my purposes do people of the Quaker faith object to all forms of military action?

CLAIMANT #1: There are certain streams of thought within the Friendly tradition on that. There have been friends in World War II who did agree to take part in a non-combative role. There were Friends who refused to take part in any way and went to prison. That's the main example in my mind, but there's different opinions on that, but there is an ongoing peace testimony if you will, that violence is wrong.

MINISTER'S COUNSEL: Do you -- and you may not be able to speak for the whole Quaker faith, but your understanding of the Quaker faith do Quakers believe in the right to self-defence as you have suggested you believe in the right to stop someone from burglarizing your house by using force?

CLAIMANT #1: When I say I would stop someone from burglarizing my house that doesn't mean I would slit their throat. I would take steps to restrain them and I think

-- I can't speak for the Quakers in this hearing room, but I'm sure if someone broke into Mr. McClure's (ph) house, he would probably have a word or two with them or try to stop them, but on the same token they don't, on the whole, agree with violence or being the protagonist of violence.

MINISTER'S COUNSEL: But do they agree with the right to self-defence or does that vary from individual to individual?

CLAIMANT #1: Some people would turn the other cheek I'm sure and other people, other people might. It varies from case to case, but I think most Quakers would take every step possible to avoid acting in a violent manner.

PRESIDING MEMBER: Right, well let me just pursue this because it's a question that is often asked in conscientious objection claims. In the event that someone broke into your house and at the time that you saw them, they had a gun to either Liam's head, God forbid, or to Nguyen's head, God forbid, and asked you to give them all of your money and your worldly possessions, whatever, your pin number, whatever, what would you do?

CLAIMANT #1: Money and pin numbers are transient and they come and go and I would happily give them everything I possibly could to spare the life of my wife and child.

PRESIDING MEMBER: Okay. In the event they weren't satisfied with that, in the event that they wanted to - indicated that, told you that they didn't want any witnesses and therefore that they were going to kill Liam, God forbid, or Nguyen, what would you do?

CLAIMANT #1: I think if this -- I would take steps to prevent it and I don't -- I think anybody in this room would take steps to prevent it. You would have -- you would be wrong not to. I mean, if I took to a knife Jeffrey's throat no matter how much -- no matter how much of a pacifist he may be it's human nature. You're going to try to stop it, but that's on an individual level, it's not a collective national level. I don't think you can help it. It's hardwired into our system. I mean, before you see a snake in life if you see one you're going to jump. It's just there.

PRESIDING MEMBER: So, do you agree then that in addition to self-defence that it includes the defence, for example, of your family members?

CLAIMANT #1: Indeed.

PRESIDING MEMBER: If necessary?

CLAIMANT #1: Indeed, and I would take every step to protect my family, but I would also take every step insofar as it's possible given being in the heat of the moment not to try to kill the person. I'd try to restrain them and if I accidentally turned their gun on them and the trigger went off, well, they instigated it, but I'm not going to walk down the street and look at people and think, oh, that guy might come into my house and kill my wife and child or rob me so therefore I should take steps to, you know, stop him before it happens, but it's definitely a heat of the moment kind of thing.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: When you applied for your conscientious objection application, I guess as you call it, when you applied for conscientious objector, did you -- you stated yesterday you didn't apply to be discharged completely, you wanted a non-combatant role?

CLAIMANT #1: Correct.

MINISTER'S COUNSEL: I mean, based on what you're telling us now that you think the world would be a better place without armies and you don't want to be a combatant even if it's in the guise of helping maintain the peace, why would you even want to remain affiliated with the U.S. Army?

CLAIMANT #1: I felt I needed to finish out my enlistment and the fact that the provision was there to have a non-combatant option I took it. If I'm cooking burgers in the chow hall or if I'm a medic or whatever I'm not actively engaging in violence and I realize that just by being associated with the organization I'm somehow complicit, but as a taxpayer I'm complicit in supporting it just as much. I mean, there is degrees of complicity, but I wouldn't be actively seeking out and killing others.



MINISTER'S COUNSEL: Do you know if it's easier to be accepted as a conscientious objector under one stream than the other? Like, is it easier to just be discharged than it is to become a non-combatant? Do you have any knowledge of that?

CLAIMANT #1: I don't know the statistics behind that.

MINISTER'S COUNSEL: So, when you decided to pursue the non-combatant status and while you were still stateside because that's when I assume you first gave your application, did you consult with anyone about, you know, what legal tests you'd have to meet and just tell me a bit about the process you went through as you put in the application?

CLAIMANT #1: I looked on the Internet about conscientious objection and I found resources as to how to compose the application and just, I mean, from the army what things, what questions you have to have and then I answered them and turned in the application. I didn't consult with anybody in the army for that.

MINISTER'S COUNSEL: And you said yesterday that the original package was lost. You had a copy of the actual application on disk, but the supporting material you didn't keep copies of?

CLAIMANT #1: The actual -- the government form that's on the first page I didn't have copies of, but the stuff that I composed and the replies to the questions I had saved to a disk.

MINISTER'S COUNSEL: So what would have been in your conscientious objection application?

CLAIMANT #1: Let me see it? What's here? It would have been the government forms that come along with it. The basic information about my family and my unit and my Social Security number and then there are questions asked in the application that I would have to reply to as to like when my views crystallized concerning violence. I need it in front of me to see it.

PRESIDING MEMBER: Tab 16.

COUNSEL: Tab 16? Is that right, sir?

MINISTER'S COUNSEL: You can take a look, but I guess I'm not looking for specifics on that so much. I'm wondering what supporting evidence you would have given aside from the government forms. Did you submit anything like letters from the Quaker Fellowship or things to support your application when you initially submitted it?

CLAIMANT #1: At the time, yes, I did have a letter from the Friends Meeting that I submitted with it.

MINISTER'S COUNSEL: And was that the first or the second application or both?

CLAIMANT #1: Both.

MINISTER'S COUNSEL: So, you had a right to present evidence at your -- during your application process and during the hearing you had the right to present evidence?

CLAIMANT #1: Yes, or witnesses, but given that I was in Afghanistan, I can provide the letter.

PRESIDING MEMBER: I think you testified yesterday that the fact that the army delayed dealing with this application resulted in it being considered while he was in Kandahar and the result was that he would have wanted to call witnesses such as his wife, I think he mentioned, had it been stateside, that he was unable to call. So I took from that, and correct me if I'm wrong Mr. Hinzman, that although you had the right to present evidence and call witnesses, that that right was limited by your being in Afghanistan rather than the States?

CLAIMANT #1: Indeed, sir.

PRESIDING MEMBER: But just as you -- just to follow up on that. Just as you presented a letter from the Friends could you not have presented letters or affidavits, declarations from your wife or from others? I mean ---

CLAIMANT #1: I don't know if that was an option at the time. In terms of validity the army, I

think, assumes that my wife would support my decision to become a conscientious objector or apply for it, and in terms of co-workers or whatever, as I explained yesterday it wasn't something that I could talk about at work. So I couldn't have established that I was talking with my friend, Private Gomez or whatever, about my -- because it didn't happen.

PRESIDING MEMBER: But I guess the question is did you feel that you had the right to present any evidence that you wished in support of your application?

CLAIMANT #1: I think all the evidence that -- as I understood it, all the evidence would be contained in my responses to the questions asked in the application, sir.

PRESIDING MEMBER: What about the evidence of others? That's the question that counsel was asking you about.

CLAIMANT #1: I didn't know whether or not it was needed. It wasn't addressed.

PRESIDING MEMBER: Ms. Chisholm?

MINISTER'S COUNSEL: Thank you. While you were in Kandahar you were on non-combatant duties, correct?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: So there was really was no hurry to have the hearing heard once you had made it to Afghanistan? You know, in the sense that nothing was going to change while you were in Afghanistan if the application had been delayed?

CLAIMANT #1: Change in what way?

MINISTER'S COUNSEL: Sorry, let me rephrase that. You were non-combatant in Afghanistan. You were non-combatant until the hearing was going to be heard?

CLAIMANT #1: Correct.

MINISTER'S COUNSEL: Why would you not try to delay the hearing until you came back to the United States so that you could then present witnesses?

CLAIMANT #1: I had no control as to when the hearing would take place. They told me hey, your hearing is going to be on whatever day it happened. April or something, and I couldn't control when it was to happen. I would have preferred that it had happened in the States or early in my deployment so it was over with, but I had no control over when they would conduct the hearing.

MINISTER'S COUNSEL: Did you ever make any request that, you know, to delay it until you could become stateside and present witnesses?

CLAIMANT #1: No.

MINISTER'S COUNSEL: I understand as well that during this time while your CO application was ongoing that you maintained your jump status?

CLAIMANT #1: I did maintain my jump status.

MINISTER'S COUNSEL: Why would you do that?

CLAIMANT #1: Because I was a member of the 82<sup>nd</sup> Airborne Division and I'm required to jump once every three months.

MINISTER'S COUNSEL: And what would happen if you didn't jump?

CLAIMANT #1: I would be given Article 15 and extra duty, but had I been given non-combatant status it's very likely I could have remained in the 82<sup>nd</sup> Airborne. I mean, the Chaplain jumps. Anybody who wears the 82<sup>nd</sup> Airborne Division patch is on active jump status.

MINISTER'S COUNSEL: So, even non-combatants would jump if they were with the 82<sup>nd</sup> Airborne?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: When your CO application was denied did you try to appeal it or take issue with it to a higher level in any way?

CLAIMANT #1: At the point that it was denied, as I said yesterday, I was pretty worn down and the only way -- if I was to re-submit another one to the same people that I submitted it to the first time in my chain of command and the result, I don't see any way that it would have been changed so, no, I didn't.

MINISTER'S COUNSEL: So do you know if there is a right to appeal? I mean outside of submitting a new application do you know if there were other remedies to your negative application decision?

CLAIMANT #1: I could appeal to the Commander of the investigating officer, but it's my understanding that he would act upon the recommendation of the investigating officer.

MINISTER'S COUNSEL: How do you know that?

CLAIMANT #1: He works for him. I would assume that he would -- they work in the same unit. He's going to do what's most effective for the unit.

MINISTER'S COUNSEL: So do you know someone else who's been through this application, this process, and that's how you know this or are you ---

CLAIMANT #1: No, I know that my right of appeal would be -- I would have to go to the Commander of my battalion.

MINISTER'S COUNSEL: Right. I'm not questioning how you know your right of appeal, I'm wondering how you came to the conclusion that it would be an ineffective remedy to pursue your right to appeal? Were you speculating that he would just follow or do you know someone else who has gone through the application and seen how it worked out for them?

CLAIMANT #1: Sure. I was speculating that, sir.

MINISTER'S COUNSEL: Okay.

CLAIMANT #1: But I see no reason why the Commander would not act upon the suggestion of his First Lieutenant. He was probably acting on the words of his Commander. I mean can't establish that, but I think it was in the battalion's best interest that I wasn't a conscientious objector.

PRESIDING MEMBER: Well, but you pointed out yesterday at least two mistakes that were in that report, in the recommendation report. One was that you made the decision after you got word of your -- you made the application after you got word of your deployment to Afghanistan and you said that was an error because you had actually made your application in, was it ---

CLAIMANT #1: August.

PRESIDING MEMBER: August? In August. August 2<sup>nd</sup>.

CLAIMANT #1: Right.

PRESIDING MEMBER: So that was a mistake in the report of the recommending officer. Did you not think that was a significant mistake?

CLAIMANT #1: I think it was a mistake, but I think it wasn't his grounds for the decision. His grounds for the decision was in the final paragraph where it said that I would defend the camp and I'm picking and choosing my own battles and whatever else. He mentioned timing in the beginning, but I don't think that was -- I think it's pretty emphatic why he was against the application.

PRESIDING MEMBER: So, do I take it that you do not believe that the timing, the incorrect timing according to you, that was in the recommendation of your application that it had no influence on the outcome of his recommendation?

CLAIMANT #1: I don't know, sir. I just know that had it been acted upon when I originally turned it in in August I would have had a hearing in the States and I think I would have been under a lot less duress after being on deployment for so much -- and I'm not saying I would have changed

what I said or anything, but it would have been an entirely different scenario.

PRESIDING MEMBER: Thank you.

COUNSEL: Could I just ask a question here? Mr. Hinzman referred to, he said, "I would be Article 15'd" and I wonder if my friend could clarify what that is because I don't know what it is and I don't know if you now this one.

MINISTER'S COUNSEL: Sure, certainly. You said you would be given an Article 15 if you refused to jump. What is an Article 15?

CLAIMANT #1: It's one of the Articles of the Uniform Code of Military Justice and it's basically for getting in trouble and you have a dock in pay, confined to the barracks, you do extra duty for a length of time.

MINISTER'S COUNSEL: Are these all certain punishments or is this a range when you say dock in pay?

CLAIMANT #1: The Uniform Code of Military Justice, the punishments are arbitrary. I mean, if it was a field grade Article 15 extra duty would be for 45 days, you'd be docked pay for a few months. If it was a company grade the penalties would be lesser and if it was, I don't remember what the grade below that is, but there's different penalties.

MINISTER'S COUNSEL: So, in terms of -- I want to pursue again then this -- your conscientious objection and your appeal rights. I'm understanding you that you're saying that you didn't pursue an appeal because you didn't think it would be effective?

CLAIMANT #1: Yes, I would be appealing to my chain of command through not acting upon my application. I had no reason to feel that they would treat it in a fair manner based on what had transpired already in terms of not acting upon it when I turned it in, as they should have, and well, I'll leave it at that. But it would have been within the same command structure and I had no reason to believe, and I think anybody else in this situation they wouldn't have any reason to believe that you'd have a different outcome with being in the same unit and people are going to back each other up.

MINISTER'S COUNSEL: Do you know the different levels? Like, does it end with the person above you or the person who makes the initial determination or?

CLAIMANT #1: I don't know.

MINISTER'S COUNSEL: You don't know. So, in theory it could, if you take it high enough, go outside your chain of command in terms of the decision making?

CLAIMANT #1: I don't know.

MINISTER'S COUNSEL: You didn't look into that?

CLAIMANT #1: I didn't have the resources in Afghanistan to look into that.

MINISTER'S COUNSEL: And that's not something you looked into at the beginning of the process?

CLAIMANT #1: I was pretty confident that my application would be accepted when I turned it in, especially since I wasn't seeking complete discharge, but just non-combatant status. I didn't see that it would be an issue.

PRESIDING MEMBER: Mr. Hinzman, you said earlier that you didn't speak to anyone when you prepared your application, that you got the information from the Internet as I recall?

CLAIMANT #1: That's correct, sir.

PRESIDING MEMBER: So, why wouldn't you have at the time you made your application or after you received the adverse recommendation, check the Internet to see what rights you had to appeal that recommendation?

CLAIMANT #1: I can't offer an excuse for that, sir. When I turned in my application my focus was on the application and there wasn't -- our Internet resources in Afghanistan were very, very, very limited.

PRESIDING MEMBER: And have you since that time looked at the Internet to see whether there are



any appeals from the recommendation of the investigating officer and whether they include appeals outside of your command structure?

CLAIMANT #1: I'm aware now that you could conceivably go to the Supreme Court of the United States with a conscientious objection application, sir.

PRESIDING MEMBER: And are you aware of that by looking at the Internet or through your legal counsel?

CLAIMANT #1: I don't know, sir. I read it somewhere, in my reading.

MINISTER'S COUNSEL: When did the first troops go to Afghanistan?

CLAIMANT #1: From my unit?

MINISTER'S COUNSEL: No. Do you know when the first troops for the military in general went to Afghanistan?

CLAIMANT #1: The American military?

MINISTER'S COUNSEL: The American military, yes?

CLAIMANT #1: A few months after September 11<sup>th</sup>.

MINISTER'S COUNSEL: I'm going to -  
--

CLAIMANT #1: I don't know exactly.

MINISTER'S COUNSEL: Okay. And when did your -- when did your unit first go to Afghanistan?

CLAIMANT #1: My unit went when we were deployed, in December of 2002.

MINISTER'S COUNSEL: So, your unit -- your battalion was the first unit among your brigade to go to Afghanistan?

CLAIMANT #1: Amongst my brigade, yes.

MINISTER'S COUNSEL: When did you find out or when did you suspect that you would be sent to Afghanistan? When did you first -- when did you have the first inkling that you were going to be sent there?

CLAIMANT #1: When we were told in October of -- October 15<sup>th</sup> of 2002.

MINISTER'S COUNSEL: So you didn't think before October of 2002 that it was likely you were going to be sent to Afghanistan?

CLAIMANT #1: It was a possibility, but it wasn't discussed. We had been told that we weren't going anywhere.

MINISTER'S COUNSEL: Did you object to the U.S. presence in Afghanistan?

CLAIMANT #1: The point where I turned in my -- no. If I was the President of the United States and someone had -- no, I didn't. I objected to taking part as a combatant in it when I submitted my CO application. I think that was made clear. I don't condone violence, I think it creates endless cycles of violence, so I didn't see what good was going to come out of it.

MINISTER'S COUNSEL: So, you didn't want to be a combatant there and that's obvious, but you didn't object to the actual U.S. presence in Afghanistan from what I'm understanding?

CLAIMANT #1: That's correct.

MINISTER'S COUNSEL: Can you tell me why you wouldn't have objected to that presence there?

CLAIMANT #1: Because we, America had established that the Taliban or whoever had been linked to the attacks of September 11<sup>th</sup> and they were responding to an attack.

MINISTER'S COUNSEL: Did you know if their presence there was sanctioned by the U.N.? Did you have any idea one way or the other?

PRESIDING MEMBER: "Their" being the U.S.?

MINISTER'S COUNSEL: The U.S. military presence in Afghanistan.

PRESIDING MEMBER: As opposed to the Taliban.

MINISTER'S COUNSEL: Yes. I'm quite sure the U.N. didn't like that very much. The U.S. military presence in Afghanistan. Were you aware whether or not it was sanctioned by the U.N.?

CLAIMANT #1: No, it wasn't. Was it, do you know? Because I don't.

MINISTER'S COUNSEL: I'll tell you about it afterwards. I can't really give testimony.

PRESIDING MEMBER: At this point she asks the questions and you answer them.

CLAIMANT #1: Yes, sir.

MINISTER'S COUNSEL: When you came back to Afghanistan, from Afghanistan, you went back to doing your training?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: Why did you not desert at that point in time?

CLAIMANT #1: There's this thing about the 82<sup>nd</sup>, that it's a fast moving train, and I was back with my family. That was where I was at and I can't offer any reason

why I didn't desert at that time. I don't think the thought had occurred to me. I think that would be the...

MINISTER'S COUNSEL: You said yesterday that it was inevitable that you were going to be sent to Iraq. When did that become obvious to you?

CLAIMANT #1: It became obvious when we were told in December that we were in fact going to go, and I mean, anything prior to that was just inference based on what I could gather from the media.

MINISTER'S COUNSEL: When was the 82<sup>nd</sup> Airborne first sent to Iraq?

CLAIMANT #1: I don't know when troops were first sent to Iraq.

MINISTER'S COUNSEL: Were they part of the invasion force?

CLAIMANT #1: Yes, there were elements that were part of the invasion force.

MINISTER'S COUNSEL: So, yesterday you stated you were tired when you returned from Afghanistan and that was the reason you didn't pursue a second CO application?

CLAIMANT #1: Tired is one reason, but I didn't -- I felt that it would be a fruitless endeavour because I would be giving it to the same people that I gave it to the first time.

MINISTER'S COUNSEL: Did you ever consult with, for example, your Quaker Fellowship or any legal resources to pursue the first application when you returned stateside to pursue your appeal rights?

CLAIMANT #1: No, I didn't. When we returned as far as I knew it was a closed matter, closed case.

MINISTER'S COUNSEL: Okay. I just want to turn now to your PIF for a few moments.

PRESIDING MEMBER: Just before you do that if I could just ask a follow up question on the issue of

why you didn't file a second application when you learned you were going to be deployed to Iraq and I'm not sure if this is where Ms. Chisholm was going, and if it is I apologize, but as I understand your PIF would I be right that there would be things that you would include in a second application asking for either non-combatant status or discharge in relation to Iraq that you wouldn't have included ---

CLAIMANT #1: I think, sir ---

PRESIDING MEMBER: --- in relation  
to your ---

CLAIMANT #1: Sorry.

