

File No: TA4-01429

Toronto: December 8, 2004

IMMIGRATION AND REFUGEE BOARD

JEREMY DEAN HINZMAN
NGA 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: Good morning, everyone. For those of you who are here for the first time, welcome. For those of you who are returning, welcome back. For those of you who are here for the first time, this is a resumption into the hearing of the claims of Jeremy Hinzman; his wife, Nga Nguyen; and their son, Liam Hinzman, for Convention Refugee status and refugee protection.

We have had two days of hearing. Following a pre-hearing conference, we have, just to recap, heard Mr. Hinzman's evidence and we began hearing yesterday Sergeant... I'm sorry, I can't remember your last name.

WITNESS: Massey.

COUNSEL: Massey.

PRESIDING MEMBER: Massey. I was going to say Murphy and I knew it wasn't Murphy.

Former Sergeant, now Mr. Massey's evidence, and that evidence was led by his counsel, or by counsel for Mr. Hinzman, Mr. House. For those of you who are here for the first time, counsel for Mr. Hinzman and his family is Mr. Jeffry House, on my left. Counsel for the Minister is Ms. Janet Chisholm, on my right.

MINISTER'S COUNSEL: Good morning.

PRESIDING MEMBER: Good morning, and the Refugee Protection Officer, on my far right, is Kristina Dragaitis, and my name is Brian Goodman, and I'm the Member of the Refugee Protection Division that has been assigned to hear these cases.

I'm confident that we can conclude the evidence today, barring any unforeseen circumstances. So, I'm going to ask Ms. Chisholm to begin her cross-examination, examination of the witness.

MINISTER'S COUNSEL: Yes, thank you.
Good morning, Mr. Massey.

WITNESS: Good morning.

MINISTER'S COUNSEL: I wanted to start off, first of all, because you spoke or you made reference to the Geneva Convention several times yesterday, and I'm wondering if you can tell me what training you had received on the Geneva Convention.

WITNESS: Yes. The training that I received on the Geneva Convention started day one that I entered in boot camp. I was forced to stay up all night and walk around the squad bay to memorize parts and articles of the Geneva Convention, and basically you were given a pop quiz the next morning by the drill instructors.

MINISTER'S COUNSEL: Now, I know that the Geneva Convention is a vast piece of law. I'm wondering if you can tell me were there some things in particular that were emphasized in your training that have remained with you till now?

WITNESS: Marines do not kill civilians. Marines do not shoot unarmed combatants that are wounded.

MINISTER'S COUNSEL: Can you, for the purposes of just elucidating, what is the distinction in the Geneva Convention between a combatant and a non-combatant?

WITNESS: Well, it depends on the SOP and whether or not it's a free-fire zone. That's kind of a broad question, Ma'am.

MINISTER'S COUNSEL: All right. Outside do you know -- because the SOPs are specific American directives, and the Geneva Convention, sort of, transcends that. So, I'm wondering not how you treated them in different zones, but if you understand the common meaning of these words that the Geneva Convention gives them, not how they were applied.

WITNESS: Right. Well, an enemy combatant is anybody that is, or any person present on the battlefield that is dressed in an uniform and has been directed by the President of the United States as an enemy combatant, whether it be Iraqi, Russian. I'm just using that as an example, but it is an individual that is in a military uniform that poses imminent threat or danger to the Marines or myself.

MINISTER'S COUNSEL: And then a non-combatant could mean a civilian?

WITNESS: A non-combatant is a civilian.

MINISTER'S COUNSEL: Right, or it could also mean a wounded -- from what you said before, I just wanted to clarify -- it could mean a wounded soldier who no longer poses a threat?

WITNESS: That is correct.

PRESIDING MEMBER: Just so I understand, are you saying that a combatant must be in a uniform?

WITNESS: They don't -- well, it's kind of a broad comment. We typically are trained, meaning Marines, that an enemy combatant is an individual that is in a uniform. However, we have also trained, because of today's combat and guerrilla-style warfare, that a lot of times enemy combatants do take off their uniform to do sabotage or assassination-type of missions so that they easily blend in within the civilian community.

PRESIDING MEMBER: Well, are there enemy combatants that don't even have uniforms?

WITNESS: I can't really ---

PRESIDING MEMBER: They're not at a point of taking off a uniform, but they commonly wear civilian clothes so that you couldn't distinguish them from the civilian population?