PRESIDING MEMBER: --- earlier  
application?

CLAIMANT #1: I think that my answers in terms of what's addressed in the CO application would have been the same and it's -- a conscientious objector application has to be either based to -- opposed to all war in general or opposed to taking part as a combatant in all conflicts. It's not -- it can't be specific conflicts.

PRESIDING MEMBER: So, are you saying that you wouldn't have said anything in a second application about your objection to serving in Iraq and why you objected to serving in Iraq?

CLAIMANT #1: You're not allowed to apply for conscientious objector status on the grounds of one conflict or a specific conflict, it's a general ---

PRESIDING MEMBER: I understand that, but if you were applying in relation to your projected deployment to Iraq would you not make reference to what about that particular conflict you objected to in addition to what you said in your first application about your objection to using violence and your preference to negotiate, et cetera, et cetera, et cetera?

CLAIMANT #1: It would -- I'm sorry if I'm not answering it clearly, but it would be irrelevant in the application when the instructions for the application, or the criteria that is used is opposition to all conflicts and as a

combatant in every scenario and it can't be -- it can't be specific.

PRESIDING MEMBER: So I take it the answer is that you would not, had you ---

CLAIMANT #1: No.

PRESIDING MEMBER: --- made a second application, that you would not have made reference to your opposition to the Iraq conflict and why you opposed participating in that conflict?

CLAIMANT #1: That's correct.

PRESIDING MEMBER: You would say it's irrelevant?

CLAIMANT #1: I would say they -- they would say it's irrelevant.

PRESIDING MEMBER: Right.

CLAIMANT #1: Yes, sir.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: Your Personal Information Form indicates that you didn't want to be a part of the war because of your belief that the war was illegal?

CLAIMANT #1: I think that's -- yes, that's true.

MINISTER'S COUNSEL: Sorry if I'm paraphrasing, but I think that's the general spirit ---

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: --- of your Personal Information Form?

CLAIMANT #1: Yes, I think that's just about it.

MINISTER'S COUNSEL: And you also state, specifically you state that, "You have a duty to refuse to follow a manifestly unlawful order."

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: So, did you believe if you were deployed to Iraq that deployment in and of itself would have been following a manifestly unlawful order?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: So why did you not just refuse to deploy?

CLAIMANT #1: Because I felt that - - because in my thinking the war was illegal and it was wrong. I would be subjecting myself to the Uniform Code of Military Justice which is fine, but I would be being punished for refusing to take part in something that's wrong, that's illegal, and I don't see why someone should be punished for refusing to be complicit in doing the wrong thing or an illegal thing.

I mean, if I had defaced government property or stolen a car or, you know, punched my platoon Sergeant then yes, sure I should be punished under the Uniform Code of Military Justice, but for refusing to do something that's wrong I don't think anybody should have to be punished for that.

MINISTER'S COUNSEL: Did you have any other concerns?

CLAIMANT #1: Given the climate that we were in in terms of fighting the war on terror, I mean, we were -- it was in our popular culture and it was also in the general talk in my unit, I mean from my squad leaders or whatever, that we would be going to Iraq to jack up some terrorists and it was known to me that terrorists, at least people who are referred to as terrorists in the eyes of the United States, don't deserve the privileges of the Geneva Convention and they aren't afforded - - it's probably not the right word when speaking in war, but the proper respect and so yes, it was my concern that I could possibly take part in -- I mean, I was an infantryman.

If I was to be deployed to Iraq the odds are that I would take part in combat and given the climate we

were in I don't -- we weren't told to handle our enemies gingerly or not that you should in war, I mean, your purpose is to jack them up again, but it's -- once they were in our custody or once -- we wouldn't do it according to the way wars, rules are fought. I mean, we were told it was a new war, we were fighting terrorists and it had been evident, I mean, through Guantanamo Bay that these people weren't human and they weren't to be dealt with in a humane way.

MINISTER'S COUNSEL: If you were -- if you were ordered to do something, if you had deployed and you were ordered to do something you didn't feel comfortable with or you felt was illegal you would have refused it, I take it, because you would have felt that it was a manifestly unlawful order?

CLAIMANT #1: Right, and but given that I felt the whole conflict itself was wrong, I felt that deploying especially in a combatant role would be -- was unlawful as well.

MINISTER'S COUNSEL: Did you have any concerns, and I'm going to ask you -- aside from what you've already told us and I mean I think that really relates to the legal status of the war and of the individuals that you might have encountered who were labelled terrorists, did you have any concerns about the conduct of the combat?

CLAIMANT #1: Yes, again it was -- we were being told that it was a new kind of war and that, I mean, these are evil people and they need to be dealt with.

PRESIDING MEMBER: Who told you that?

CLAIMANT #1: My squad leader, my First Sergeant in pep talks that we would receive from commanders or anything else, but it was the overall climate in what we were working in. We were agents fighting the war on terror and they think, again, terrorists aren't dealt with the way that normal combatants or people who are deemed as terrorists.

PRESIDING MEMBER: And when you use the term terrorist or when your superiors use the word terrorists are they referring to the former followers of Saddam Hussein? What exactly are they referring to?



CLAIMANT #1: When my superiors, like my team leader or squad leader, refers to terrorist they're thinking of a terrorist, sir, as anybody of Arab descent. There's no discrimination. They associate everybody from that region as terrorists. In regards to Iraq that's what we were led to believe, that Saddam and Iraq were allies with the war on terror, hence terrorists.

PRESIDING MEMBER: So the entire population of Iraq were terrorists?

CLAIMANT #1: Potentially. I mean, of course not everybody is and I don't think anybody -- I mean, obviously since the invasion and stuff there have been insurgents and whatever else, but at that time there had been no established links to terrorists, but that's what we referred to Iraqis or Saudis or Yemenis or anybody else from that region was implicitly part of it, at least in our imagination or in our thinking. Not mine, but in the unit that I was in.

PRESIDING MEMBER: So it's even larger than Iraq as I understand what you're saying? Is that the environment was that all Arabs from that region were terrorists?

CLAIMANT #1: Correct, sir. Just like, and it's a poor example, but I mean certain racial groups in certain areas in certain parts of the world have been referred to no matter what they do in certain ways. I mean, whether it be Tutis or Jews or whatever else, we equated, or my unit equated people of their origin or Middle Eastern Muslim descent as terrorists.

PRESIDING MEMBER: What about Christian Iraqis?

CLAIMANT #1: They wouldn't know the difference. I think they equated everybody in that region of that racial make-up, as terrorists.

PRESIDING MEMBER: You're aware that there are ---

CLAIMANT #1: Yes, Christian Iraqis, Jewish Iraqis.

Iraqis ---  
--

PRESIDING MEMBER: --- Christian

CLAIMANT #1: Any other number of -

for example?

PRESIDING MEMBER: --- Chaldeans

CLAIMANT #1: Right.

PRESIDING MEMBER: The fact that they were all Arabs made them terrorists?

CLAIMANT #1: Right. I mean, it's like referring to the way people refer to blacks in the south back in the day. I mean, it was just a general attitude towards a group of people.

MINISTER'S COUNSEL: So, I just want to make sure I'm clear in what you're saying. You're saying that the government or the army indoctrinated you to believe that every single Iraqi could potentially be a terrorist?

CLAIMANT #1: Yes, I think that's a fair assessment. Potentially is the key word.

PRESIDING MEMBER: But it was a little broader than that? It certainly included Iraq, but you suggested that that could include Saudis, Yemenis, anyone from the region?

CLAIMANT #1: Yes.

PRESIDING MEMBER: Of Arab descent?

CLAIMANT #1: Yes, sir. It falls into kind of like the dehumanization I was talking about yesterday when Ms. Dragaitis was questioning me. There was an assumption that based on the acts of a few everybody would, in the case of a few bad apples spoiling the batch.

MINISTER'S COUNSEL: Do you think that that indoctrination was part of a precautionary measure to make you aware that there were -- it was difficult to distinguish combatants from non-combatants?

CLAIMANT #1: No, I don't think so. I think it was just part of -- I mean, terrorist is a bad word, especially in the times that we live with now and to deem someone a terrorist, whether or not they are, gives at least in the United States, gives you justification for dealing with them in ways that aren't very nice.

MINISTER'S COUNSEL: So, if this wasn't a precautionary measure to deem combatants from non-combatants did you have the impression that you were going to kill all Iraqis when you got there?

CLAIMANT #1: Well, no, not at all, but the ones that we came into contact with. No, I didn't. I sure hoped we wouldn't have gone over there and just started mowing down every person we ran into.

MINISTER'S COUNSEL: But if you're saying that the precaution, the way that everyone's been dubbed a terrorist is not a precaution to distinguish combatants from non-combatants, then why else does it exist?

CLAIMANT #1: Because it fosters an attitude of hatred that gets your blood boiling and allows you to carry out the mission without feelings of remorse. By any means, without having to think twice about it.

MINISTER'S COUNSEL: So was this any different than any other conflict in terms of the dehumanization of the enemy?

CLAIMANT #1: No. Again, in order to kill someone, at least I was told, you have to dehumanize them and make them less than human, but in other conflicts or when we were trained I mean we were told that -- I mean, once you -- I mean, once you capture a soldier or once you -- there are rules to combat and that there's a certain sort of decorum, if you will, in combat and that we weren't setting the stage for that I don't believe prior to our departure to Iraq, or their departure.

PRESIDING MEMBER: Was that different than the atmosphere in Afghanistan?

CLAIMANT #1: I don't know. The atmosphere in Afghanistan was that we were responding to 9/11, but

there wasn't -- before we were deployed there wasn't this kind of everybody is -- that developed after we were there and people were sick of the situation and took out their anger in other ways.

PRESIDING MEMBER: Were you told though when you were in Afghanistan or before you were deployed there that any Afghani was a potential terrorist?

CLAIMANT #1: No.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: I'm just curious. So, this is one of your pressing concerns. You don't want to go to Iraq because you feel the entire population has been vilified and dehumanized and you don't want to have to kill these individuals?

CLAIMANT #1: Correct. I mean, I think since -- and also since the war, at least in my thinking, was unjustified from the onset any act of violence there was then wrong as well.

MINISTER'S COUNSEL: Why is none of this in your Personal Information Form?

CLAIMANT #1: When I composed my PIF my main concern was not being complicit in a criminal enterprise, taking part in a pre-emptive strike or if you will, an offensive operation that has no defensive basis. I felt that was grounds enough to not take part in the conflict.

PRESIDING MEMBER: And by that you mean an illegal war ---

CLAIMANT #1: Yes.

PRESIDING MEMBER: --- as you responded to counsel in her first question?

CLAIMANT #1: Yes, sir.

MINISTER'S COUNSEL: So to you the more important issue was the technical reasons for the war rather than the potential atrocities you could engage in?

COUNSEL: Well, if I may? I don't want to intervene, but I don't think my client has said anything about technical reasons for the war. I think that's an unfair characterization of what he's talking about.

PRESIDING MEMBER: Perhaps you could rephrase the question?

MINISTER'S COUNSEL: Let me rephrase you. You thought the most important thing was the legality of the war rather than the potential atrocities that you thought you would have to commit?

CLAIMANT #1: Yes, for sure. This in my mind was a criminal war and by taking part in it, especially as a combatant and acting in a violent fashion without any justification, I couldn't see any reason for going there. That was my overriding concern and still is.

MINISTER'S COUNSEL: So that was much more important to you than potentially anything you would have to do when you got there?

CLAIMANT #1: Yes. But in my thinking any act of violence in an unjustified conflict is an atrocity. No one should have to die for a war that has no justification. So, any act I think that takes part in a war that has no justification, any violent act is atrocious just for the fact that it has no rationale behind it.

MINISTER'S COUNSEL: So, it wasn't that you were concerned about performing acts that contravened the Geneva Convention, it was the actual participation that was the most pressing? I'm sorry, you've covered that already. Let me rephrase that. There was no concern about -- I'm sorry, I'm going to ask you to give me a moment, please?

PRESIDING MEMBER: Well, while you're getting your moment, did that have then -- your opposition to the war itself, you had a choice, whether it was a real choice or not can be debated as you point out, but you could have filed another application in respect of your deployment to Iraq?

CLAIMANT #1: I can't -- when I file an application I can't refer to a specific conflict.

PRESIDING MEMBER: At the time that you were deployed you were notified of your deployment to Iraq you could have filed another application, is that right?

CLAIMANT #1: I could have had I presented new -- I think the rules for submitting another conscientious objector application are that you have to provide significant new reasons in your responses to the questions that are addressed and I don't have any reason to change what I wrote in my application.

PRESIDING MEMBER: Right.

CLAIMANT #1: Right.

PRESIDING MEMBER: I'm just interested in the timing of your decision to desert and I'm assuming Ms. Chisholm will get there after our break, but you could have presumably, if your concerns were the atrocities that you were not prepared to take part in, you could have gone to Iraq? Had your primary concern not been the legality of the war you could have gone to Iraq, refused an order to participate in an action that you felt resulted from an illegal order to do something that was illegal in which case the whole issue would have been raised at that time in the event that you went to Iraq?

I don't know if I'm making myself clear. It's the choice of the timing of your decision and my understanding is that because you were opposed -- your position is that because you believe that the war in Iraq is illegal you chose to desert as opposed to going to Iraq and deserting at that time or refusing to follow an order at that time? You chose not to go to Iraq?

CLAIMANT #1: Correct, sir. I don't think I'd have anywhere to go in Iraq if I'd deserted then.

PRESIDING MEMBER: Well, there are people who deserted in Iraq?

CLAIMANT #1: I'm not aware of that.

PRESIDING MEMBER: Well, we have some examples in the materials. In any event, do you have one

last question before we take our break, Ms. Chisholm, or would you want to resume after our break?

MINISTER'S COUNSEL: I just want to follow up on what he said. So, he said the real barrier to you going to Iraq was the legality of the conflict?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: I think I want to leave it at that for now.

PRESIDING MEMBER: Okay. So let's say we'll resume at 11:20. Thank you very much.

MINISTER'S COUNSEL: Thank you.

PRESIDING MEMBER: Okay, we're back after our morning break and Ms. Chisholm is conducting her examination of Mr. Hinzman. We'll go through till 1:00 so if there is anyone who can't stay through to 1:00 I'd ask you to leave now please so that there are no disruptions. Obviously, Mr. Hinzman, if you require a break prior to then I would be sympathetic.

CLAIMANT #1: Thank you, sir.

PRESIDING MEMBER: And that goes for Ms. Chisholm as well. It's a long time to proceed. Once again I would ask you all to please turn your cell phones off so that there are no disruptions and I'd like to again compliment the vast majority of you who have been very quiet and conducted yourselves with the appropriate respect and decorum for the process. Thank you very much, I do appreciate that.

COUNSEL: Mr. Member, if I could just make a comment for the record and then I have a question. My comment for the record is my client's spouse and child have now departed. They were here this morning.

PRESIDING MEMBER: Yes.

COUNSEL: The record should reflect that and my question is this. I spoke to Ms. Chisholm about the likely length of her cross-examination and I have a sense of the length of my re-examination which I don't think will be lengthy.

So I would like to know if I might, how long you propose to sit tonight which will allow me to speak to Sergeant Massey over the luncheon break and ascertain whether he'll be here today or not and I would also add that a number of journalists have inquired about this question of timing. So I think it's appropriate that I do raise it with you.

PRESIDING MEMBER: And do you have any suggestions as to how long we should sit this afternoon?

COUNSEL: Well, 5:00 is fine with me. I am hesitant to go beyond that, but if you determine that it is appropriate that we go beyond that point I certainly will.

PRESIDING MEMBER: Ms. Chisholm?

MINISTER'S COUNSEL: I mean, given that I have to review this late disclosure that I've just received today I don't want to go past 5:00. That will make for a very lengthy evening otherwise.

PRESIDING MEMBER: Ms. Dragaitis?

RPO: Five o'clock is fine.

PRESIDING MEMBER: Sounds like we're agreed on 5:00 then.

COUNSEL: Thank you.

PRESIDING MEMBER: Ms. Chisholm?

MINISTER'S COUNSEL: Thank you. Would you object, have objected to having been deployed to Iraq under different circumstances? And I'm going to ask you -- I'm going to put out a series of circumstances. If the Security Council had approved initially the invasion of Iraq would you have objected to be deployed there?

CLAIMANT #1: I don't know. The Security Council didn't approve it, so that's what my objection would stem from.

MINISTER'S COUNSEL: Okay. My question is if they had approved it would you have considered -- continue to have an objection, do you think?



CLAIMANT #1: If there was no grounds for invasion I don't think a Security Council stamp makes it necessarily any better. I mean, if the rationale offered was no weapons -- I mean, weapons of mass destruction, links to terrorism and bringing democracy or what have you and none of those things were evident or were going to be carried out, just because the Security Council gave it its justification I don't know that it would be right.

MINISTER'S COUNSEL: And if they had found weapons of mass destruction do you think your position would be different?

CLAIMANT #1: We would have had grounds to be there.

MINISTER'S COUNSEL: Would you have continued to object to the grounds for the war then?

CLAIMANT #1: Well then the grounds would have been valid because that's the rationale they offered. I mean, I think weapons of mass destruction would pose a threat to the countries if they were indeed there.

MINISTER'S COUNSEL: In any of these circumstances or absent any of these circumstances if you had gotten your non-combatant status would you still have deployed to Iraq?

CLAIMANT #1: Yes, because I wouldn't be taking part in violent acts.

MINISTER'S COUNSEL: And in regard to your combatant status, you touched upon it earlier, did you consider putting in an application, not this time -- after your return from Afghanistan did you consider asking to be discharged from the army?

CLAIMANT #1: In terms of the other?

MINISTER'S COUNSEL: The other stream that you could have pursued?

CLAIMANT #1: Right. No, I didn't.

consider that option? MINISTER'S COUNSEL: Did you ever

CLAIMANT #1: No, I didn't.

MINISTER'S COUNSEL: Why not?

reason. CLAIMANT #1: I don't have any

offer a reason earlier? PRESIDING MEMBER: Well, you did

CLAIMANT #1: Pardon me.

understood you to offer a reason, and that is, that you made an agreement that you would serve for a term.

CLAIMANT #1: Four years.

and that you felt you should honour that? PRESIDING MEMBER: That's right,

would still say that. CLAIMANT #1: I would still. I

testimony yesterday you spoke of a college fund that you would get and it depended on the length of time that you had served would be the amount of the fund you would have access to. If you had served out your term as a non-combatant would that have affected the amount of money you would receive at the end of your term?

CLAIMANT #1: Not to my knowledge.

asked to be discharged from the army under the second procedure would that have affected the amount of your college fund? MINISTER'S COUNSEL: And if you had

CLAIMANT #1: Probably.

consideration? MINISTER'S COUNSEL: Was this a

CLAIMANT #1: No. The point when we came to Canada we had a substantial amount of money in the bank and whether or not, or even at the time of the application, whether or not I received the college fund I don't think it would have had any bearing at that point whether or not I attended university in the future.

MINISTER'S COUNSEL: When you did finally make the decision to desert I'm wondering what sort of arrangements did you make? Did you leave sort of in a stealth manner? Did you move your furniture away? I'm wondering if you can explain the circumstances surrounding your departure?

CLAIMANT #1: We pretty much took what essentials we needed and not much more. We tied up some loose ends that we had in terms of bills and whatever else and I cleaned out the fridge so that our house would be somewhat sanitary when we left. We left our house which was on base housing full of material goods, our things, our stuff.

MINISTER'S COUNSEL: And were those yours or would they have been given to you by the army? Like things like the furniture? Would you have been provided a furnished apartment?

CLAIMANT #1: No, we finished our apartment with the cast-offs of other military members. The military is a very transient culture in terms of people being from transferred from base to base so garbage days are our treasure days. Kind of like Toronto.

MINISTER'S COUNSEL: So, do you have any idea, you know, if that apartment is still there available for you?

CLAIMANT #1: I'm sure it's been -- the stuff has been removed and it probably has another inhabitant by now.

MINISTER'S COUNSEL: Did you have your mail forwarded?

CLAIMANT #1: We did.

MINISTER'S COUNSEL: And have you received anything in writing from the army?

CLAIMANT #1: My family has. My mother and grandmother have. I have not.

MINISTER'S COUNSEL: What have you received from the army?

CLAIMANT #1: I mean, something asking where I'm at and that I should come back.

MINISTER'S COUNSEL: Sorry, when did you receive that?

CLAIMANT #1: I didn't receive it, my grandmother did.

MINISTER'S COUNSEL: Okay, sorry. When was that received?

CLAIMANT #1: Last winter. After we arrived here. January or February. I'm not sure of the specific date.

MINISTER'S COUNSEL: Okay. And have you received anything else from them?

CLAIMANT #1: No. My grandmother received a bill for a lot of military equipment that we had left behind in our house on post in a conspicuous place because I had assumed that once we were gone my chain of command would go to that place to see if we were there.

MINISTER'S COUNSEL: Now, yesterday you produced a document to us that you retrieved on-line via a password. When did you retrieve that document?

CLAIMANT #1: I think it was October 6<sup>th</sup>.

MINISTER'S COUNSEL: So as recently as October 6<sup>th</sup> all your military passports were working?

CLAIMANT #1: It wasn't a passport, it was my Social Security number. I think. I don't even know. I typed in my name and then whatever it asked for at the time.

MINISTER'S COUNSEL: Do you know, has the army -- I'm just trying to get a sense of when or if the army cut off its ties to you, if that has been the case. When would they have stopped paying your salary for example?

CLAIMANT #1: They actually -- it's a direct deposit into my account and we were actually paid in January and February and we didn't touch the money because we didn't earn or deserve it and then it was removed from our account later.

MINISTER'S COUNSEL: So it was deposited in January or February and then it was taken back from your account?

CLAIMANT #1: Right.

MINISTER'S COUNSEL: Okay. Have they attempted to, other than this bill for the equipment, have they attempted to collect any other monies from you such as your recruitment bonus or anything like that?

CLAIMANT #1: I never collected my recruitment bonus. I was waiting until near the end of my enlistment or for a rainy day.

MINISTER'S COUNSEL: So, it's hard for you to say what has happened since your departure because from what I understand you have no contact with anyone?

CLAIMANT #1: No, I haven't spoke to anyone from my unit.

MINISTER'S COUNSEL: So no contact with your superiors?

CLAIMANT #1: No.

MINISTER'S COUNSEL: No contact with your peers?

CLAIMANT #1: Correct.

PRESIDING MEMBER: What about telephone contact?

CLAIMANT #1: I mean I haven't talked to my Company Commander or any of my chain of command or anything like that.

PRESIDING MEMBER: So, not just that you haven't called them, but they haven't called you?

CLAIMANT #1: Right, sir.

PRESIDING MEMBER: Okay. As far as you know?

CLAIMANT #1: Right. The only thing that I know is that my squad leader at the time of my departure had contacted my mother, I believe.

PRESIDING MEMBER: And that was to inquire where you were?

CLAIMANT #1: And to convey to her that it would be in my best interest to return.

MINISTER'S COUNSEL: So I understand you, you haven't written or communicated to the army in an official manner that you're resigning or you're leaving or anything in that vein?

CLAIMANT #1: No, no.

MINISTER'S COUNSEL: And do you have a copy of the letter that your grandmother received in January or February asking you to come back or wondering, inquiring as to where you are?

CLAIMANT #1: No, I do not.

MINISTER'S COUNSEL: In terms of your status now with the military I am not certain if you know this, but do you think the army would consider you or do you consider yourself AWOL or deserted and why?

CLAIMANT #1: I think -- I believe for the first 30 days of absence you are considered away without leave, or AWOL, and then after that 30 days or on the 31<sup>st</sup> day it is -- it changes to desertion.

PRESIDING MEMBER: Is that so if you seek asylum in another country?

CLAIMANT #1: I would assume so, sir. I don't know.

PRESIDING MEMBER: In other words, if you seek asylum in a country, in another country, prior to the 30 days of being AWOL, do you know whether that changes matters?

CLAIMANT #1: I don't know, sir.

MINISTER'S COUNSEL: You said yesterday that -- we talked about some of the information that I had disclosed and about the amount of people that are just dealt with administratively who are AWOL or who are deserted and I just wanted to clarify, do you think that you are going to be treated differently than someone who went AWOL or deserted because they didn't like the army any more, for example?

CLAIMANT #1: I mean, it's speculation, but I think I've probably offended enough military sensibilities to be treated in a different manner.

MINISTER'S COUNSEL: So would you say that if your -- that you're being targeted specifically because of your political beliefs?

CLAIMANT #1: I think if I was to be prosecuted it would be -- I mean, I would be prosecuted for acting upon a political or moral belief.

MINISTER'S COUNSEL: I understand, but I want to know what you think the military's motivation would be? Would their motivation be to suppress your political opinion or would they treat you in the same manner they treat anyone who's deserted?

CLAIMANT #1: I think I would -- I believe I'd be subject to the Uniform Code of Military Justice.

PRESIDING MEMBER: If I could, Counsel? I think we need to be a little bit more specific about the scenario. One scenario would be where you voluntarily return. I'm not saying that you should do that, but one scenario is that you voluntarily return. Another scenario is that you're

apprehended, apprehended in the States. Would you be treated do you believe any differently if you voluntarily returned as opposed to being apprehended?

CLAIMANT #1: I think it's much more severe of course if you're apprehended as opposed to voluntarily returning. So, yes, I think it would be.

PRESIDING MEMBER: And take it one step further, if you voluntarily returned and indicated that you had thought the matter through and talked to a number of people and you have reconsidered and you are willing to resume your military duties in a combatant role until it was determined otherwise, which would give you the option of applying again obviously, do you believe that you would be treated differently if you voluntarily returned and offered to re-join your company?

CLAIMANT #1: Well, if I voluntarily return, sir, it would have been just to be punished for being away, but then I would be, after my punishment was up I would be back to normal duty which would end up being -- at that time would have meant being deployed to Iraq and taking part in what I deem to be an unjustified, illegal and immoral war.

PRESIDING MEMBER: So, you believe that if you voluntarily return that you would be required to serve after your term of imprisonment if there was one, or punishment --

CLAIMANT #1: If I returned ---

PRESIDING MEMBER: --- that you would be required to serve?

CLAIMANT #1: --- right now, sir?

PRESIDING MEMBER: Well, whenever?

CLAIMANT #1: Well, okay. Well, okay if I returned right now I think there's no question that I would be prosecuted under the Uniform Code of Military Justice and the punishment that's meted out is at the command's discretion and I would be imprisoned I'm sure for again, I don't know how long, a year, five years, whatever, and then after that it would be a bad conduct discharge or a dishonourable discharge.



PRESIDING MEMBER: Right. So you would not be required to serve unless you wanted to serve?

CLAIMANT #1: Well, I don't think they would have me again, but no, I don't believe so, sir.

PRESIDING MEMBER: So you would be court martialled, penalized in accordance with the Code, following which you would be discharged in the event you were court martialled?

CLAIMANT #1: Correct, sir.

PRESIDING MEMBER: Because there's some question about whether everyone who deserts is court martialled which we talked about yesterday, but to your knowledge you would not be required to serve in the military under any circumstances if you returned unless you agreed to do that?

CLAIMANT #1: To my knowledge, sir.

MINISTER'S COUNSEL: May I continue?

PRESIDING MEMBER: Please.

MINISTER'S COUNSEL: So, I just want to go back to where I was. You think you might be given a different sentence based on your political beliefs?

CLAIMANT #1: Yes, I think that's a fair characterization.

MINISTER'S COUNSEL: Do you have any evidence of this?

CLAIMANT #1: Well I think the way people -- the way people are being dealt with who dare to question the present regime that's in power in the U.S., you can take what you want from that. I don't think it's been -- I think I would be privy to that. I think I would be being prosecuted for refusing to do something that's wrong.

MINISTER'S COUNSEL: Okay. I want to be more specific because that's a very big statement. Who -- you say based on -- you're taking this, you're extrapolating this

view that you would get a different sentence based on the way "people are being dealt with". Who are these people?

CLAIMANT #1: Anybody who questions the way things are going now. I mean, I'm not saying they would deem me an enemy combatant and send me to Guantanamo Bay, but there's been a lot less room for dissent in the current climate in the U.S.

MINISTER'S COUNSEL: But who are these people that you're referring to who have been treated differently or have been targeted? Do you have any examples?

CLAIMANT #1: Staff Sergeant Mahia (ph), Camilla Mahia.

MINISTER'S COUNSEL: Staff Sergeant who?

CLAIMANT #1: Mahia.

MINISTER'S COUNSEL: And do you want to tell us who that is?

CLAIMANT #1: He served in Iraq for eight months, came back to the U.S. and refused to go back and was then court martialled and sentenced to a year in the brig in Fort Sill (ph), Oklahoma. And when he was court martialled he was given no opportunity and was not allowed to explain to the people who were prosecuting him why he refused to carry out his orders.

MINISTER'S COUNSEL: You know this from coverage of the media? Personal?

CLAIMANT #1: Coverage in the media and speaking to him prior to his incarceration.

MINISTER'S COUNSEL: And does Sergeant Mahia have access to legal remedies for his court martial do you know?

CLAIMANT #1: I know he had a lawyer.

MINISTER'S COUNSEL: Does he have a right to appeal?

CLAIMANT #1: I don't know. I don't know if he does or not. He may, I don't know. I think he would have appealed had he had the opportunity.

PRESIDING MEMBER: Am I right, did he hold a press conference?

CLAIMANT #1: He did, sir.

PRESIDING MEMBER: It's referred to in the materials. I think in both the RPO's materials and also, I believe the Minister's material.

RPO: There was a thing on page 99 of R/A-2 about Sergeant Mahia.

PRESIDING MEMBER: Let's just take a look at that. There was an article I think that specifically refers to this press conference. I think it's the Minister's materials or it could be in Mr. House's, I'm not sure.

COUNSEL: I thought it was in mine, but I'm having difficulty locating it.

MINISTER'S COUNSEL: It's also in - we have made reference to it in M-5, page 175 of M-5. Are you familiar with the general term of imprisonment for anyone who deserts? Do you have any knowledge of this? Do you know any former deserters or people who are AWOL, went AWOL?

CLAIMANT #1: I know people who have been AWOL before, but have come back, but that's different than desertion. I don't know. It's debatable whether or not we are in a time of war, I mean, I guess when President Bush landed on the aircraft carrier he said we were no longer at war, but whatever, and that was prior to my desertion, but I know that during a time of war if you do desert you can be given any sentence as far as the death penalty.

MINISTER'S COUNSEL: Okay. I just want to bring your attention and then I want to ask you, because we've done some research as to the penalties that people have received and most recently from 2000 back to 1990. Would it surprise you to know that the penalty that Sergeant Mahia received

being one year is within the normal bounds of what the other cases show deserters receive?

CLAIMANT #1: It doesn't. I am not surprised.

PRESIDING MEMBER: I just ---

CLAIMANT #1: I will though -- I'm sorry, sir.

PRESIDING MEMBER: No, no, I don't want to interrupt you.

CLAIMANT #1: I will say that serving one day in prison for refusing to comply with an illegal order is too long.

PRESIDING MEMBER: Okay. If I could just quickly. The reason that I wanted to refer to the article about Mahia, is that how you pronounce it? Is that I just want to read from page 175. This is the Washington Post article.

MINISTER'S COUNSEL: M-5, page 175.

PRESIDING MEMBER: Page 175. Have you got that? And that's in the Minister's materials, M-5. "A nine year military veteran," and I'm reading from the middle of the article, "Mahia went into hiding after returning to the United States on a two week furlough in October. On March 15<sup>th</sup> he turned himself in to authorities at Hanscomb (ph) Air Force Base in Massachusetts after a news conference in which he took the unusual step of publicly criticizing his Commanding Officers who he said unnecessarily put soldiers in harm's way."

So that was obviously prior to him being court martialled, his holding a news conference and publicly criticizing his commanders. He received a one-year sentence. He also, of course, as you probably know because you spoke to him, had applied for conscientious objector status, but he did so while he was in Iraq as I believe. It appears that one of his grounds was that a bloody ambush that caught civilians in the crossfire and a mix-up of a medical unit that led to the death of an Iraqi child, had turned him against all wars and he felt that the war was oil driven.

So, do you believe that you would be treated more harshly than he was?

CLAIMANT #1: Perhaps, sir. Again, the punishment that's doled out by a court martial board is at the discretion of that court martial board. I don't believe they are bound by any -- again, it's a command decision and it's very -- well, I mean, it's possible that I could be treated harsher. It's possible that I could be treated less harshly, but again, I will say spending one day, one week, ten years, any amount of time for refusing to take part in an unlawful conflict, that is too long.

PRESIDING MEMBER: Okay, thank you.

COUNSEL: Mr. Member, I had, I guess, an objection with respect to my friend's last question and this goes back I think to the point that you originally made yesterday. My friend has provided a number of reported decisions which her last question was something to the effect that Sergeant Mahia's penalty was within the penalties that are prescribed there, but we don't have any evidence that those particular decisions are representative. That those are the only possible decisions.

Originally I understood that that material was going to be introduced as law. It later transpired that it really was going to be introduced as fact and you said that usually one would have someone available for cross-examination and in particular, if my friend is going to say this is an average sentence, that one year is an average sentence, with great respect I don't think the fact that we have a number of cases proves that, and so I would caution her unless she's going to provide someone who can tell us about the average or common length of sentence and the factors that go into it I don't think it's really fair that her materials be assumed to be representative.

PRESIDING MEMBER: Counsel?

MINISTER'S COUNSEL: Well I mean, Counsel, you have the opportunity to rebut my evidence if you choose to if you don't think it's representative. Please go ahead and introduce evidence to the contrary. There's nothing that prevents you from doing that. That's my first point.

My second point is it's not up to me to prove the length of the penalty. This is your case to make. I

only had this research done to give myself and the panel an idea of what some of the more recent case law is on this. You know, do I say it's every single case in the last ten years, no, but I don't think that it's fair to say that I might have cherry-picked the cases in order to show the most lenient cases in the last ten years. I mean, it's not like I'm suppressing a case where someone got an extremely harsh penalty and you know, if there is such a case I'm sure you would have presented it.

COUNSEL: Just to respond briefly. With respect obviously I'm not making an allegation about my friend's comment with the cases. For the record I think it's been exemplary, however ---

PRESIDING MEMBER: Nor may I say did you suggest that she cherry-picked.

COUNSEL: No. That's the kind of comment that I am responding to. My objection is that there's no evidence that these specific cases are representative in a statistical way, and yet, my friend's last question suggested that somehow it was a lenient penalty or something well within the range and it would be my submission to you that if you are going to conclude -- well, I guess my submission would be that there is no evidence that they're representative therefore the question itself is improper.

PRESIDING MEMBER: Okay. I'm going to ask counsel, do you have any evidence that this sentence given to Sergeant, Staff Sergeant Mahia, I think you said falls within the range of sentences that have been meted out to persons who have deserted?

MINISTER'S COUNSEL: I have introduced case law that shows a variety of sentences received over the years, the last ten years. I extrapolated from that. I don't have any statistical studies showing every single discharge over the last ten years and showing what every single person received, no, but I would note that, you know, the information we're receiving via the press that's relied on by both counsel and myself, you know, still any prison time for individuals -- I mean, there's articles entitled, Punishment Rarely Severe for Deserters. We've produced that and that information is also -- we've got some more information in the Mahia case showing that they're not generally subjected to harsh penalties. I mean, these are all generalizations in the media as well.

I don't think there are statistics that I would have access to that shows one way or the other, but again, it's not my case to prove. I'm suggesting that the cases that I have read before me are that one year is an average sentence and that's the question I posed.

PRESIDING MEMBER: Okay. Well, I've heard you both. I accept the objection in the absence of evidence that this is some kind of normal or average sentence and I don't believe you're saying that. What you're saying is that you have not cherry-picked. That you put forward a number of cases, but my understanding is that you haven't produced any evidence to indicate that they're representative.

On the other hand, as I say, that you haven't suggested that you've taken only the most lenient cases either. So, I'm going to allow you to ask the question but in a different way.

MINISTER'S COUNSEL: Thank you. I have before me a number of cases that show that sentences for deserters are in the range of one year and these are sentences that were given to people who were not necessarily political objectors, but they had gone -- had deserted for other reasons. Is there any -- do you have any reason to believe that you personally would be subjected to a different punishment based on your beliefs due to experiences you've had or you know, knowledge you have of the military's attitude towards you?

CLAIMANT #1: I guess I would say that given what I've done if I were to go back, at least in the culture of the military and popular culture too, many people would say what I've done has been treacherous, and so I would infer from that that there is a good possibility that I would be treated more harshly. Despite that, again I will say that any amount of incarceration for refusing to participate in an unlawful act is too much incarceration.

MINISTER'S COUNSEL: And just to make it clear, you have no indication that there's a warrant for your arrest?

CLAIMANT #1: As far as I know after 30 days of being AWOL a warrant goes out, but no, I don't have a warrant in my notebook or anywhere.

MINISTER'S COUNSEL: And you have not been contacted -- other than this letter from your grandmother you have not been contacted by the authorities to indicate that you're wanted?

CLAIMANT #1: No.

MINISTER'S COUNSEL: And your statement that you think you'd be treated more harshly because of the culture of the military you stated that's an inference?

CLAIMANT #1: Yes, it's speculation.

MINISTER'S COUNSEL: You haven't hidden the fact that you're making a refugee claim in Canada to the American authorities?

CLAIMANT #1: No.

MINISTER'S COUNSEL: If you're concerned that your opinion might aggravate your potential sentence, why would you notify the American military you are making a refugee claim in Canada?

CLAIMANT #1: Could you repeat that, please?

MINISTER'S COUNSEL: Yes. If you are concerned your political beliefs are going to aggravate your sentence why would you notify the American military of your refugee claim and I'm referring to your counsel's letters to the military indicating you had made a refugee claim in Canada?

CLAIMANT #1: Well, because ---

COUNSEL: I'm sorry, may I?

PRESIDING MEMBER: Yes, please.

Hold off here.

COUNSEL: Perhaps that could also be asked in another way. My letters to the U.S. military were in response to your raising a Rule 7, Mr. Member, and so I wrote as a result of that and so I think it's unfair that my friend ask the question why would he communicate with the U.S. military? I mean,



it may be that the question could be asked about the decision to be public which I have no doubt that the U.S. military has access to the Washington Post for example, has published articles about Mr. Hinzman.

MINISTER'S COUNSEL: Well, I am only quoting the letter. "I represent the above named man. He is presently in Toronto and has claimed refugee status in this country." I mean, this is directed to the 82<sup>nd</sup> Airborne Division.

PRESIDING MEMBER: But to be fair, Counsel, the reason that he wrote the letter was to try and obtain Mr. Hinzman's military record.

MINISTER'S COUNSEL: Of course, but my question is why would -- I mean, there's nothing that requires him to say that he's making a refugee claim in this letter in order to secure this information and that's what I'm trying to ask the claimant. Why would he ask -- why would he offer this specific information if it was only to secure his military records?

PRESIDING MEMBER: Well, I mean, personally if you're asking me I can think of all kinds of reasons.

MINISTER'S COUNSEL: Well, I would like to ask him actually.

PRESIDING MEMBER: Not the least of which is that he hoped to obtain it as soon as possible so that he could make it available for this hearing.

MINISTER'S COUNSEL: Well, I'd like to hear his evidence. I'd rather hear from the claimant, with all due respect.

PRESIDING MEMBER: Well, that's fine. You go ahead.

MINISTER'S COUNSEL: Thank you.

PRESIDING MEMBER: I would ask you to ask the question in a different way because ---

MINISTER'S COUNSEL: Yes, all right, I can do that.

PRESIDING MEMBER: --- I don't think counsel can be faulted for writing a letter for the purpose of which was to ask for the claimant's military record which we all agreed would be useful and that by the way was quite apart from Rule 7.