WITNESS: Yes.

PRESIDING MEMBER: So, do I understand you to say now that your understanding of the definition of combatant or the common meaning, as used in the Geneva Convention, doesn't necessarily include, or isn't necessarily confined to persons in uniform?

WITNESS: Yes.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: The training you received, as far as you know, is this training specific to the Marines?

WITNESS: No, Ma'am. The Geneva Conventions are for all American armed forces and countries that are acting within allied powers.

MINISTER'S COUNSEL: The training, itself, would it be restricted to the Marines; do you know?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: So, other sections of, like Army, Navy, Air Force, as far as you know, everyone would receive training such as this?

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: Were you trained -- were you given protocols as to what to do if civilians or non-combatants were killed?

WITNESS: You're going to have to break that down a little bit more.

MINISTER'S COUNSEL: Or course. In your training, was it ever discussed what would happen if a civilian was killed?

WITNESS: You provide proper medical attention for or -- well, there is no actual protocol. If a civilian is killed, then you notify the chain of command of the incident, and the chain of command then conducts an inquiry into who, what, when, where, and why.

MINISTER'S COUNSEL: This would vary on the situation? For example, if a civilian was killed in a bombing where it wasn't specifically the civilian being targeted, but the civilian was killed as a result of aggression, is it treated differently than a situation whereas a civilian is intentionally targeted?

WITNESS: Well, it doesn't matter. Anytime that a shooting involves a civilian, there has to be an investigation done.

PRESIDING MEMBER: And, again, so I understand. Let's take the case of someone who is not in a uniform. That person is killed in combat. Is the investigation done, as you described yesterday, to determine, if possible, whether the person was indeed just a civilian or was, in fact, a combatant?

WITNESS: That's correct, yes. The investigating officers, which is generally military police, arrive on the scene and do an investigation from their end. Also, Naval Investigative Service might be called in, NIS, which is a part of the department of the Navy, and that's all that they specifically do, and it can involve all the way up to the Central Intelligence Agency.

PRESIDING MEMBER: So, do I take it that at the time the person is killed and an American soldier comes upon that person, they are not certain if that person is or was a civilian or a combatant?

WITNESS: Well, there is no way to ---

PRESIDING MEMBER: Unless they have a gun or a grenade.

WITNESS: That's correct. There is no way to tell whether or not that person...however, I would like to point out that in Iraq the military training began quite early for, and they were forced into military training. When you go into the schools, such as Baghdad University, we occupied Baghdad University for approximately a week. We used it as a staging ground for us to go out on our patrols, and I noticed that part of their course curriculum was teaching the students how to fire AKs, and also military tactics and doctrines, but these were things that were imposed upon the head schoolmaster to teach within his course curriculum. It doesn't mean that's what he wanted to teach, because in conversation with the head master at the Baghdad University, he was quite indifferent to teaching that type of ideology to his students, but it was forced upon them.

PRESIDING MEMBER: So was that beginning, as far as you know, did that begin at university or did it start before that?

WITNESS: From my understanding, it started before that, because I've seen several pictures of young children at the age of six and up performing some sort of military training, or what we consider to be the Boy Scouts. That might be their idea of Boy Scouts, because Boy Scouts in America are taught firearms, which could eventually teach them to kill another person.

So, I think we have to be careful as far as speculating are they training everybody in Iraq to be a potential killer or terrorist, because Saddam, obviously being a dictator, this is what he was imposing upon the people, but if you look at the American culture, we impose that young men go into organizations like the Cub Scouts that teach these same things, the same tactics.

PRESIDING MEMBER: Have you heard of Saddam's Youth Brigade at all?

WITNESS: Yes, I have.

PRESIDING MEMBER: What is that?

WITNESS: The Youth Brigade is a -- I don't know the exact age group of when they go into that organization, but it's much like what we have in the States as far as going to boys' military academies, but it's just a military or military training to put them on a faster track to either going in -- enlisted into the Iraqi Army or becoming an officer within the Iraqi Army. It's just a head-start program for youngsters that are usually forced into that type of environment, much like America.

PRESIDING MEMBER: Just going back to my earlier question and your testimony yesterday, Mr. Massey, and you described in detail incidents that occurred where cars sped toward -- or maybe not sped. I think you said they were travelling mostly 25 ---

WITNESS: Yes.

kilometres an hour.