COUNSEL: No doubt.

MINISTER'S COUNSEL: Okay. So, my question was, you think that your political opinions might aggravate your sentence?

CLAIMANT #1: Yes.

MINISTER'S COUNSEL: So, you're obtaining your military records in order to present them to this tribunal and your lawyer writes a letter to the military requesting your records and in that letter he notifies -- he could have asked for your military record for any number of reasons, is that correct? Do you have a number of reasons why one might want their military record?

CLAIMANT #1: Conceivably I'm sure there are plenty of reasons.

MINISTER'S COUNSEL: So you could have asked -- you could have -- do you have a right to your military record as a matter of course?

CLAIMANT #1: I don't know actually, but I do know that we were asked to provide the military record by the Refugee Board and that was the motivation for asking for them and that's what we told the army.

MINISTER'S COUNSEL: So, it's fair to say in your correspondence and as well your dealings with the media and your web site, you haven't hidden the fact that you are making a refugee claim in Canada?

CLAIMANT #1: Oh, no.

MINISTER'S COUNSEL: So my -- and in all fairness, you're an open individual and you have every right

to express your political opinion and I'm not suggesting you shouldn't have. I'm wondering though what your motivation was behind the choice to make it public?

CLAIMANT #1: I think it was kind of a safety mechanism. When I came up here I felt, like many people feel, that an American making a refugee claim in Canada is kind of a preposterous proposition and I didn't know how the -- I mean, I have faith in the IRB and whatever else, but I didn't know how it would be handled and I felt that by being public it would ensure that it is handled openly and fairly and that -- I mean, again, I had no experience with Canada before except for listening, As It Happens, and so I mean, it was just to ensure that it would be dealt with in the arena that -- in my thinking it was a safety mechanism.

MINISTER'S COUNSEL: But when you say you wanted it to be dealt with openly and fairly by whom did you want it be dealt with openly and fairly?

CLAIMANT #1: By the Refugee Board and by Canada.

MINISTER'S COUNSEL: Okay, but if you hadn't gone public did you have concerns that it wouldn't be dealt with openly and fairly?

CLAIMANT #1: No, I have faith in the system. I'm not trying to -- but I didn't know how it would be dealt with. I thought they would conceivably say, oh you're an American, what the hell are you doing, you know, go back. And so by doing this I felt that it would ensure that it was dealt with.

MINISTER'S COUNSEL: So there was -- was there any consideration of what might be the impact if you were returned to the United States after having gone public in Canada?

CLAIMANT #1: No, because I felt that based on what I had read, that soldiers who had refused to participate in an illegal war and faced prosecution for that refusal, are considered political refugees and I felt I stood on solid ground and I still feel I stand on solid ground in asserting that and so I mean, I had confidence that I will be able to stay on that ground.

MINISTER'S COUNSEL: I think those are my questions.

PRESIDING MEMBER: Thank you very much. It seems like we're moving right along.

COUNSEL: Yes, and that's a good thing. Mr. Member, I put to Ms. Chisholm at the end of the last break, and she said to me that she would likely go until some time after lunch, so if I could have ten minutes? I don't think I'm going to be very long, but her having stopped now has taken me slightly by surprise. If I could just have ten minutes to run through my notes that would be very helpful.

PRESIDING MEMBER: Ms. Chisholm, do you have any problem with that?

MINISTER'S COUNSEL: No, I don't.

PRESIDING MEMBER: Okay. Well, let's take ten minutes then. Resume at 25 minutes after 12:00. Okay, we're back on record after a short break requested by Mr. House and Ms. Chisholm has asked the opportunity to ask another question and Mr. House has indicated to me that if I agree to allow her to do that that he has no problem with it. So, I don't know what the question is, but I'm assuming it's relevant and probative.

MINISTER'S COUNSEL: It is. It's just in regard because you're the designated rep of your son, Liam. I'm wondering, Liam's PIF, I believe adopts your narrative as the reasons why he fears persecution in the United States. Is there anything aside from that that we should know about in terms of Liam's fear of persecution in the United States?

CLAIMANT #1: I don't know if Liam has a concept of fear yet. I suppose it's hardwired into him, but as it was understood to me when I submitted the PIF's for all three of us their claims were contingent upon the outcome of mine.

MINISTER'S COUNSEL: So I just want to make it clear. It is based completely on your claim? There's no separate claim that he is espousing for the purposes of this tribunal?

CLAIMANT #1: He tells me to go away sometimes ---

MINISTER'S COUNSEL: Yes, we heard that.

CLAIMANT #1: --- but no, I don't believe so.

MINISTER'S COUNSEL: Okay, that was my only question. Thank you.

PRESIDING MEMBER: He tells you to go away and then he goes away.

CLAIMANT #1: Yes.

PRESIDING MEMBER: Okay. Now, at this point I mentioned in terms of order that I would proceed prior to Mr. House, but I have had the advantage of being able to ask questions, to clarify answers and clarify my understanding of Mr. Hinzman's position as we've been going along. I don't have any burning questions at this moment. I obviously reserve the right following Mr. House's questions if there are any burning questions to ask I will, in which case Mr. House would likewise be offered the opportunity to ask questions arising from any answers to my questions. Right now I don't really have any questions.

COUNSEL: Thank you very much, Mr. Member. Mr. Hinzman, Ms. Chisholm asked you a number of questions about the relationship between your view that the war in Iraq is an illegal war and your view of the conduct of the war on the ground. At the time that you made your application did you distinguish between the nature of the decision to go to war and the conduct of the war on the ground?

CLAIMANT #1: At the time that I made my decision, again my thinking was in terms of the war being unlawful and unjust, as far as I know from what I've read any act that -- any act of violence that takes place without a justification, at least in terms of military, is criminal and wrong and therefore in my thinking atrocious.

COUNSEL: So did you distinguish between the decision to go to war and the conduct of the war?

CLAIMANT #1: I think they were of the same essence.

COUNSEL: Okay.

PRESIDING MEMBER: And just so I understand the answer it is because you believed that any act in pursuit of an unjust war is itself unjust?

CLAIMANT #1: Correct.

PRESIDING MEMBER: So it stems from the illegality of the war and follows then that any action in pursuit of an illegal war would itself be illegal. Is that it?

CLAIMANT #1: Yes, sir.

COUNSEL: As you are aware, the member made a decision which required that we set aside any evidence about the illegality of the war and not introduce it at this tribunal. So I would like you to attempt to concentrate on the residual elements of what you called violation, I think you called it an atrocity when you were speaking in-chief. Have you thought about the likelihood that you would participate in violations of international humanitarian law had you gone to Iraq? In other words, at the time that you decided you weren't going had you thought about the likelihood that you would participate in violations of international humanitarian law?

CLAIMANT #1: Given the military culture that I discussed earlier in terms of referring to most people in the region as terrorists and unworthy of the privileges of a normal combatant, I felt that it wasn't outside the realm of possibility that I could be doing things that weren't warranted and good conduct.

COUNSEL: Now, you've just said words to the effect that the enemy in Iraq according to the culture that you were familiar with, were not worthy of the, I think you said the normal? Could you remind me what you said? Not worthy of the normal?

CLAIMANT #1: Just like the respect that enemy combatants get, right?

COUNSEL: And in-chief you had talked about dehumanizing the enemy and that they were not deserving of treatment of normal combatants. Where did that idea come from? When you had that thought where did that idea come from?

CLAIMANT #1: Just the overall -- again, the overall climate of the country and the army and specifically my unit. We were referring to these people as savages who were complicit in doing great harm upon our country and we would deal with them as such.

PRESIDING MEMBER: And who do you mean by, or did you believe "these" people meant?

CLAIMANT #1: "These" people are Iraqis.

PRESIDING MEMBER: All Iraqis?

CLAIMANT #1: Right. Yes, sir.

COUNSEL: Well, let me just follow that up then because you've said that you didn't think that you would simply land and mow down the entire Iraqi population. You're nodding, but I think for the record you have to say yes or no.

CLAIMANT #1: That's correct. Yes.

COUNSEL: So these people that weren't to be accorded the status of regular combatants, who were they in your mind at that time?

CLAIMANT #1: Anybody that the army or my unit deemed suspect in Iraq.

COUNSEL: You also spoke about having a concern about soldiers, American soldiers including you, and I think you had said -- I think you used the term we got broken down and lost civilian traits. Could you just tell me what you mean by that?

CLAIMANT #1: To become a soldier you essentially become a yes man and that's necessary for any army

to function. You need to follow orders when they are given to you and in doing that, I mean, you lose -- or you're supposed to suspend a lot of things that we take for granted in the course of every day life. If you tell me my hair is out of place I go out and say what are you talking about? Well, it's one thing as a civilian if I say -- and in the military it could be taken as disrespect.

COUNSEL: Well, presumably you weren't concerned about haircuts ---

CLAIMANT #1: No.

COUNSEL: --- when you say that. I guess I'd be interested in what you think were the civilian traits that were being lost that you thought shouldn't be lost?

CLAIMANT #1: I mean, just general good -- I mean, the Golden Rule. I mean treat others the way you wanted to be treated. Relating to other people as human beings and not as objects.

COUNSEL: I'm going to ask you a couple of questions I think Ms. Dragaitis. I knew it ---

PRESIDING MEMBER: Dragaitis.

COUNSEL: Dragaitis. Had asked questions about the relationship of Airborne and the infantry. You belonged to a unit that is denominated an Airborne unit. You're nodding again.

CLAIMANT #1: Yes. I was part of an Airborne unit.

COUNSEL: I think that nodding is a civilian trait.

CLAIMANT #1: Yes, it is.

COUNSEL: All right.

CLAIMANT #1: I just have the haircut. I lost everything else.



PRESIDING MEMBER: It seems that you've been rehumanized, in any event.

CLAIMANT #1: To some extent.

PRESIDING MEMBER: Okay. But seriously, you should, as I mentioned at the outset, when you nod you should say something because we're not being filmed, we're being recorded in an audio manner and unless you say something it won't get recorded.

CLAIMANT #1: Yes.

PRESIDING MEMBER: Okay?

CLAIMANT #1: Okay.

COUNSEL: So, you answered one of the questions as follows. "I was deployed to Iraq to do what the infantry does, kill people," and I don't understand, or I don't think it is clear, to what extent you were infantry, to what extent you were a paratrooper? How did that affect what you would be doing on the ground in Iraq or in the air in Iraq?

CLAIMANT #1: First and foremost I was an infantryman. Being Airborne qualified is incidental to that. There is any other number of jobs in the Airborne, but we were infantry and that was our main focus, was to carry out infantrymen's tasks regardless of whether we were trucked in or flown in or whatever else, that's just the way of arriving at the battle.

COUNSEL: What -- do you have any control over the assignments you get once you're in Iraq?

CLAIMANT #1: No, I do not.

COUNSEL: Can you tell us what range of duties are the likeliest ones?

CLAIMANT #1: As an infantryman you'd probably go out on a lot of patrols or you could be assigned to man checkpoints, to search vehicles or people going through different areas or you could be involved in policing an area or crowd control or airborne assaults or doing KP, kitchen duty, if it's your turn or there's any number of things.

COUNSEL: You, in a response to a question by Ms. Dragaitis, you indicated that the cultural climate within your unit was that you were going to Iraq and I'm going to quote your words, "to jack up some terrorists." I think I get the general sense, but what does it mean to "jack up" someone?

CLAIMANT #1: To eliminate them.  
Kill them.

COUNSEL: You also responded to a question from Ms. Dragaitis that while you were back at the base, I believe Fort Bragg, you said something like these words. "We were not setting the stage for fighting with the usual decorum." Do you remember saying that?

CLAIMANT #1: Something to that effect.

COUNSEL: Right. I don't think I have it absolutely verbatim. What did you mean by that?

CLAIMANT #1: We were told that it's a new kind of war that we're fighting and different methods, or different ways of dealing with the enemy would be employed.

COUNSEL: Who told you that it was a new kind of war?

CLAIMANT #1: The President, but I mean also my command. Anywhere up from my team leader up to my squad leader to my Company Commander and platoon Sergeant, First Sergeant.

COUNSEL: Were they explicit about what this new kind of war entailed in terms of different behaviour?

CLAIMANT #1: No, they weren't specific. No, it was just the general kind of a climate that we were in and that the country is still in.

COUNSEL: How did you understand the implications of the idea that it was a new kind of war?

CLAIMANT #1: Well, I mean, one instance was seeing people interred for indefinite periods of time. Take Guantanamo Bay for example. They were terrorists, just like Iraqis were supposedly terrorists and they weren't afforded any sort of due process or given any of the privileges of the Geneva Conventions.

COUNSEL: Were you aware of that at the time that you were at Fort Bragg?

CLAIMANT #1: Of Guantanamo Bay?

COUNSEL: Yes?

CLAIMANT #1: Yes, I was.

COUNSEL: Were you aware of the conditions at Guantanamo and the position of the administration with respect to the Geneva accords?

CLAIMANT #1: Yes, I was.

COUNSEL: How do you think that played out in Iraq?

CLAIMANT #1: I think the framework was set, that since we were referring to Iraqis as terrorists they can expect to receive the same treatment as people at Guantanamo Bay or -- yes, I would say.

COUNSEL: You though weren't a prison guard, correct?

CLAIMANT #1: I wasn't a prison guard.

COUNSEL: And Guantanamo as I understand it is a prison?

CLAIMANT #1: As far as I know.

COUNSEL: So, in what way, if at all, did that particular example influence your understanding of what you might likely be doing?

CLAIMANT #1: The fact that I could be potentially capturing people who would be sent to such a fate was a consideration.

PRESIDING MEMBER: And the fate being, as I understand your earlier answer to Mr. House, detained indeterminately?

CLAIMANT #1: Indefinitely I thought.

PRESIDING MEMBER: Indefinitely.

CLAIMANT #1: I hope I didn't say indeterminately.

PRESIDING MEMBER: Well, indefinitely.

CLAIMANT #1: Right.

PRESIDING MEMBER: In poor conditions?

CLAIMANT #1: Yes, without any sort of due process or charges laid against them or anything.

PRESIDING MEMBER: And in poor conditions?

CLAIMANT #1: And in poor conditions.

COUNSEL: Were you aware at the time what the conditions at Guantanamo were?

CLAIMANT #1: I had -- I had read different accounts and seen different news stories of what they were.

COUNSEL: What did you think they were at that time?

CLAIMANT #1: That people were -- I mean, they were just stuck in this place where they had no rights. I mean, I wasn't there. I don't know exactly what it was like,

but that they were, by not having recourse to anything sort of due process - you're stripped of your dignity. I mean, you're not being treated as a human. You're kind of being treated as trash to be left somewhere.

COUNSEL: At the time were you aware of the position of the U.S. government concerning the Geneva accords and their applicability to Guantanamo, for example?

PRESIDING MEMBER: Sorry, at what time, Mr. House?

COUNSEL: At the time that you were at Fort Bragg after Afghanistan, let's say. After you'd come back from Afghanistan.

CLAIMANT #1: Was I aware of the conditions?

COUNSEL: No, no. Were you aware of the position of the U.S. government with respect to the applicability of the Geneva Conventions in that facility?

CLAIMANT #1: I think I had some understanding that people being detained there weren't being given or being treated under the Geneva Convention. I had read an article in the Atlantic Monthly by Mark Odonen (ph) in the fall of 2003 where he was talking about different ways of detaining suspects and whether or not it was torture or coercion.

COUNSEL: Was that something that had to do with Guantanamo in particular?

CLAIMANT #1: No, it was just a general outline of what could or couldn't constitute torture.

COUNSEL: During the time when you were in Afghanistan did you hear or find out anything about the position of the U.S. government with respect to the applicability of the Geneva Conventions to terrorists, say, in Afghanistan?

CLAIMANT #1: I knew that people in Afghanistan were being sent to different places. I mean, whether or not it was Guantanamo or a different third country with less stringent restrictions on how suspects are interrogated.

COUNSEL: Ms. Chisholm at one point yesterday made a suggestion that the experience of a U.S. Marine might be entirely different from the experience of a soldier in the U.S. Army. Can you tell us your view on that?

CLAIMANT #1: A U.S. Marine infantryman is trained in the same way as a U.S. Army infantryman. They are trained under the same doctrines and use the same training manuals and in regards to their individual units there might be idiosyncrasies or whatever else, but an infantryman is an infantryman is an infantryman.

COUNSEL: Are you familiar with the words "terms of engagement?"

CLAIMANT #1: I am.

COUNSEL: What does that mean to you?

CLAIMANT #1: That gives you -- it's a protocol in effect of when you can and cannot fire upon people in a given situation. Rules of engagement, I guess.

COUNSEL: Rules of engagement?

CLAIMANT #1: Yes.

COUNSEL: All right. And do you know where those are generated or are they generated internationally, locally, nationally? How does that work?

CLAIMANT #1: I think they're generated by the chain of command.

COUNSEL: But for example, if you know this, are the terms -- are the rules of engagement in northern Iraq the same as the rules of engagement in southern Iraq or are there, to your knowledge, individual variations based on locality, say, or conditions?

CLAIMANT #1: I don't know, but I believe it would be contextual based on how we were trained.

COUNSEL: When you say based on how we were trained can you just tell me what you mean by that?

CLAIMANT #1: Well, you're in different situations at different times and you act in ways that the command finds appropriate.

PRESIDING MEMBER: Well, perhaps you could be a little bit more specific to help me out by giving me an example of a rule of engagement and how it might be applied differently in northern Iraq than in southern Iraq?

CLAIMANT #1: Well, I don't know how they're applying it differently in terms of geography, sir, but like in terms of like one of the first rules of engagement oftentimes is don't fire until fired upon or don't fire until -- don't fire until you fire a warning shot and that may be in the context of providing security for say a political demonstration or something else. If you're on the offensive of course there's going to be fewer questions asked before you shoot.

PRESIDING MEMBER: Right. So that rule of engagement would not apply to offensive operations, it would apply to for example crowd control, am I right? Don't shoot unless you're fired upon, fire a warning shot first to a security checkpoint for example?

CLAIMANT #1: Right. It's just completely contextual, sir. I mean, different circumstances warrant different rules.

PRESIDING MEMBER: But if it was a checkpoint in northern Iraq or a checkpoint in southern Iraq ---

CLAIMANT #1: Oh, okay.

PRESIDING MEMBER: --- a rule -- would the rule be the same, don't fire until fired upon, fire a warning shot first?

CLAIMANT #1: I don't know, sir. I think like in the context of northern Iraq the Kurds tend to be more friendly than in southern Iraq towards the U.S. troops, so there may be different rules of engagement, but I don't know the specifics, sir.

COUNSEL: I don't have any further questions of Mr. Hinzman.

PRESIDING MEMBER: Okay. It's almost 1:00. There's the question of Sergeant Massey. Is Sergeant Massey available today?

COUNSEL: Yes, he is. He's on his way down. When my friend indicated that she had finished her questioning I asked someone to contact him. I believe he's on his way down and should be available at any time after 2:00 that you deem appropriate.

PRESIDING MEMBER: Okay. I have a few questions that relate to the pre-hearing conference that I don't believe have been asked yet and so what I would like to do is -- I was waiting until you completed your examination, to do that, and obviously allow you to ask any questions arising from any of Mr. Hinzman's answers to my questions, but I would like the opportunity to -- I believe I should take the opportunity to ask Mr. Hinzman about some of the items that we discussed. Some of it relates to documents, what efforts were made to obtain them, et cetera, and I'd like the opportunity to do that before we hear from Sergeant Massey.

MINISTER'S COUNSEL: Are we at all going to hear from the female claimant?

PRESIDING MEMBER: Well, do you intend to call the female claimant?

COUNSEL: I don't think so.

PRESIDING MEMBER: Do you intend to call the female claimant?

RPO: I have no questions for the female claimant.

PRESIDING MEMBER: So it doesn't appear that she's going to be called. So, what I suggest is that when we resume at 2:00 I will ask a very small number of questions that as I say relate to some of the things that we discussed at the pre-hearing conference that in my view haven't yet been answered and then allow Mr. House to ask any questions arising from that, following which we'll hear from Sergeant Massey.