PRESIDING MEMBER: --- to 30

WITNESS: Yes.

PRESIDING MEMBER: Were travelling towards a security checkpoint that you had set up with your company.

WITNESS: Yes.

PRESIDING MEMBER: With your group of men, and at the time that that car enters the Red Zone, are you able to tell whether the people in the car are civilians or combatants?

WITNESS: Well, I can't sit here and speculate, but at the time, after the first couple of incidences, and I was seeing a trend and a pattern that they were not, that they were panicking when they were coming into the area, I could literally look through the windshield and seeing them panic at the fact of what was about to take place, because when all of a sudden you see weapons levelled at your vehicle and Marines charging the weapon, I think they have an understanding that they are about to get fired upon.

So, it becomes a conflict. It becomes a conflict between the individual Marine that is pulling the trigger, is this person a civilian or is this a person an enemy combatant? We have to go by the intelligence reports that are being given to us at that time that are painting the picture. The Iraqis can't paint the picture for us, because they are the supposed enemy. So, we have to go by what our intelligence is telling us.

So, regardless of how we feel whether or not they are a civilian, we have to do what the intelligence reports tell us to do. So, my personal feeling, every time we pull the trigger, I felt that they were civilians. However, I can't react; I can't say no, because then not only am I disobeying a direct order, but I'm disobeying a direct order that the First Marine Division General, General Maddis (ph) is saying is part of our doctrine and what we're doing, or part of the SOP. You will fire upon these vehicles and that's it.

PRESIDING MEMBER: At that time, when you set up your checkpoint, were you aware of any incidents where cars sped through and either contained suicide bombers that hit checkpoints, or that contained combatants that fired on checkpoints, or that bombed checkpoints?

WITNESS: I had heard one scuttlebutt rumour. I never knew if it was an actual, official report, but I heard from other Marines that, in fact, one checkpoint was hit by a suicide bomber.

PRESIDING MEMBER: Had you heard of that happening elsewhere in the world?

WITNESS: No, sir, other than Beirut.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: Give me a moment, I have to see where I was.

PRESIDING MEMBER: Yes. We were talking about the distinction between combatant and civilian, and my questions were designed to first determine whether it was restricted to people in uniforms, which it wasn't and, secondly, how one distinguishes between a combatant and a civilian in some of the circumstances that were described yesterday, and whether one can distinguish between a combatant and a civilian without an investigation in all cases.

MINISTER'S COUNSEL: Would there be an investigation in the situation where, as you suggested yesterday, a downed soldier, enemy soldier was killed? He was in a non-combatant role at that point in time. Would that invoke an investigation?

WITNESS: I'm sorry, repeat that.

PRESIDING MEMBER: I don't quite understand the question.

MINISTER'S COUNSEL: Let me rephrase it, then.

We talked earlier about how if a civilian was killed, you stated that there would be an investigation.

WITNESS: Yes.

MINISTER'S COUNSEL: Is this true, as well, when you haven't ascertained whether or not it is a civilian?

WITNESS: So, are you asking me if a person is in uniform, will we still conduct an investigation?

MINISTER'S COUNSEL: Yes.

WITNESS: Definitely not.

MINISTER'S COUNSEL: What if they had been in the process of -- yesterday, for example, you said they were in the process of surrendering, or in a situation where they were no longer in a combatant role; for example, they had been injured and they were down.

WITNESS: Ma'am, if this person walks up to us, I don't care if he's got an AK3, 4, swung on his body, if he has his hands up, he is no longer a combatant. It becomes my responsibility to disarm him or have my Marines disarm him.

Now, of course, if he retaliates, then he becomes a combatant again and we fire.

MINISTER'S COUNSEL: So, in a situation where if someone walks up to you with their hands up, that individual was killed with their hands up indicating they're no longer a combatant, would there be an investigation into their death if they were subsequently killed?

WITNESS: Yes, Ma'am, there should be an investigation done.

MINISTER'S COUNSEL: So, my other question is: In a situation where it's clear that they can no longer be considered a combatant; for example, they're injured and on the ground and sprawled out, to me, from what you stated, that

person would not be considered a combatant anymore, because they are not a threat to you at that moment.

WITNESS: That's correct.

MINISTER'S COUNSEL: If that individual was killed -- an injured soldier in an enemy uniform sprawled on the ground is considered a non-combatant; correct?