Now, there's the issue of the order of questioning with respect to Sergeant Massey. It seems to me that Sergeant Massey is being brought forward as a witness by counsel for the claimant and that in his capacity as counsel for the claimant that he would have prepared Sergeant Massey and therefore would be in the best position to begin the examination of Sergeant Massey. I think it would be extremely difficult for Ms. Dragaitis to question a witness who she hasn't prepared and so unless you have strong views otherwise I would suggest, Mr. House, that you examine Sergeant Massey, recognizing again that you will have the opportunity at the end to ask any questions arising from any of his answers to questions from others.

COUNSEL: Yes, that's fine. I had spoken to Ms. Chisholm who is also of that view, and I think she indirectly told me that Ms. Dragaitis doesn't object to that. That would be fine.

RPO: In fact, I might say that I don't think the guideline even applies to witnesses. The guideline referring to the order of questioning only refers to questioning the claimant and it doesn't -- I don't think it even has application to witnesses. So on top ---

PRESIDING MEMBER: That's a relief.

RPO: I think -- well, that's my reading of it anyway. It says the RPO starts by questioning the claimant, period.

PRESIDING MEMBER: Right.

RPO: So I don't think there's anything unusual about having Mr. House put in Sergeant Massey's evidence.

PRESIDING MEMBER: Excellent. So let's reconvene at 2:00 p.m. Thank you. Okay, we're back on record after our lunch break. I hope you had a pleasant break, all of you.

MINISTER'S COUNSEL: Yes.

PRESIDING MEMBER: Good. And the weather outside remains frightful. I indicated prior to the break that I wanted to review the transcript of the pre-hearing to

determine if there were any documents that I had suggested that Mr. House, Mr. Hinzman, could see if they could obtain and that I wanted to determine whether they were able to obtain them and if not what efforts were made and why those efforts proved unsuccessful.

So, I'm going to start with those questions. I also indicated that Mr. House would have the opportunity to ask any questions arising from Mr. Hinzman's answers to these questions. One of the documents that I indicated would be helpful or the type of documents would be if you had either written anyone or if you maintained a diary, if you had entered a notation in your diary, as to your reasons for joining the military and just following that through likewise with respect to the evolution of your thought from the time of recruitment until the time of desertion. Did you write to anyone or make any kind of diary entry about your thoughts, about what you were proposing to do, why you were doing it? Likewise with respect to the activities that you were engaged in, the training for example, to which you referred specifically in your PIF, I believe in your PIF and your testimony. The dehumanization aspect and the portraying of the enemy as someone who needs to be killed.

I haven't received any such documents. For example, letters to your parents or to your grandmother, to friends. We talked about contact with people in the military, but we haven't really talked about contact with people outside the military, aside from your wife of course. So, my question is, did you prepare such documents? Did you write such letters or make such diary notations to indicate why you were doing the things you were doing and what you were doing when you were doing them?

CLAIMANT #1: Sir, the remembrance of things past, I'm not the most prolific writer and I've never been much of a diarist. I did however during the time of basic training write letters to my wife and as far as I know she had saved them and when we left North Carolina we had put some of those letters away and I had asked someone to obtain or try to find those in a stack of stuff and they weren't able to and other than that I don't have any sort of written documentation as to the evolution of my beliefs. I wish I did, by all means, but I don't.

PRESIDING MEMBER: It must have been an awful burden for you, that's why -- for you to carry alone without the opportunity to talk to anybody about this?

CLAIMANT #1: Well, I had my wife --

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PRESIDING MEMBER: Aside from your wife, of course.

CLAIMANT #1: --- to speak to and that was -- I wasn't the most social animal in Fayetteville, so there weren't a lot of people outside of my family that I spoke to on any sort of ongoing basis.

PRESIDING MEMBER: Did you write to your mother and father at all?

CLAIMANT #1: My father is deceased, sir, ---

PRESIDING MEMBER: I'm sorry.

CLAIMANT #1: --- and as for my ---

PRESIDING MEMBER: Or your grandmother?

CLAIMANT #1: No, I mean I would send them little, kind of token gestures. Like, hi, how are you doing and everything, I'm okay, and stuff like that, but I never went into any depth with them. I felt that that was stuff to be spoken about with my spouse because that's the nature of our relationship.

PRESIDING MEMBER: And do you have any documents available to you from the military at all aside from the ones that have already been submitted?

CLAIMANT #1: No, sir. The three things, my enlistment contract and the EIB award, but that was all I was able to find.

COUNSEL: I presume you're accepting -- we have the transcript of the hearing and so on?

PRESIDING MEMBER: Yes, I'm saying aside from that. Aside from those documents are there any other documents that you have from the military?

CLAIMANT #1: No, sir.

PRESIDING MEMBER: And at the pre-hearing conference I asked whether you received or someone received for you your notice of deployment to Iraq, a written notice, and my recollection is that you were going to look into that. I believe I suggested it was, you know, -- it seemed to me likely that some kind of written notice would ultimately be sent with respect to your deployment to Iraq?

CLAIMANT #1: From my experience of deployments, which there's only one, we receive the written orders on the eve of our departure and I assume the same held elsewhere for Iraq because we were just verbally informed in a battalion formation that we were going. After we had found out from CNN.

PRESIDING MEMBER: You mentioned that you had your mail forwarded. You mentioned that your grandmother received some mail. Are you aware of any written notification that was received?

CLAIMANT #1: The only notification that I've received, or that my -- is the documents mentioned earlier in relation to my military equipment and my absence from work, that I know of.

PRESIDING MEMBER: And from the other side, are there any documents that you have written to the military, was another question that I asked, with respect to your failure to comply with the deployment, advising of your desertion, et cetera?

CLAIMANT #1: With the exception of a request for military records that my counsel sent for this hearing, no, I have not.

PRESIDING MEMBER: Okay. And the other issue was whether you were personally aware of anyone who you knew who had deserted and what the outcome of that desertion was in terms of whether they were penalized in some way?

CLAIMANT #1: The only people I've known about is Sergeant Mahia, whose situation came to light to me after we arrived in Canada and that's all, was Sergeant Mahia.

PRESIDING MEMBER: So, am I right then that there is no one that you know in the 82<sup>nd</sup> Airborne, that you personally know of in the 82<sup>nd</sup> Airborne, that has deserted and you know of them and know what the outcome of their desertion was?

CLAIMANT #1: That's correct, sir, I don't know.

PRESIDING MEMBER: And my last question really relates to the timing of your application, your application for conscientious objection status. Actually before I ask that -- conscientious objector status. We have a Military Code. It deals with requests for conscientious objector status, as you point out, both discharge and also non-combatant status. Is there any possibility of negotiating a discharge without being a conscientious objector?

CLAIMANT #1: There is plenty of possibility, sir. I could have slugged my Sergeant. I could have ---

PRESIDING MEMBER: Well, we know you're a non-violent person.

CLAIMANT #1: I could have drank a lot of beer and drove a car and on repeated occasions of -- any degree of misconduct or if I could find some sort of abnormality with my big toe or anything like that, sir, but I felt that I was going to act on principle as opposed to conjuring up something that I could use for a discharge.

PRESIDING MEMBER: I'm not suggesting that you would do otherwise. Could you have approached your Commanding Officer and said, look, I've tried this, I realize that I've made a big mistake and I'm wondering whether there is any way that I can negotiate my release from the army without, or the -- of the army without suffering a serious penalty? For example, there are countries in the world where one can do alternative service. There are countries in the world where one can make a payment in lieu of service or in lieu of partial service. So you signed an agreement, a recruitment agreement. Was there an opportunity or did you consider trying to renegotiate that, keeping your principles in mind, to allow you to be discharged and not punished?

CLAIMANT #1: As far as I knew or know, sir, there aren't any possibilities in that regard.

PRESIDING MEMBER: So, do I take it that you know of no one who has done that?

CLAIMANT #1: No, sir, but the only way you can get out as far as I know is when your enlistment is over or you're kicked out for misconduct or anything else. That's the only ways that I know. You can't just go to your commander and say hey, this isn't working out, let me go.

PRESIDING MEMBER: What about medical reasons?

CLAIMANT #1: I'm in good health, sir, and I didn't have any medical reasons that I could fall back upon.

PRESIDING MEMBER: We --- by the way I'm not suggesting you're not in good health ---

CLAIMANT #1: No, I didn't ---

PRESIDING MEMBER: --- by asking that question.

CLAIMANT #1: Right.

PRESIDING MEMBER: But it sometimes happens, sometimes, in some of the claims certainly, and I've dealt with a number of conscientious objection claims from countries other than the United States and I'm relying on my specialized knowledge and just to let you know I don't expect that you would know this which is the reason that I'm telling you this. Is that there are occasions when soldiers who have serious objections to serving, are able to obtain a psychiatrist's letter indicating that they have some mental health problems. Sometimes their testimony is that sometimes it's accurate and sometimes it's not. Sometimes they actually are able to buy such a letter in some countries.

CLAIMANT #1: Sir, I'm a biased judge, but I don't believe I have any mental health issues and were I to fake one I don't think that would be a very -- I don't think that would be right.

PRESIDING MEMBER: So that wasn't something that you considered?

CLAIMANT #1: No, no.

PRESIDING MEMBER: Was to get a medical report?

CLAIMANT #1: No, sir. I mean, the only kind of medical discharge that I could have got was if I self-inflicted it. For instance, if I held my legs straight landing on a jump and broke them or something like that, but other than as far as I know I'm relatively sane and I'm in good health and I wasn't willing to fake or not be authentic about that.

PRESIDING MEMBER: Okay. And back to the timing of the decision, it was evident to me during your testimony and consistent with your PIF that you had serious concerns about the dehumanizing process of training and about some of the things that you were being encouraged, if I can put it that way, through collegiality to chant during your training exercises. Something about "Kill We Will", I can't remember.

CLAIMANT #1: Yes, sir, that's the gist of it.

PRESIDING MEMBER: Things like that, about killing, and I'm wondering why in view of those very serious concerns that you continued to pursue your activities and apply for pre-Ranger school and why you didn't at that point when you had those concerns make your application? Why you waited?

CLAIMANT #1: Those concerns were with me throughout my entire experience and as far as waiting, initially when it was during training I was hoping that it was a phase I was going through and it was something that I could overcome and deal with, but after time progressed and after I arrived in my unit thinking that the indoctrination would be over and we'd return to life as usual and that wasn't the case, eventually it built up within me and I acted upon it. But initially in basic training I felt that, you know, I can't put in my two weeks notice, I signed up for four years, and hopefully this is just a phase or some sort of culture shock, that I'll eventually overcome and I didn't overcome it.

PRESIDING MEMBER: And I believe it was your testimony that it was the prospect of going to pre-Ranger school that crystallized in your mind the fact that you had to decide what you wanted to do, is that right?

CLAIMANT #1: Yes, sir, in terms of submitting my conscientious objector application I felt if I was to go through the whole Ranger process, I mean, there could be a point of no return, but in my thinking that was it. I was -- and there wasn't really -- I mean, conceivably there would be, but there wouldn't be a point after that where I could act upon. I just felt that would be the kind of final seal.

PRESIDING MEMBER: Did you consider going to pre-Ranger school and seeing how it went before you decided what to do?

CLAIMANT #1: No, sir. The whole -- I wasn't afraid of Ranger school. In fact, if there was some sort of civilian version that you could go to without being in the army it probably would be a good thing for a lot of people to do, but just in terms of where it would land me in my career I felt I needed to act before that or I didn't see when I would...

PRESIDING MEMBER: Okay. Those are my questions.

COUNSEL: I have no re-examination.

PRESIDING MEMBER: So, I take it that you're now going to call Sergeant Massey?

COUNSEL: Yes, if I may. Jimmy Massey, please. Is the protocol that I go to the door and get him?

PRESIDING MEMBER: Yes.

COUNSEL: Mr. Member, this is Sergeant Massey. Where would you like him to sit, please?

PRESIDING MEMBER: Welcome, Sergeant Massey. I think he should sit where you can see him because you're going to examine him. I think probably the best place, although there's no microphone there.



RPO: No.

PRESIDING MEMBER: That could present difficulties.

COUNSEL: Perhaps ---

PRESIDING MEMBER: Perhaps he and Mr. Hinzman can change places. Welcome to you, sir.

WITNESS: Thank you. It's a pleasure to be here.

PRESIDING MEMBER: As you know, Mr. Hinzman and his wife and child have applied for Convention refugee status and refugee protection in Canada and this hearing is being held so that I can obtain more information about his claim and the claim of his wife and child, which are dependent upon his claim, and you have been called as a witness and I would like you to please stand so that I can affirm you ---

WITNESS: Sure.

PRESIDING MEMBER: --- or swear you in, whatever you'd like. Could you please state your full name?

WITNESS: Yes, Jimmy J. Massey.

PRESIDING MEMBER: And, Mr. Massey, do you -- could you please raise your right hand?

WITNESS: Sure.

PRESIDING MEMBER: Do you solemnly affirm that the evidence that you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth?

WITNESS: Yes.

PRESIDING MEMBER: Thank you very much. You may be seated. Now, I'm just going to give you some very brief instructions. First of all I'm going to tell you how we're going to proceed. Mr. House will begin by examining you followed by Ms. Janet Chisholm, who is the Minister's counsel, and

then Ms. Dragaitis, who is the Refugee Protection Officer and then myself and my name is Brian Goodman, by the way, and then Mr. House may have some questions arising from any of your answers to our questions.

Please listen to the questions very carefully. Wait till they're completely asked before you answer them and then answer them directly. It's not necessary for you to give long answers. In the event that Mr. House or I or others require clarification or explanation we'll ask for it. The important thing is to focus on the question and to answer the question as asked. If you don't hear or understand the question please say so, it will be repeated or explained.

If you don't know the answer to the question, and no one can be expected to know everything, that's a perfectly acceptable answer. Just say you don't know, don't speculate, and based on my experience please try to avoid using imprecise pronouns like "he" or "she" or "we" or "they" because I need to know who it is that you're referring to and as far as dates go be as precise as you can. The main thing is please try and relax. It's easier for you to relax, it's not your hearing, nonetheless your testimony is important to, obviously to Mr. Hinzman.

There is water if you'd like to get a glass of water before we begin. You're okay?

WITNESS: Yes.

PRESIDING MEMBER: Okay. Mr. House?

COUNSEL: Thank you very much, Mr. Member. Mr. Massey, I understand that you have been in the U.S. military, is that correct?

WITNESS: Yes, I was in the U.S. Marine Corps for 12 years.

COUNSEL: All right. So, can you tell us what rank you finally achieved at the highest point?

WITNESS: I was an E-6, which is a Staff Sergeant in the U.S. Marine Corps.

COUNSEL: And can you tell us your enlistment date?

WITNESS: Yes, January 1992.

COUNSEL: And I understand a Staff Sergeant is a Non-Commissioned Officer, is that right?

WITNESS: A Staff Sergeant is a Staff Non-Commissioned Officer which when you reach the rank of E-6 you are considered a career Marine. At that time when you are appointed to the rank of E-6 it's basically a Presidential appointment to that rank and it basically means in layman's terms that you are fully vested into the United States Marine Corps. It means you are on a career path.

COUNSEL: Okay. Can you tell us when it happened that you received this Order or this position?

WITNESS: I was promoted to the rank of Staff Sergeant November 2000.

COUNSEL: Now, can you tell us whether you saw service in Iraq?

WITNESS: Yes.

COUNSEL: And prior to your service in Iraq had you ever served in any zone involving active combat?

WITNESS: No.

COUNSEL: Were you in command of other Marines during the time that you were in Iraq?

WITNESS: Yes, 45 plus, depending on the mission and what the mission entailed. Sometimes we would have personnel added. For example, combat engineers or for example a human intelligence team.

COUNSEL: Okay. So, during the period of time that you were in Iraq the maximum number of people that you would have commanded would be what?

WITNESS: Fifty-five.

COUNSEL: And the minimum?

WITNESS: The minimum, 25.

COUNSEL: Okay. Can you describe for us how your unit entered Iraq? From where and whether you were involved in any combat during the period of time you were in Iraq?

WITNESS: Yes. We went into what's known as the LD, the Line of Departure, into Iraq around March 22<sup>nd</sup> timeframe of 2003. We entered through the city of Safwan. Safwan was the first area where we actually took a casualty. The first casualty of the war came from my battalion, 3<sup>rd</sup> Battalion 7<sup>th</sup> Marines stationed out of 29 Palms, California, First Marine Division. The first casualty of the war was a Marine by the name of Staff Sergeant Halowell (ph), who lost his leg in an urban city area in the town of Safwan to a landmine that was placed there by U.S. Marine forces.

PRESIDING MEMBER: Could you just hold up for a second? Would you know the spelling of Safwan?

WITNESS: Safwan, S A F W A N.

PRESIDING MEMBER: Okay, and on which border is that?

WITNESS: The Kuwait/Iraq border, sir.

PRESIDING MEMBER: And could you slowly reiterate your unit, your company, your battalion, et cetera?

WITNESS: Yes, sir. I was part of the 3<sup>rd</sup> Battalion, 7<sup>th</sup> Marines, Weapons Company, CAT-1, which stands for Combined Anti-Armour Teams, First Marine Division, location 29 Palms, California.

PRESIDING MEMBER: Thank you.

COUNSEL: After your unit entered Iraq did it participate in any battles involving armed combatants on the other side?

WITNESS: Yes. Our first firefight came a little bit north of the town of An Nasiriyah, heading towards Baghdad. We came into a direct ambush. The firefight lasted for approximately ten seconds where we did take incoming rounds. I had bullet holes in my Humvee. We never saw the enemy. They were quite a long distance away from us, but it happened on a major road going north towards Baghdad.

COUNSEL: I understand that at some point you were required to create a checkpoint, is that right?

WITNESS: Yes.

COUNSEL: And can you tell us where this checkpoint was and how long after you had been in Iraq that this checkpoint was set up?

WITNESS: The first checkpoint came in a city, a small city, I don't remember the name of the city, north of An Nasiriyah and at that time we were explained, this happened very quickly. It was less than a 24 hour period that we stayed there. When we went into the city we were told to set up a checkpoint, not to let any vehicles or civilian personnel through, that we were to search and seize any peoples or vehicles and to basically catch any type of weapons running that might be involved within that city or getting arms out of that city.

COUNSEL: In terms of the checkpoint you said just now we were told this and we were told that. Who is it that directs that you set up a checkpoint at a certain location?

WITNESS: That would be the Colonel of the infantry battalion, which he is giving the direct orders from First Marine Division. The General that was in charge of the First Marine Division while we were in Iraq was in General Maddis (ph), and so Lieutenant Colonel Belcher (ph), my Colonel for 3-7 was taking direct orders from General Maddis who was the head of First Marine Division.

COUNSEL: And are you given any leeway in terms of how you set up the checkpoint or where or is that something that is determined from a higher rank?

WITNESS: There is a standard operating procedure on how you set up checkpoints. That is in a

Marine Corps doctrine for establishing a checkpoint and controlling a certain area and Marines are trained on this SOP, however it has always been known within the Marine Corps that the situation dictates the standard operating procedures. So, standard operating procedures can change quickly on the battlefield depending on the situation.

COUNSEL: So, this first checkpoint that you set up, was it set up in accordance with the standard operating procedure or were there important deviations?

WITNESS: It was set up within the standards of the SOP.

COUNSEL: Did anything significant happen at that checkpoint while you were there?

WITNESS: Nothing significant happened at this checkpoint other than the Iraqis bringing us the normal food and Chai tea.

COUNSEL: Okay. How long were you there?

WITNESS: We were there for less than 24 hours.

COUNSEL: Did you have occasion to stop any vehicles?

WITNESS: Yes, we did.

COUNSEL: And was there anything unusual that happened during the period that you stopped the vehicles?

WITNESS: Yes, there was an occasion when a vehicle came into the checkpoint and they were waving their arms out of the window holding a white flag. We stopped the vehicle. We got the occupants out of the vehicle. I noticed that there was a body wrapped up in white linen in the back of the -- in the back seat. The young, or the father of the child made a motion like he was digging in the earth, so I understand that the child had obviously passed away and they were going to bury the child.