WITNESS: Correct.

MINISTER'S COUNSEL: That individual is then killed.

WITNESS: That's murder.

MINISTER'S COUNSEL: That's murder, and would that involve an investigation?

WITNESS: It should.

Yes, Ma'am.

MINISTER'S COUNSEL: So, yesterday - and I just want to be clear if I understood you properly -- you suggested that you had witnessed situations where Marines shot downed soldiers who were not a threat imminently to the Marines. Did I understand you correctly?

WITNESS: The situations that -- I can say that I honestly didn't witness -- I witnessed the aftermath of an attack that we had done to the north, or north of An Nasiriyah to where as we were driving by after the attack, I saw enemy soldiers in uniform that had no weapons and they were on the side of the highway, which was typically what the enemy combatants did, was they walked along the side of the highway with a white flag. So, I began to wonder how these enemy combatants were killed when they had no weapons and there was white flags, but I did not personally witness. I was on the battlefield at the time. I witnessed after.

MINISTER'S COUNSEL: So, have you -- other than your own situation where you shot on someone with their hands up, have you ever witnessed, or did you, during the course of your time in Iraq, witness individuals firing on someone who was surrendering?

WITNESS: Yes.

MINISTER'S COUNSEL: You did?

WITNESS: And I took part.

MINISTER'S COUNSEL: You took part. Other than that incident, were there any other situations, such as that one, where non-combatants, people who had identified themselves as non-combatants were intentionally shot?

WITNESS: Not as direct as the one gentleman that clearly had his hands up, no.

PRESIDING MEMBER: Well, I don't understand the answer, "not as directly as". Were you a witness, or did you participate in any other incident in which an unarmed man, who was determined not to be a threat, was shot?

WITNESS: No, no. Just the one gentleman. It's kind of hard for me, sir, because I know in my heart that these vehicles, when they came up, I knew that they were civilians, but I had to act under orders that was given to me by the First Marine Division. So, it's a struggle within my heart to, but there was only time that I can honestly say that, yes, he was clearly surrendering.

PRESIDING MEMBER: Just a follow up to Ms. Chisholm's question, if I could. Did you determine -- you said that you suspected that enemy soldiers had been killed while surrendering because you saw them along the highway, lying along the highway and you saw white flags. Did you determine whether those incidents were investigated or not?

WITNESS: To my knowledge, I don't know if they were investigated or not.

PRESIDING MEMBER: Were these men under your direction?

WITNESS: No, they were not. They were part of a different company.

PRESIDING MEMBER: You indicated earlier that under normal circumstances, incidents like that would be investigated; am I right?

WITNESS: Yes, sir.

PRESIDING MEMBER: Thank you. Ms. Chisholm?

MINISTER'S COUNSEL: Yes, thank you. How long did you spend in Iraq in total?

WITNESS: From March 22nd till May 15th of 2003.

MINISTER'S COUNSEL: So, from what I understand, you were part of the invasion force?

WITNESS: Yes.

MINISTER'S COUNSEL: And from what you testified yesterday, your unit was the first to sustain casualties?

WITNESS: That's correct. Yes, Ma'am.

MINISTER'S COUNSEL: I just want to take you through yesterday's testimony, and some of my questions are going to come from yesterday's testimony and some are going to come from the interview that's quoted in Counsel's material.

I understand you gave an interview similar to the one that you gave yesterday to a radio talk show; was it? Let me just refer to that directly.

WITNESS: Which one is she talking about?

COUNSEL: I'm not allowed to answer. He's asking me which radio show. So, perhaps...

MINISTER'S COUNSEL: Counsel, can you tell me what tab it's at?

COUNSEL: Off the top of my head? No.

MINISTER'S COUNSEL: I think it's tab 142. You gave an interview to Amy Goodman?

WITNESS: Yes.

PRESIDING MEMBER: For the record, no relation.

MINISTER'S COUNSEL: It's tab 20 of Volume 1 of Counsel's disclosure. It's an interview you gave with Amy Goodman with "Democracy Now".

WITNESS: Yes.

MINISTER'S COUNSEL: So, some of the questions don't sound like something you testified to yesterday. They might emanate from this recording of that, just so you are aware.

WITNESS: Okay.

MINISTER'S COUNSEL: Just for the record, when did you first come forward with your story?