I then told them that we needed to get the child out so that we could examine, which he understood. I called the corpsman over which is the medical personnel that's assigned to us. The corpsman takes care of all of our medical needs if we're wounded in combat. The corpsman and I both began to examine the child and noticed that the child was still alive, but was expiring rather quickly.

They had wrapped the linen very tightly around the child's throat. I became very angered at the situation and I asked the man why he had done this and he said that the bombs had killed the child. The area had been bombed previously before we got there by incoming Marine and Navy air. The child through all of our attempts at trying to revive him failed and the child expired there in front of us and the man kept telling us that the bombs were exploding around his house and it caused the child to expire.

The corpsman evaluated the dead child and had stated to me that it was more than likely internal damage had been done to the child. So we let the vehicle pass through our checkpoint so that they could bury their dead.

COUNSEL: You had mentioned this is a child. Would you be able to tell us approximately how old the child was?

WITNESS: Under the age of seven.

COUNSEL: How long were you at that checkpoint?

WITNESS: Less than 24 hours.

COUNSEL: Did you establish other checkpoints?

WITNESS: Yes.

COUNSEL: And did you establish numerous checkpoints or just one other or?

WITNESS: The next checkpoint, major checkpoint, that we had established for a long period of time came in an area called the Rasheed (ph) Military Complex which is south of the city of Baghdad.

COUNSEL: And perhaps you could describe for us how you did set up this specific checkpoint? First of all, was it done in accordance with the standard operating procedure?

WITNESS: Yes, it was.

COUNSEL: Were there any significant deviations due to area conditions or anything of that nature?

WITNESS: There was a significant deviation done because of the incoming intelligence reports that we were receiving via the radio. These intelligence reports were telling us that the Fedayeen and the Republic Guard were mounting suicide and terrorist attacks against the American and ally forces and that they had taken off their uniforms and had donned civilian attire and basically the city of Iraq was -- or the city of Baghdad was under a constant guerrilla style war fighting and also that insurgents from Syria and Turkey and Iran had been stealing police cars and ambulances and loading them with suicide explosive bombing material and running them into Marine checkpoints.

COUNSEL: So, how did that intelligence affect how you set up this checkpoint?

WITNESS: It totally changed our mindset on how we had to control that area and how we had to be careful of any type of oncoming traffic coming into that checkpoint and not allowing them enough time or space to detonate any type of suicide bombing material.

COUNSEL: So how did you set up this checkpoint then physically?

WITNESS: What we did, we basically drew imaginary lines on the highway. We had what was known as a green zone and a red zone. This green zone was our opportunity to give a verbal and then an actual warning shot before the vehicle came into the red zone. Once the vehicle reached into the red zone and failed to comply with our warning shot then we discharged our weapons into the vehicles.

COUNSEL: Could you describe a little bit more, was it a small country road? An eight lane highway? What was the road like there?



WITNESS: To give you an understanding it's important to understand the architecture and how this road was laid out. The Rasheed Complex is a military compound. We were actually physically inside the military compound. To the left was a 13 foot wall or a 13 foot concrete wall with consantina (ph) wire going across.

COUNSEL: What's consantina wire?

WITNESS: Consantina wire is barbed wire used to keep out any type of intruders and the same was on the right. It was a four-lane highway going to, going fro. In the centre of the road was a divider. At the end of the road was a bridge, an expansion bridge that you could either hang a left or hang a right and to go actually up onto the highway. Below the bridge there was a group of protesters that were sitting on the curb below the bridge facing us. In the back of the bridge there was another group of protestors, approximately six, that were yelling and shouting, telling us that Saddam was good and in back of that was a suburban area, suburban housing area.

COUNSEL: Okay. You're now describing, as I take it, an incident involving a demonstration. I had understood that there was a previous incident and I wonder if that was at the same place or some other place? You told about setting up a green zone and a red zone.

WITNESS: Yes.

COUNSEL: Were there any vehicles, military vehicles involved?

WITNESS: At these checkpoints?

COUNSEL: Yes.

WITNESS: Yes, our Humvees. We had our Humvees in a staggered formation to basically give us -- in a staggered formation. One Humvee here, one Humvee here and so on and this allowed us a direct access to open fire with our weapons.

COUNSEL: Now, did the checkpoint -- was there any barrier that could be placed over the road to ensure that all vehicles would have to stop?

WITNESS: No, we had no field expedient barriers to place out front.

COUNSEL: So what I understand is a series of Humvees parked alongside the road and then an area that's a green zone and then a red zone, am I right?

WITNESS: That's correct, yes.

COUNSEL: Okay. And what about the possibility of putting a vehicle across the road at the end, the end of the green zone or something like that? Was that done?

WITNESS: No, because by that time if we had actually -- the first vehicle was at the very edge of the red zone. So we had given approximately a 150 to 200 metre radius depending on the location and we were able to give that much leeway. To give you an example it was approximately 100 metres of green and 100 metres of red.

COUNSEL: And were there any signs in either English or Arabic or even French telling the people what you were doing? That they were supposed to stop?

WITNESS: Yes, we had placed out placards that Marines had made in mass quantity while we were in Kuwait and I'm not even sure if the Arabic writing that was on the placards was correct and telling them to stop or hold because they were done in mass production by Marines.

COUNSEL: Okay. So you, yourself, don't know what they said?

WITNESS: No.

COUNSEL: How many vehicles came into this checkpoint during the period that you were operating it?

WITNESS: Three.

COUNSEL: Three vehicles came into the checkpoint. Did anything happen to these vehicles?

WITNESS: Yes. All three of the vehicles we discharged our weapons into. When we discharged our weapons and went to search the vehicles for any kind of propaganda

linking them to a suicide mission or linking them to any kind of insurgents we didn't find -- we found no weapons and no suicide bombing material.

COUNSEL: Okay. So of the vehicles -- first of all we're talking about what period of time that you operated this checkpoint?

WITNESS: It was the end of March.

COUNSEL: But two hours? Twenty-four hours? Forty-eight hours?

WITNESS: It was 17 hours.

COUNSEL: And so how did it happen that you ended up discharging your weapons into those vehicles?

WITNESS: The vehicles would come into the green zone. We would give an audible halt signal which is basically an international signal within the American Armed Forces. This means halt or simply with your hand straight out meaning stop and then we would discharge our weapons into the air firing a warning shot. If the vehicle didn't stop and it proceeded into the red zone then we would discharge our automatic machineguns into the vehicles.

COUNSEL: And how many of the cars stopped?

WITNESS: All of them stopped after we discharged our weapons.

COUNSEL: Yes, I'm quite sure of that. How many of them -- did any of them stop before you discharged your weapons?

WITNESS: There was an incident where we had a young Iraqi man that did stop his vehicle and as he was exiting out of the vehicle we were still firing at him and he jumped out with his hands up and we continued to discharge our weapons and we killed him.

PRESIDING MEMBER: Who is the "we" please?

CAT-1. WITNESS: I'm sorry. My platoon,

platoon? PRESIDING MEMBER: Who in the

WITNESS: Myself, Lieutenant Shay (ph), Kevin Shay, Howard, Lance Corporal Howard, PFC Martins, Sergeant Westerman (ph), Sergeant Cox with the Snipers, Sergeant Smith with the Snipers. Excuse me, Lance Corporal Smith. That's all I can think of off the top of my head.

PRESIDING MEMBER: So you all discharged your weapons at the same time when the vehicle entered the red zone?

WITNESS: Yes, sir.

PRESIDING MEMBER: And was there a warning shot fired before you discharged your weapons?

WITNESS: Yes, sir.

PRESIDING MEMBER: And you described standard operating procedure before which was that if the vehicle didn't stop after the warning shot and continued to enter into the red zone that your orders were to discharge your weapons, is that right?

WITNESS: Yes, sir.

COUNSEL: The vehicles, I guess we'll deal with the guy who got out of his vehicle in a moment, but the other vehicles that came in you're telling me that they didn't stop until you stopped them?

WITNESS: That's correct.

COUNSEL: And were you able to see how many people were in these vehicles?

WITNESS: Yes.

COUNSEL: And how many people were in the vehicles?

WITNESS: That day four.

COUNSEL: There were four people in?

WITNESS: In the vehicles that came up, one, two, four.

COUNSEL: Okay. And I'm getting a little lost here, but were there people who were passengers in any of the vehicles or was it only the driver?

WITNESS: No, it was only the driver except in one vehicle, a Toyota Corolla, had an additional passenger.

COUNSEL: All right. And do you have any sense that when they went into the red zone, do you have any sense of how many bullets were fired into these vehicles?

WITNESS: We had -- in the Marine Corps we have three different types of rating systems when you discharge your weapons. You have a cyclic, a sustained and a rapid. A sustained being the slowest, rapid being the second and cyclic being pull the trigger and you don't stop. We fired at a cyclic rate.

COUNSEL: So can you give me a sense of -- I know you can't be exact, but how many bullets were there sent into these vehicles?

WITNESS: At least 500.

COUNSEL: Per vehicle?

WITNESS: Per vehicle.

COUNSEL: You said that in your recollection there were four cars that day with four people. Did you operate the checkpoint on the next day also?

WITNESS: No, we were relieved of command that afternoon.

COUNSEL: Okay.

PRESIDING MEMBER: Is there any reason for that?

WITNESS: Yes, sir. Sorry, there's five. With a passenger it was five total that day. So it was four vehicles and one of the vehicles, a Toyota Corolla, had a passenger, so five total.

PRESIDING MEMBER: And was there any reason that you were relieved of command that afternoon?

WITNESS: Yes, sir. When this was the last vehicle, the gentlemen in the Toyota pick up truck, on the right side of -- or on the right side of the road that we were at Lima (ph) Company was actually inside the compound watching what was going on. Lima company was our backup, our backup plan. If we became overran Lima Company could get there in a rapid fashion. Lima Company was watching everything that was going on through binoculars or standing on top of the Amtrax, so they were keeping a good tally on everything that was going on that day.

When the gentleman jumped out of the vehicle with his hands up and we continued to fire the Company Gunnery Sergeant, which I do not remember his name, for Lima Company, a Company Gunnery Sergeant is an E-7 in the Marine Corps. Come running over to our pause and began yelling at my Lieutenant and I saying, you just shot a guy with his hands up. I've already notified the Battalion Commander, Lieutenant Colonel Belcher, and he is on his way and you're to stand down as of now and Lima Company is coming in to take over your pause and you are to fall back.

COUNSEL: Does that answer your question?

PRESIDING MEMBER: Yes, excuse me. And was part of the operating procedure that if someone went through the red zone and exited the car with his hands up that you were not to fire?

WITNESS: You're not supposed to fire on an unarmed person and while the Geneva Convention, if he's giving himself up that you're not supposed to fire.

PRESIDING MEMBER: Well, what are you supposed to do?

WITNESS: You're supposed to take that person into custody.

PRESIDING MEMBER: But how do you know whether that person or the car is booby trapped?

WITNESS: We didn't know until we actually did a physical examination of all the vehicles that we shot into and all the vehicles that we shot into we found no explosive devices, we found no propaganda to link them to any type of insurgents.

PRESIDING MEMBER: I'm just trying to understand what the standard operating procedure is. On the one hand if someone goes through after a warning shot you are to commence firing?

WITNESS: Yes, sir.

PRESIDING MEMBER: On the other hand you're telling me that if they go through the red zone and come out and raise their hands up that you're supposed to take them into custody?

WITNESS: Yes, sir.

PRESIDING MEMBER: And inspect the car. The two don't appear to be consistent to me.

WITNESS: Yes, sir. It was very inconsistent with me as well, sir.

PRESIDING MEMBER: On the one hand it appears that you're trying to avoid the possibility of that person harming people at the checkpoint by either crashing into it or by it being a suicide bomber, et cetera, and on the other hand you're protecting the person and at risk to yourselves?

WITNESS: Yes, sir. I think it's important also that you understand not only the intelligence reports that we were receiving, but the propaganda that was being given to the Iraqis. We had taken over a radio station in Iraq that were blasting propaganda. The propaganda that we were telling the Iraqis at that time was keep the schools open, go about your every day normal routines, keep the water treatment

plants open, the power, the water is going to be turned on shortly, we're here to establish a democracy in Iraq. If you do not pose an imminent threat to the American or allied forces then nothing is going to happen or nothing is going to happen to them and we even told them through this propaganda that they were even allowed to have a weapon as long as they didn't point it at the American troops.

So we were being told that -- this isn't speculation because this is the mindset that all of my Marines felt. With the intelligence reports that we were receiving via radio it was giving us the mindset that everybody in Iraq, regardless of age, nationality, if you were in Iraq you were a potential terrorist or they were a potential terrorist, the Iraqi people. So, the Iraqis were receiving propaganda telling them that we were there to provide a democracy and to overthrow Saddam Hussein and to help liberate and to go about your every day normal routines.

PRESIDING MEMBER: I'm still back at the checkpoint. That's where I am. Me. I take it that someone who would drive through the red zone and not stop at a warning shot would be a potential threat?

WITNESS: Yes, sir. Then you had to look at what a warning shot means to the Iraqi people.

PRESIDING MEMBER: Well, you said there were signs in Arabic?

WITNESS: Yes, sir.

PRESIDING MEMBER: The signs told them to stop?

WITNESS: Yes, sir.

PRESIDING MEMBER: You mentioned that none of the cars stopped, the three or four cars stopped?

WITNESS: That's correct.

PRESIDING MEMBER: And do you have any idea as to why that's the case?



WITNESS: Yes, sir. I didn't find this out until during the summertime. I was in Boston at a convention. I was telling my story. A gentleman stood up during question and answer time and said, why didn't the Iraqis stop, and I told him I don't know, that's a good question. That's something that's plagued me every waking moment of the day.

After my speech a Muslim lady came up to me and she said, can you explain to me what you were doing again? So she goes, how did you give them a visual signal, and I stuck my fist in the air and she said, okay, well in Iraq that means solidarity, and she said what else did you do? I said, I put my hand up like this. Well, in Iraq or even in America that could mean hello and I said well, what about the warning shot and she said what do you see Saddam Hussein doing when you turn on the television or you see file footage of Saddam Hussein, he's firing a weapon in the air. Then she went on to explain to me that Iraqi culture they fire weapons in the air to celebrate.

So, I don't know if the Iraqi people thought that we were celebrating their newfound democracy or not, but I do know that we killed innocent civilians.

PRESIDING MEMBER: And did you tell her about the sign in Arabic?

WITNESS: Yes, sir.

PRESIDING MEMBER: And what did she say about that?

WITNESS: She said who painted the signs and I said Marines painted the signs. She asked me if they knew how to read or write the Arabic language and I said no.

PRESIDING MEMBER: So, are you saying that the signs didn't tell in Arabic the people to stop?

WITNESS: I'm saying that the potential that they could be saying something completely different is a concern.

PRESIDING MEMBER: Well, you said these were made in ---

WITNESS: Mass production.

PRESIDING MEMBER: --- mass productions. If it said something different would that not come to light?

WITNESS: None of my Marines knew how to speak Arabic. So I don't know. We were going off of a template that was written by a Kuwaiti person in Kuwait telling us what to write and how to make the sign.

PRESIDING MEMBER: Okay. Mr. House?

COUNSEL: Thank you. Can you estimate for us in terms of all the checkpoints that you operated how many people were shot to death by your unit?

WITNESS: Thirty plus over a 48-hour period.

COUNSEL: You've told us about four cars which had something like -- I may be guessing, five or six people in total, is that right?

WITNESS: Yes, sir.

COUNSEL: And so how do the rest come into the picture?

WITNESS: The demonstrators that were in the back of the bridge, I know that we hit them. The reason I know we hit them when we did a reconnaissance of the area after we discharged our weapons it's part of the responsibility of the Lieutenant and the Staff Sergeant to make sure that the Geneva Conventions are applied. The Lieutenant wanted to do a reconnaissance of the area of the protesters that were just shot.

COUNSEL: We haven't gotten to that. So let's talk about the protest situation. Was that at the checkpoint or was that at some other place?

WITNESS: That was at the checkpoint.

COUNSEL: Okay.

WITNESS: At the Rasheed.

COUNSEL: Was it the same day that the four or five people died?

WITNESS: Yes, sir.

COUNSEL: Okay. What happened? What happened at the demonstration?

WITNESS: When we first pulled into the Rasheed Military Complex there was a Marine Abrams tank that was parked to the entrance of one of the compounds on the right hand side. We pulled in, we put our vehicles in the staggered formation and I immediately went out, jumped out of my vehicle and went over to talk to the Marine tanker. I asked him what was going on and he said that he was looking through binos, binoculars. I asked him what was going on and he said they're having a peaceful demonstration.

I looked down the road and I noticed that they had a picture of what appeared to be a Muslim cleric and a picture of Saddam Hussein. They were dressed in the traditional kophia (ph) for the Iraqi or Muslim people and they were chanting in Arabic and then in English saying, Go Home. I looked -- I asked the Marine tanker if any of them had any weapons and he said no. I went back and started checking the lines to make sure ---

COUNSEL: What are the lines?

WITNESS: The line. It's just -- it's a slang word for vehicles. You're checking the lines. You're checking the vehicles. You're checking the men to make sure that they're in the position that they're supposed to be in. That they have their weapons aimed at the proper direction. That they have the machinegun head, space and timing set correctly.

So after checking the lines I went to the rear of my vehicle. I opened an MRE. As soon as I tore open the package of the package of the MRE ---

COUNSEL: Sorry, but I don't think everyone knows what an MRE is?

WITNESS: An MRE is a Meal Ready to Eat.

hear that?

MINISTER'S COUNSEL: Sorry, I didn't

Eat.

PRESIDING MEMBER: A Meal Ready to

MINISTER'S COUNSEL: Thank you.

either an MRE or a meal.

COUNSEL: So we could call that

WITNESS: Or a meal, yes, sir.

COUNSEL: Yes, go ahead?

WITNESS: As soon as I opened the package there was a stray gunshot that went above our heads. I looked up and immediately went to the left side of my vehicle into the open and my Marines were already discharging their weapons towards the protesters. I unslung my rifle and began to fire as well, firing at all four of the protesters.

COUNSEL: Okay. And what happened?

WITNESS: After we ceased fire the Lieutenant wanted to do a reconnaissance of the area. I understood what he meant by reconnaissance. He wanted to make sure that the kill that we just performed was a clean kill. Part of the responsibility of being a platoon Commander or platoon Sergeant is to ensure that the Geneva Convention rules of engagement and the standard operating procedures are applied.

COUNSEL: Okay. And what was the result of your investigation? Were there deaths or injuries?

WITNESS: All four of the protesters expired.

COUNSEL: Do you have a sense of how many bullets were fired at the protesters?

WITNESS: Two to 500.

PRESIDING MEMBER: And was it ever determined where that shot came over your head from?

WITNESS: No, sir. Never determined.

PRESIDING MEMBER: Do you believe that it came from -- let's start with do you believe that it came from any of your soldiers?

WITNESS: I have no idea, sir. I can't speculate. I have no idea.

PRESIDING MEMBER: Well, did you know what direction it was coming from?

WITNESS: It came from -- it came from our right to the left going over our heads.

PRESIDING MEMBER: And ---

WITNESS: Not direct. We were looking down the road this way. It came from the right to the left.

PRESIDING MEMBER: And where were the protesters?

WITNESS: Dead ahead.

PRESIDING MEMBER: So, do I take it from your answer that you do not believe that the shot was fired from the protesters?

WITNESS: I do not believe that the shot came from the protesters.

PRESIDING MEMBER: But you don't know where it came from?

WITNESS: No, sir. Also I would like to add that when we did the reconnaissance of the area and we looked at the bodies of the protesters none of them had any weapons.

COUNSEL: Were there other people in the area who were injured as a result of this action by your squad?

WITNESS: Yes, sir.

COUNSEL: And tell us about that?

WITNESS: We actually went up onto the highway overpass. We turned around on the highway and drove back down towards the Rasheed. As our vehicle made its way down the off ramp I noticed an Iraqi hiding behind a concrete pillar. I told my driver to stop. I was standing in the back of the Humvee.

I told my driver to stop and I pointed my weapon at him and I motioned him away from the pillar. When he came from behind the pillar he had his hands up. I immediately went to the mike. We had a personal intercom radio system that we could talk to each vehicle without actually utilizing a military radio.

I went over the mike and I said don't shoot, don't shoot, he's unarmed. When the gentleman stepped away from the pillar I looked down and I noticed that half of his foot had been shot off and that the only thing that was holding it on was tendons. I motioned my rifle again and he ran off in the direction, or hobbled off in the direction of the suburban housing area.

COUNSEL: Now, what I've understood you to say so far is that during the first 17 hours at your checkpoint -- excuse me, Mr. Member, I just need to get a bit of water. Thank you. What I understand is that during the first 17 hours at your checkpoint four to five people were killed who you believe to be civilians, is that right?

WITNESS: Yes, sir.

COUNSEL: And when you fired on the demonstration there were another four, is that right, who were killed?

WITNESS: Yes, sir.

COUNSEL: But you've indicated I think in response to one of my questions that you believe your unit killed 30 plus civilians ---

PRESIDING MEMBER: Over 48 hours.

COUNSEL: Pardon me?

PRESIDING MEMBER: Over 48 hours.

COUNSEL: Over 48 hours. So, I wonder if you could tell us about the rest of the killings?

WITNESS: Yes, sir. In order to save time and not being redundant, the vehicles, the four vehicles that had come into our checkpoints that day, we discharged our weapons. Each time we found nothing to link them to any type of terrorist activity. No weapons in the car, no propaganda inside the car to link them to Fedayeen or Republican Guard or any type of insurgents.

PRESIDING MEMBER: Okay. Sergeant Massey, you've indicated that. That's not the question that Mr. House asked you. He asked you how the others were killed or died. You've mentioned that in 17 hours there were people killed at the checkpoint, four or five, then there were the protesters, four protesters. So the question is how were the others killed?

WITNESS: There were stray bullets that I know hit some of the Iraqis that were behind in the civilian area, the suburban area. I can see when we opened fire in the background that we must have hit at least six. They were all wearing the traditional kophia and I noticed that they were turning red. They probably -- well, I know they did. They expired somewhere else inside the suburban area.

The next day is when the rest of the continued civilian casualties happened. This happened in Baghdad near the Baghdad stadium on a super-highway, which was three lanes on both sides of the highway going to, going fro. The next one, the next incident was an older Iraqi man driving a large Mercedes dump truck. It was one shot that fatally wounded him through the windshield. We pulled the body out. We examined the truck, no weapons, nothing to link him to any type of terrorist activity.

PRESIDING MEMBER: So why was he shot?

WITNESS: He was shot because he went into the red zone.

PRESIDING MEMBER: Okay. This is someone else at the checkpoint then?

WITNESS: Yes, sir.

COUNSEL: So, what I understand you to say is that the next day there was a similar checkpoint and similar rules about stopping and so on that we heard before, is that right?

WITNESS: Yes, sir.

COUNSEL: And you said that something like 30 plus people were killed in all. Were the rest killed at that checkpoint?

WITNESS: The remaining were killed at the checkpoint the next day.

COUNSEL: All right. And can you describe for us, was it only men? Was there a mix? How did that happen?

WITNESS: There was -- after we were relieved of duty, this was while we were still at the Rasheed Complex, Lieutenant Colonel Belcher came in and I could tell that he wasn't very happy. He pulled my Lieutenant, Lieutenant Shay, off to the side in a private conversation and I didn't hear the conversation, but I could see that it wasn't going very well by the tone in the Colonel's voice. He was being very loud, but I couldn't distinctly make out what he was saying.

COUNSEL: But I think my question was about the mix ---

WITNESS: Yes.

COUNSEL: --- in terms of men and women and children in so on. In the other vehicles, you've told us about four to five people during the first 17 hours and now you've indicated that there were a number of others ---

WITNESS: Yes.

COUNSEL: --- subsequently. So, I wonder what the mix was? If you could tell us how many cars, approximately how many people?



WITNESS: Yes. The mix, 85% -- I would say 85% male, five per cent children and the rest being female.

COUNSEL: Okay. And were there more than one to a vehicle, or was it all one to a vehicle?

WITNESS: The casualties, the females and the children casualties happened while we were packing up our gear and being relieved of the command.

COUNSEL: Okay. So explain that to me?

WITNESS: After Lieutenant Colonel Belcher came into the area order and ordered us to fall back in that we were relieved, we were packing up our gear when another vehicle sped into the area and had approximately three women and a child in the car. Lima Company opened fire on the vehicle with the Colonel present and killed the occupants.

COUNSEL: Were there any males in that vehicle?

WITNESS: No, sir.

COUNSEL: And are you aware of whether any weapons or explosives or other contraband was found?

WITNESS: No, sir.

COUNSEL: You're not aware or there wasn't?

WITNESS: No, there was none.

COUNSEL: Were you present at the time that this occurred?

WITNESS: Yes, sir. We were still there before we'd left.

COUNSEL: Okay. You said that you and I believe your superior were relieved of command that day, is that right?

WITNESS: Yes, sir.

COUNSEL: And that was because you had killed someone waving a white flag, is that right?

WITNESS: No, sir. They had come out of the vehicle with their hands up.

COUNSEL: Okay. How long was it before you were active again?

WITNESS: Within a seven hour period.

COUNSEL: So you were relieved of your command for a total of seven hours, is that right?

WITNESS: Yes, sir.

COUNSEL: Did you suffer any other consequences in terms of discipline or anything of that nature as a result of what you had done?

WITNESS: No, sir.

COUNSEL: Do you know if anyone suffered any consequence as a result of the numerous civilians who were killed during the course of these two days?

WITNESS: No, sir.

COUNSEL: You don't know or ---

PRESIDING MEMBER: Mr. House, if I could? I really don't mean to interrupt you, but I'm still back to the issue of what exactly the rules of engagement were. I mean, if there's a shot fired in the air and before anyone can get out of the car do the rules of engagement allow you to fire on the car?

WITNESS: Yes, sir.

PRESIDING MEMBER: The car continues to speeds towards you. Do the rules of engagement allow you to stop the car by shooting at it?

WITNESS: Yes, sir.

PRESIDING MEMBER: Well, how is it that people got out of the car with their hands up?

WITNESS: This was a very fast, young Iraqi man. While we were firing the vehicle was still rolling. He opened up the door of the vehicle and was exiting out while we were firing.

PRESIDING MEMBER: Okay. And then is another rule of engagement then that if someone leaves the car with their hands up at that point you stop firing?

WITNESS: That's correct. Then he becomes a POW.

PRESIDING MEMBER: And that one of you is required to go and take him into custody? One or more of you?

WITNESS: We are all required.

PRESIDING MEMBER: All required?

WITNESS: The entire CAT-1, yes, sir.

PRESIDING MEMBER: But what happens if he's a suicide bomber? What happens if he's carrying a bomb on him and you all go together at the same time?

WITNESS: What I mean by all of us, sir, is it is a standard operating procedure that all Marines, if a man comes out - gets out with his hands up, it is a requirement within standard operating procedures of Combined Anti-Armour Team 1 that we all take this individual into custody and then we treat him as a POW.

PRESIDING MEMBER: Well, no, I understand that he has to be taken into custody and treated as a POW. What I don't understand is why all of you would be exposed to the risk of doing that?

WITNESS: Because it's a team effort, sir.

PRESIDING MEMBER: So the team lives and dies together? If the person has got a bomb on him and detonates it when all of you are there?

WITNESS: Well, I think you're misunderstanding what I'm ---

PRESIDING MEMBER: Well I'm trying to understand. When you say you're all required to do it?

WITNESS: We're all required by the Geneva Convention. We have a standard operating procedure on how we take this individual down. It doesn't require the entire CAT team to take this individual down.

PRESIDING MEMBER: That's what I'm trying to understand.

WITNESS: Yes, sir.

PRESIDING MEMBER: So it doesn't require the entire team to do that?

WITNESS: No, sir, but we all are required to act by the Geneva Conventions and the rules for acquiring a prisoner of war.

PRESIDING MEMBER: And do you have the standard operating procedures with you?

WITNESS: No, sir.

COUNSEL: Mr. Member, just for your information, in the materials, and I can find this for you, there's an indication that a fair number of them are classified, so I'm trying to find that for you if it becomes relevant ---

PRESIDING MEMBER: Well, it seems to me that -- I mean, I think it is relevant. I certainly would like to know exactly what the procedure is because it seems to me that -- from Mr. Massey's testimony -- do I call you Sergeant Massey or Mr. Massey?

WITNESS: No, sir. No, sir.

PRESIDING MEMBER: You're no longer a Sergeant. From Mr. Massey's testimony that there appears to be some inherent contradiction between beginning firing on the car as soon as it enters the red zone and then stopping firing when people put their hands up. The number of rounds of ammunition that Mr. Massey indicated are fired at this vehicle, I mean, it's hard to believe that marksmen would -- that someone would actually be able to get out of the car and put their hands up. In any event I think it would be extremely helpful if we could see exactly what the operating procedure is.

COUNSEL: I'll certainly take that under advisement. I don't know if I'm going to be able to find that for you quickly, but I will look for it.

WITNESS: Sir, if you would like I could actually demonstrate to you so that you have a better understanding of how fast this incident happened. You're driving down the road. If I'm sitting -- I've got my hands on the wheel. The Marines are directly in front of me. They fire a warning shot. As soon as he hears that first burst of round he's opening the door. He's only going 25 to 35 miles an hour. That's not too hard to do. I could do that and I'm 33 years old. He was a young Iraqi.

PRESIDING MEMBER: So he got out after the warning shot but before the ---

WITNESS: When he heard the first burst of ammunition he jumped out. He was already hit, but a 556 round when it enters your body it takes awhile. It tumbles. It could hit you in your chest and go out your big toe.

PRESIDING MEMBER: Okay. Well, I certainly would like to see the standard operating procedure because I understand that Sergeant, that Mr. Massey is making the point that ultimately when the vehicles were checked and the people were checked that there were no weapons that were found and that they were innocent civilians. That's the effect of his testimony. I think the question though remains what was the operating procedure and was the operating procedure followed and then we can deal with the issue of -- we can hear from you on whether the operating procedure was appropriate or not.

WITNESS: There's another -- I'd like to comment. The U.S. Army, U.S. Marine Corps has just now

adopted a new doctrine because of these situations that have arose. That new doctrine just became available about two months ago and it's a new standard operating procedure for personnel within Iraq because the old standard operating procedure was not working.

PRESIDING MEMBER: Not working because innocent civilians were being killed?

WITNESS: I can't speculate on their exact reasons why, but in my opinion I think that's why.

PRESIDING MEMBER: Okay. And how -- do you know how the new operating procedure differs from the old operating procedure?

WITNESS: I'm not going to speculate, sir. It is in black and what. What I read from it, it pretty much gives that platoon or squad of Marines that is in that situation at a checkpoint, it gives them without a question or a shadow of doubt in their mind that if they fire at that checkpoint they are within every right, regardless of, if it's a civilian or not. That's what I read. That's the interpretation that I read.

PRESIDING MEMBER: If who fires at the checkpoint?

WITNESS: The Marines that are at the checkpoint. When they fire, this new standard operating procedure that the Army and Marine Corps has made, the way that it is written, like I said, I'm not going to speculate, but when I read it the meaning that I got from it was that if you fired your weapon at a checkpoint and then it later found out to be that they were civilians you were still within the right.

PRESIDING MEMBER: Well, what if they weren't in the red zone?

WITNESS: If they weren't in the red zone ---

PRESIDING MEMBER: Yes, if they weren't in the red zone and the Marine or the soldier shot a car, what would happen?

WITNESS: Then that's moot. If ---

PRESIDING MEMBER: That's contrary to operating -- that would still be contrary to operating procedure?

WITNESS: Yes, sir.

PRESIDING MEMBER: Okay. And does it still require the firing of a warning shot?

WITNESS: From what I read, yes. Standard operating procedures can differentiate depending on the mission. It's a guideline, but the thing about a guideline or a standard operating procedure you can never take away, but you can always add. So if the mission dictates that you add something it might be contradicting to the actual statement, but if you add something it's okay because mission dictates at that time. The mission that you're doing. So if you're in an area for example that doesn't have the availability to set up a roadblock, but you still have to control, then you operate on what's available to you at that time.

PRESIDING MEMBER: But presumably you wouldn't have an operating procedure that would have as its first response to shoot the people?

WITNESS: I'm sorry, repeat that?

PRESIDING MEMBER: Presumably you wouldn't have an operating procedure whose first response would be to shoot the people?

WITNESS: I have to disagree with you. That's ---

PRESIDING MEMBER: Well, can you tell me about an operating procedure that says that for example, you're not in a red zone, no warning shot is fired, you're still allowed to shoot someone?

WITNESS: There was a situation that just happened recently in Fallujah where a young Marine came upon a groaming (ph) dead, or sorry, expiring Iraqi and decided to put a round in his skull.

PRESIDING MEMBER: That's the one that's referred to, Mr. House, in the materials and the one for which the U.S. is investigating and has promised an investigation, or a report by the end of the year?

COUNSEL: I presume that is the instance that this gentleman is referring to, sir.

PRESIDING MEMBER: This is the one, sir, that was caught on camera?

WITNESS: Yes, sir. Did that happen while I was in Iraq? Yes, it did.

COUNSEL: Well, can I? Maybe I should follow that up.

PRESIDING MEMBER: Yes.

COUNSEL: If that particular thing didn't happen while you were in Iraq would that particular soldier and that particular deceased person?

WITNESS: Right, right. Did I hear of cases of this happening? Yes, that's what I mean by did it happen in Iraq while I was there. I heard individual cases from other Marines of witnessing this and it's still been the standard SOP up until they were caught on video.

PRESIDING MEMBER: SOP, Standard Operating Procedure?

WITNESS: Yes, sir.

COUNSEL: Okay. Well, maybe you could -- this is -- maybe you could tell us what you mean? How is it a standard operating procedure to do something like what was caught on videotape? What do you mean?

WITNESS: Well, it's -- we have a saying in the Marine Corps. It's MORTA (ph). You know, if you become a mobster, part of a criminal organization, and I'm not saying that the Marine Corps is a criminal organization, I'm just saying the MORTA that you or the code of silence that you take while you're in the Marine Corps is much like that of an organized crime family.



COUNSEL: Why do you say that?

WITNESS: For example, what happens on the battlefield stays on the battlefield.

COUNSEL: Okay. Now, you've said that -- you've almost recited that. Are you saying that's your opinion or what?

WITNESS: No, I've heard that from day one that I entered the Marine Corps.

PRESIDING MEMBER: I heard that about Los Vegas too, by the way.

WITNESS: What happens -- it's a standard American practice, yes sir.

PRESIDING MEMBER: Yes.

COUNSEL: What happens on the battlefield stays on the battlefield?

WITNESS: Yes, sir.

PRESIDING MEMBER: So that's the code of silence that you're referring to?

WITNESS: Yes, sir.

COUNSEL: All right. Now, I should probably get back to what my prepared questions were, but I'm just going to ask you a bit more about, -- you talked about ---

PRESIDING MEMBER: Okay, Mr. House, I'm just wondering whether after you ask those questions we should a break? We've been going for ---

COUNSEL: Yes, okay. I'll just try to pursue this one little area.

PRESIDING MEMBER: Of course, yes.

COUNSEL: You talked about an instance with a young Marine that was basically killing someone

who was lying on the floor I think in a mosque and you said that that didn't depart from standard operating procedure. I'd like you to explain what you mean by that?

WITNESS: If you're on the battlefield there are certain times and certain incidents depending on what type of day you're having that you could take out your angers or your aggression on an enemy combatant. They might be expiring and the proper thing to do is to then put them into a direct POW status, but Marines have been known, and I have witnessed and heard of Marines violating and putting rounds into enemy combatants that are expiring.

COUNSEL: All right. I think I propose to go on to another area and perhaps return to my original ---

PRESIDING MEMBER: Sure. You know, I'm sorry that I intervened, but I wanted to understand ---

COUNSEL: It's all right.

PRESIDING MEMBER: --- more about what exactly the standard operating procedure was at a checkpoint ---

COUNSEL: I understand.

PRESIDING MEMBER: --- in light of his testimony and it would have been asked in any event. So let's take shall we say another 15-minute break and, Mr. Massey, I'd ask you not to talk to Mr. Hinzman during the break.

WITNESS: Okay.

PRESIDING MEMBER: Because you're still a witness here.

WITNESS: Yes, sir.

PRESIDING MEMBER: Thank you very much and we'll see you then at 4:00. Okay, we're back on record after our afternoon break. Mr. House is continuing his examination of the witness who he has called on behalf of Mr. Hinzman and his family, Mr. Massey.

WITNESS: Yes, sir.

PRESIDING MEMBER: Mr. House?

COUNSEL: Thank you. Before we leave this checkpoint situation, Officer, or Mr. Massey, could you explain to us what you were supposed to do, what was the purpose of the checkpoint, what you were doing there and what you were supposed to do if someone actually did stop without being shot to death?

WITNESS: We were -- standard operating procedure is to clear the vehicle of all the occupants, search the vehicle, look for any type of improvised explosive devices or anything, or any type of intelligence that could give us who, what, when, where or what the enemy was doing.

COUNSEL: What about investigating the individuals themselves? Was that also to be done?

WITNESS: Yes, sir. We were to personally interrogate the occupants of the vehicle and it was up to our individual judgement on whether or not we needed to send this person to a higher command within the human intelligence chain or if we didn't feel that they felt any type of threat or that they were doing what they said that they were doing then we let them go.

COUNSEL: Okay. What is this human intelligence chain that you're talking about?

WITNESS: The human intelligence, or the HUMAS (ph), is the intelligence group that they have interpreters that physically come in to interrogate that individual and they are readily available on the battlefield so you could call them, they actually have an interpreter that would come out and speak to them and then once you turn them over to the HUMAS or the intelligence it's out of your hands. Basically we just left the situation and then turn it over to them.

COUNSEL: All right. And what -- if the human intelligence determine that the person was a person that they wished to interrogate at length, what happened to the person?

WITNESS: They would take that individual to an undisclosed location to interrogate them further.

COUNSEL: Now, maybe I'll just end with this. When the person was to be stopped at first, how was the interrogation or the questioning done before you decided whether to send them up the chain to the human intelligence group?

WITNESS: One of the key indicators if they had any type of -- "they" meaning the Iraqis, if they had any type of dealings with the Saddam government. There were clear indicators. They were usually dressed in Western style clothes, Armani, anything with any type of name brand clothing, if they were neatly manicured and they weren't wearing the traditional Iraqi attire. Generally they wore gold chains or gold bracelets.

COUNSEL: So these were the things that you were told to be looking for?

WITNESS: These were just common sense attributes that we, as Marines, are trained to notice.

COUNSEL: Okay. And whose decision was it, would it have been, to turn someone over to the intelligence unit.

WITNESS: It would have been my decision or the Lieutenant's decision.

COUNSEL: Okay. And am I correct that none of the people that entered your checkpoint survived to be turned over to intelligence?

WITNESS: That's correct.

COUNSEL: Now, was there another incident in your Baghdad statement that you witnessed?

WITNESS: Yes. There was an incident, I call it the Red Kia incident, Kia meaning the Kia spectra of the Korean made car-company. This car sped into our checkpoint area. It had four occupants in the vehicle. It failed to stop. We discharged our weapons. Three of the occupants were badly wounded. The driver miraculously was unscathed and we immediately ran over. By this time we had stopped the overkill. We had reduced the amount of ammunition that we were discharging into the vehicle.

PRESIDING MEMBER: And is that what you refer to as overkill? Excess -- the ammunition that you thought was unnecessarily more than -- more than you would otherwise have to use?

WITNESS: Yes, sir, at the cyclic rate is overkill.

PRESIDING MEMBER: Okay.

WITNESS: And prior to that we were firing at a cyclic rate. So when this vehicle entered into our area we changed our SOP prior to that morning and I had told the Marines that no longer would we be acting like a bunch of cowboys, that we would conduct ourselves in a professional manner and if we did discharge our weapons we would discharge them at a sustained rate of fire and in discharging our weapons at a sustained rate of fire, this allowed one occupant of the Red Kia to be unscathed. The other three occupants were expiring very fast.

We pulled them out of the vehicle. We started administering first aid immediately, started treating them for shock and protecting their wounds. I immediately called for the corpsman, which is the medical personnel to come over and start rendering first aid as well. Meanwhile, the Iraqi gentleman, he was young, in his mid-20's, was running around frantically and literally pulling his hair out and asking me and my Marines why we had killed his brother and then he began to explain to us that he was not a terrorist, that they weren't doing any harm and why did we kill his brother.

COUNSEL: In what language was he speaking?

WITNESS: In English.

COUNSEL: And did you find out which one of the people that had been shot was his brother?

WITNESS: Yes.

COUNSEL: And how about the other two? Who were they?

WITNESS: I'm assuming that they were friends.

COUNSEL: Were they ---

PRESIDING MEMBER: Just to finish that thought though. So, what did you answer him when he asked you, why did you kill my brother?

WITNESS: I didn't know what to say to him. I just kept giving orders to my Marines in the hope and attempt that we could get them back to the battalion surgeon, the battalion medical officer, to get them bandaged and patched up so his brother wouldn't expire.

PRESIDING MEMBER: So, do I take it from your answer that you didn't respond to him?

WITNESS: I did not respond.

PRESIDING MEMBER: Sorry, Mr. House.

COUNSEL: Were all the people in the vehicle male?

WITNESS: Yes.

COUNSEL: And again, this may seem obvious, but did you check the vehicle to see if there were explosives or weapons or anything that would associate them with the opposition?

WITNESS: Yes

COUNSEL: And was there anything?

WITNESS: We found nothing.

COUNSEL: Overall your experience of these various incidents which led to numerous deaths do you feel that you were clear about who was the enemy and who wasn't?

WITNESS: I was never clear on who was the enemy and who was not.

COUNSEL: How would that lack of clarity affect your ability to comply with the Geneva Conventions?

WITNESS: It hindered our ability tremendously. When you don't know who the enemy is what are you doing there? What's the purpose of your being there? When Marines go into battle they are designed, Marines are trained and designed for one thing, and that is to meet the enemy on the battlefield and destroy you. That is their mission. That is their purpose in life. If you have no enemy or you don't know who the enemy is what are you doing there?

COUNSEL: In our materials there are a couple of terms that I'd like just to know whether you have ever heard of them and just for the member's edification, this particular term appears at page 250 of volume 5, part 2 of my materials and the term is "a weapons free zone." Have you ever heard that phrase used, sir?

WITNESS: Yes, sir.

COUNSEL: Can you tell us what a weapons free zone is?

WITNESS: A weapons free zone has been designated by the Marine Corps or various intelligence groups, including the Central Intelligence Agency, as an area that is so hostile that anybody that is caught in that area, man, woman, child, young, old, it doesn't matter, is an enemy combatant.

COUNSEL: And what do the words "weapons free" then mean?

WITNESS: It means that they're not supposed to have any type of weapons and basically it's a free-for-all if they are caught in that area. It doesn't matter whether they have weapons or not, if they are caught in that area then they are to be shot.

PRESIDING MEMBER: Even if they don't fire the weapon ---

WITNESS: That is correct, sir.

PRESIDING MEMBER: --- and they surrender? I'm sorry, you have to wait.

WITNESS: That is correct, sir.

PRESIDING MEMBER: Okay. Just wait till I finish asking my question.

WITNESS: Yes, sir.

PRESIDING MEMBER: So, in a weapons free zone someone with a weapon who surrenders would still be shot?

WITNESS: It depends on the situation, sir. It depends on who, what, when, where, what just happened, whether or not one of the Marines was hit. If a Marine from my squad was hit in that area and I saw somebody that was walking without a weapon they're still game. It's a free-for-all. That's why it's a free -- it's a free zone because that area has already been deemed by the military personnel as they're not supposed to be in there. If they're in there then obviously they're enemy combatants.

COUNSEL: Have you ever heard the term "free fire zone?"

WITNESS: Yes, sir.

COUNSEL: What does that mean?

WITNESS: Basically an area, once again if you are in that area or you see individuals that are in that area, you can discharge your weapons.

COUNSEL: At them?

WITNESS: At them, yes, sir.

COUNSEL: Who is it who decides if an area within Iraq is a weapons free zone or a free fire zone?

MINISTER'S COUNSEL: I'm just going to stop my friend here. I have no objection to asking questions of things that he might have knowledge of, but things like general deciding overall, what's designated and what isn't. This individual isn't an expert and I'm hesitant to start going down that road of asking him how strategy is determined and how it isn't because I think that even Sergeant Massey would indicate that that's beyond his scope.



WITNESS: No, Ma'am, it's not.

PRESIDING MEMBER: Okay, just I'm a little confused before we deal with the objection, as to the distinction between a free fire zone and a weapons free zone. Could you explain the distinction between a weapons free zone and a free fire zone?

WITNESS: There is no distinction, sir. It's an area or a zone that has been pre-determined by higher intelligence or the Marine Corps military ally forces that if an individual is within this area they are considered an enemy combatant and you can fire upon them.

PRESIDING MEMBER: And is the distinction that in the case of a weapons free zone it would be an individual with a weapon and in a fire free zone, or a free fire zone, it would be -- wouldn't necessarily be someone with a weapon?

WITNESS: I'm sorry, say that again?

PRESIDING MEMBER: One is called a weapons free zone.

WITNESS: Yes, sir.

PRESIDING MEMBER: You explained that if someone had a weapon in that zone, they weren't supposed to have a weapon, and you were free to fire on that person?

COUNSEL: I think he also said that even if they didn't have a weapon you could fire on them.

WITNESS: That's correct.

PRESIDING MEMBER: Okay. So, what's the distinction then between a weapons free zone and a free fire zone?

WITNESS: Those are just terms, sir.

PRESIDING MEMBER: Well, I realize that, but are they terms for the same thing or something different?

WITNESS: They're terms for the same thing. They're terms that overall means if an individual is in that area, regardless if whether they have a weapon or not, that area has been deemed as a hostile combatant area and the U.S. and allied forces can and will open fire on those individuals regardless even if they're trying to surrender. That's why the situation dictates what the call of the mission is.

If one of my Marines was just shot at from this free fire zone or zone, then I have every right to open fire regardless if he has a weapon or not because he's not supposed to be in that area.

PRESIDING MEMBER: Okay. And do you have any personal experience with either the designation of or operations within either a weapons free zone or a free fire zone?

WITNESS: Yes, sir, I do.

MINISTER'S COUNSEL: Then I can withdraw my objection. I just don't want him to speak about things of which he hasn't had personal experience.

PRESIDING MEMBER: I understand. That's why I asked the question.

WITNESS: Any time you go into a combat area, the U.S. military and allied forces already designates areas that are free fire zones. It is a standard operating procedure in any type of combat.

PRESIDING MEMBER: Okay. So you have been in a free fire zone?

WITNESS: That's correct.

PRESIDING MEMBER: Okay. Go ahead, Mr. House.

COUNSEL: All right. On page 284 of the same volume there's a term that I'd like to ask you if you know about. The term is "dead check." Does that mean anything to you?

WITNESS: A dead check is basically a slang term that military personnel use. If I'm going to do a dead check on a body I am checking to see whether or not that individual is playing possum. What I mean by playing possum is if he or she is acting dead in order to evade being captured or to evade being killed.

COUNSEL: And if you find that someone has been playing possum what happens then?

WITNESS: It is not uncommon for Marines to place rounds in the heads of an individual that is playing possum.

PRESIDING MEMBER: Is there a reason for that?

WITNESS: Marines are trained to do one thing, sir. That's to meet the enemy on the battlefield and to destroy him. No if and's, no but's, that's their job.

PRESIDING MEMBER: Okay. Mr. House has submitted a number of articles with respect to the incident that you testified to earlier about the -- and it's under investigation now as I understand it from the articles. About the Marine who was filmed shooting someone after he said he's alive or something like that and in a number of the articles experts are quoted as saying that incidents have happened previously where bodies have been booby-trapped or where the person who was still alive is still booby trapped. Are you aware that this happens?

WITNESS: Yes, sir, and those tactics have been used all the way back to World War I. It's still the responsibility of the Marine regardless, when that individual is lying there moaning, that is a POW. It's up to the Marine to ensure that he or she is not booby-trapped. If you place a round in that individual's head you are a murderer. You did not take the proper procedures to get rid of the booby trap or to check if they had a booby trap, you decided to end their life. You are a murderer.

PRESIDING MEMBER: And is there a standard operating procedure for determining whether that person is booby-trapped?

WITNESS: Yes, sir.

PRESIDING MEMBER: And could you tell me what that standard operating procedure is?

WITNESS: It's to identify the body, look, do a visual check. It doesn't matter if it takes two seconds or two hours. Try to verbally communicate with that individual. Then after you've verbally or you've physically looked at him with your eyes, or excuse me, visually looked at them with your eyes, then the next procedure is to lightly pat that body down the same way as if you were going into an area that you suspect might be booby trapped. All of these techniques are taught at the recruit depot at Paris Island, South Carolina and Marine recruit depot, San Diego, California from day one when you enter into the United States Marine Corps.

You visually and then physically check and then from there you call other Marines to visually check that individual. If they have a closed fist and they have it around their chest you've got a problem, but if they're just laying there where they are outsprayed (ph) like this, the only thing you have to worry about is if they have a grenade placed in the small of their back, but you can still take your fingertips and go along the back of the body to see. It's not that hard. It's up to the Marine whether or not he or she wants to violate the Geneva Convention.

PRESIDING MEMBER: Okay, thank you.

COUNSEL: I'm just going to ask you a couple more questions about the culture of your unit when events like this occur. Were you concerned that other members of the unit were going to make complaints that the Geneva Conventions had been violated?

WITNESS: I had various members of my platoon come up to me and say, Staff Sergeant, I'm having a little trouble understanding what exactly it is that we're doing over here, and I asked them to expound. They told me that -- and this reference, I'll give you the name. Lance Corporal Howland (ph), said that he was having difficulties with understanding why we were killing innocent civilians. I in return told him that it is not his responsibility to play politics, it is his responsibility to ensure that mission accomplishment is number one, troop welfare is number two and that he is not a politician

on the battlefield. He needs to leave that to the Staff Sergeant and to the Lieutenant.

COUNSEL: Were you concerned though that someone in your unit would make an allegation to Generals or to someone outside of the immediate Non-Commissioned Officers that violations of the Geneva accord had occurred?

WITNESS: I was hoping that one of my Marines would come forward because I was already two steps ahead of them.

COUNSEL: What did you, yourself, do as a result of these experiences that you had?

WITNESS: I went to my Commanding Officer and my -- let me backtrack. My Commanding Officer, Captain Schmidt, Dan Schmidt, actually came to me and he said -- this was right after the Red Kia incident, and he said, Staff Sergeant, you're looking a little under the weather. He said, what's wrong? I said, well, sir, today has been a very bad day. We killed a lot of innocent civilians, and he looked at me straight in my face and he said no, today is a good day, and he walked off. So I knew right then and there that this wasn't the type of man that was going to listen to any type of allegations or betrayal of the Geneva Conventions.

COUNSEL: Okay. So, you have now said that you had this interaction with Captain Dan Schmidt. What steps did you take though, if any, at that point after you had gone through this experience?

WITNESS: I became very verbal in my commands. I could not out-step or overstep my boundaries too far because of fear that I could be tried as a mutineer, which is punishable by death. If you try to take control of an officer's position that is called mutiny. So I had to be very careful in how I presented things to my Lieutenant and how I presented things to my men. I did the very best at what I could to present it in a tactful way so that they could understand that what we were doing was wrong.

COUNSEL: I'm interested in particular in your attempts to communicate your experience up the line? Not so much to the men under your command, but to people in positions above you?

WITNESS: I expressed I was deeply concerned with the civilian casualties and I went to my Lieutenant numerous times, explaining to him that we need to take a more proactive approach on handling of the civilian casualties and trying to prevent. He concurred, however it was never done. I became more vocal with my concern. I told my men at one point that after any more civilian casualties they needed to start policing their brass. What I mean by policing their brass is picking up their spent cartridge cells that have been injected out of the M-16.

COUNSEL: Why did you tell them that? What did that mean to you and to them?

WITNESS: That meant I was basically telling them that what they were doing was committing murder. Some of them understood what I was talking about, some of them didn't. I was basically telling them that you are shooting at innocent civilians and you need to be careful. Some of the Marines understood, some of them didn't understand, but like I said, whenever you're in this type of environment you speak in tongues, you can't outright say what you want to feel because then you could be tried as a mutineer.

We have a saying in the Marine Corps, it's not only the enemy that you have to worry about in front of you, it's the enemy that you have to worry about that's behind you.

COUNSEL: You've now told us about your conversation with Captain Schmidt and also you've said that you had numerous conversations with the Lieutenant and I understand that was the person immediately superior to you, is that right?

WITNESS: Yes, sir.

COUNSEL: Okay. I guess I'd be interested in knowing right now, how did it happen that you left Iraq?

WITNESS: I was relieved of my command when I became vocal. My Lieutenant basically came to me and said I want your resignation and he told me that he was going to press charges for destruction of government property and I

asked him what for and he told me because I left nets and poles, which is a camouflage system that you put over your vehicle to protect it from incoming air, it's a camouflage net system that you use to hide the Humvee and I'd left them on the battlefield because it was starting to cave in the roof of my Humvee.

I had a canvas top and the weight of the nets and poles is about 120 to 150 pounds. So I threw them on the side of the highway and he told me that that was destruction of government property and I then looked at him and I said, sir, is this personal or is this business, and he said it was business and I gave him my resignation and I told him that now that I resigned that I wanted to go see the division psychiatrist because I was having nightmares, that I hadn't slept in about three days to that point, and when I did sleep I only got between two to three hours.

He then began to call me a malingerer. He began to tell me that he didn't even know how I made it as far as I did in the Marine Corps. That if I was playing games that he would ensure that I would spend a long time in jail or the brig and these ridicules came from Captain Dan Schmidt as well. I did go see the division psychiatrist. I told the division psychiatrist the same thing that I told you all here today. The division psychiatric immediately recommended that I be medi-vac'd off the battlefield for major depression and post-traumatic stress disorder.

I got back stateside. I was evaluated by a psychologist. I was ordered to report to the psychologist. I was evaluated. The first thing that she told me, her name was Beverly Dexter. The first thing that she told me was that I was a conscientious objector. I then explained to her that I am not a conscientious objector, that if she wanted to label me as a conscientious objector for not wanting to kill innocent women and children and civilians then I would see her in court.

COUNSEL: Was she -- was she employed by anyone in particular or was she a free standing psychiatrist?

WITNESS: She was employed by the United States Navy.

COUNSEL: And why did you end up with her in particular as opposed to someone else?

WITNESS: The military does not allow you to seek the medical attention at your leisure. The military appoints a doctor or psychologist or psychiatrist to you.

COUNSEL: Okay. So at that time you were still in the military?

WITNESS: Yes, sir.

COUNSEL: How long did it take before you were discharged from the military?

WITNESS: Roughly six months.

COUNSEL: Okay. And can you tell us whether you were honourably discharged, dishonourably discharged or some other form of discharge?

WITNESS: I was honourably discharged with a medical disability. I have been rated by the American Veterans Association or the VA system 80%, disabled with post-traumatic stress disorder and major depression.

COUNSEL: Okay. During the time that you were in Iraq did any of your immediate superiors in the military talk to you about the need to comply with the Geneva Conventions or chastize you for violating the Geneva Conventions?

WITNESS: No, sir.

COUNSEL: Apart from your several hours that you stood down from your command, did you receive any penalties whatsoever for the 30 plus deaths that occurred during those days?

WITNESS: No, sir.

COUNSEL: Those are my questions, Mr. Chair.

PRESIDING MEMBER: Thank you very much. Ms. Chisholm?



MINISTER'S COUNSEL: I see we're close to the end of the day and I'm wondering if perhaps it might be wise to call it a day at this point in time?

PRESIDING MEMBER: Only if you're going to be more than 15 minutes.

MINISTER'S COUNSEL: Well, I can't say how long I'm going to be right now, but I really would prefer to start fresh tomorrow morning if that's possible.

COUNSEL: I have no objection.

PRESIDING MEMBER: You're okay with that?

COUNSEL: That's fine. It's ten to 5:00.

PRESIDING MEMBER: I mean, if you can finish it and I don't want to rush you, but if you could ---

MINISTER'S COUNSEL: I don't know if I will finish it or not ---

PRESIDING MEMBER: Okay.

MINISTER'S COUNSEL: --- and I would prefer ---

PRESIDING MEMBER: Because that means that of course we're going to have to have the witness come back which is something that we ---

MINISTER'S COUNSEL: Well, Ms. Dragaitis will need to question as well potentially.

RPO: Yes.

MINISTER'S COUNSEL: I doubt we're going to finish both of us in ten minutes.

COUNSEL: And we had the expectation at one point that he would probably be testifying Friday morning in any event, so it's not ---

PRESIDING MEMBER: Friday morning?

COUNSEL: I'm sorry, Wednesday morning. Wednesday morning. Sorry, Wednesday morning. Sometimes it can seem like Friday.

PRESIDING MEMBER: Okay. Well, I'm pleased then, because I don't like to inconvenience witnesses and require them to come back if it's going to be difficult for them to do so, especially a witness who has the diagnosis that this witness just shared with us. I'm sure it's not easy for him to testify about some of these things that no doubt will bring back painful memories for him.

So, we'll start tomorrow morning at 9:00 sharp. We'll resume with Ms. Chisholm's examination, cross-examination of this witness, then Ms. Dragaitis's examination, any questions that I may have. It would be helpful, Mr. House, if those standing orders are available, the ones that he referred to that were in place at the time. If those could be -- if they're not classified, if those could be found and produced because they formed a large part of this claimant's (sic) testimony in terms of what the standard operating procedure was under the circumstances.

We'll then give Ms. Chisholm an opportunity to ask Mr. Hinzman any questions arising from the articles that were disclosed today and Ms. Dragaitis and myself will have the opportunity to read them this evening, and then we'll discuss the issue of submissions and I take it you are not calling any more witnesses?

COUNSEL: That is correct. Mr. Member, you said that you would discuss the issue of submissions. I think my friend and I have discussed it and of course we're wondering whether you're going to want oral submissions. If you are I would like to know that now. If you're not then obviously we can discuss the precise time of the written submissions.

PRESIDING MEMBER: Right. Well, I've done some thinking about this needless to say, and although the normal rule is oral submissions I expect, that given this large volume of documents, that each of you is going to make submissions that will refer extensively to the documents and that being the case, frankly it's my feeling that submissions in writing would be more helpful, both for you and for me, and once again I found that your submissions in relation to the preliminary

question that I had to determine which were also based in large part on legal documents, did serve that purpose. They were extremely helpful and I see no reason why -- you know, it's not really the testimony.

If it was the testimony alone I'd say oral submissions, but my reading of this is that much of the argument is going to be based not only on the testimony, but on the written documents. Is that a fair assessment?

MINISTER'S COUNSEL: Yes, very much so.

COUNSEL: Yes.

PRESIDING MEMBER: Okay. So that being the case what I'll be requesting is written submissions and we can talk about -- at the relevant time, about the timing of that given that we're approaching the holiday season. That being said, Mr. Hinzman, you have been waiting a long time to have this resolved and certainly we're all going to do our utmost to make sure that your claims are resolved in as timely a manner as possible. To be fair to you I believe that written submissions are really called for in this case as opposed to oral submissions.

CLAIMANT #1: I understand completely.

PRESIDING MEMBER: Okay. So, we'll adjourn till tomorrow at 9:00. Have a nice evening everyone. Thank you for being here.

I HEREBY DECLARE THAT THIS IS A TRUE  
TRANSCRIPT OF THE TAPE AND THAT I  
HAVE SWORN THE OATH OF SECRECY

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Barb Strachan 94031539

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