WITNESS: In Iraq.

MINISTER'S COUNSEL: Okay, but to the American public when would you have first come forward?

WITNESS: It was my wife had replied to an article. Basically, we have a very small newspaper in our hometown. It comes out tri-weekly, that's how small. They wanted opinions on how the locals in the area felt about the Iraq War. My wife answered with the knowledge that I gave her upon my honourable discharge from the Marine Corps.

The local newspaper then contacted her and wanted to do an interview with me. I declined. When I was discharged from the Marine Corps, I had every -- my goals at that time was to remain a private citizen and go about my life, and forget that I had ever spent 12 years in the Marine Corps.

When I started reading the articles that was published by the embedded reporters in my battalion, and I started to read the lies that were being printed and the cover-ups of the civilian casualties, I became concerned that the American public was not getting an accurate betrayal of what was happening and is still happening in Iraq. Watching CNN further disgusted me. So, I decided to do an interview, after several harassing phone calls from the local newspaper, wanting me to explain my story. So, I agreed to the interview and here I am.

MINISTER'S COUNSEL: Can you tell me the name of that newspaper?

WITNESS: "The Mountaineer". The reporter's name is Jeff Schmirker (ph).

MINISTER'S COUNSEL: Can you tell me when you would have given that interview?

WITNESS: That was around January of 2004.

PRESIDING MEMBER: And I don't want to interrupt your train of thought and your questioning, but you said that you decided to do this after reading the reports of media that were embedded with your company, your battalion?

WITNESS: Yes, sir.

PRESIDING MEMBER: Do you know what media they were associated with?

WITNESS: The "St. Louis Dispatch".

PRESIDING MEMBER: Any other ones?

WITNESS: The "Associated Press, AP". I had no quarrels with Ravay Nooseman (ph) with the "AP", the "Associated Press". The articles that he published were right on the money. I did have, and I still have big heartburn with what the "St. Louis Dispatch" -- and I'm drawing a blank, I'm trying to remember his name, Ron Harris was his name with the "St. Louis Dispatch".

Mr. Harris, I even questioned his validation of being a reporter, because he was reporting on incidences that involved my platoon, and Mr. Harris wasn't even present. Mr. Harris never even was a part of my platoon at any time during combat operations, but he was, in fact, reporting... he was reporting like he was right there with us.

PRESIDING MEMBER: I think you mentioned that your concern was that the American public was being lied to ---

WITNESS: Yes, sir.

PRESIDING MEMBER: --- and
deceived by these articles?

WITNESS: Yes, sir.

PRESIDING MEMBER: How was that?
Why do you say that?

WITNESS: He wasn't -- he was making it sound like -- he was being judge and jury. He was making it sound like we were having tremendous amounts of fire fights when the civilian vehicles would come into our checkpoint, which is untrue. He made it sound like we were constantly under attack at these checkpoints, which is not true.

So, he basically fluffed it up to make it look like we were fighting almost hand-to-hand combat with these road terrorists and insurgents, and all of a sudden innocently civilians were involved, and he does mention in his articles, or the article that he wrote about the Rashid (ph) Military Complex, he does mention about the civilian casualties.

My driver, Corporal Schutts (ph), was quoted as saying, "It's a shame that civilians are being killed; however, it's better them than us." That's his direct words.

PRESIDING MEMBER: Was that in the
article?

WITNESS: Yes, sir. You
can do a Google search and pull it up, sir.

PRESIDING MEMBER: Is that an article that has been produced at all?

COUNSEL: No, it isn't. I wasn't aware of the reasons that caused Mr. Massey to come forward to the public in the United States, sir.

PRESIDING MEMBER: So, let me just summarize, if I can, to see if I get this right.

That you first declined to be interviewed.

WITNESS: Yes, sir.

PRESIDING MEMBER: Because you just wanted to return to civilian life and put what happened in Iraq behind you?

WITNESS: Yes, sir.

PRESIDING MEMBER: That you began reading articles or articles began to appear that you read, and reports on CNN that you became concerned with, because you believed that they were untruthful and were deceiving the American public?

WITNESS: That's correct, sir.

PRESIDING MEMBER: And, in particular, there was an article about what happened at Rashid by Ron Harris of the "St. Louis Dispatch"?

WITNESS: That's correct. Yes, sir.

PRESIDING MEMBER: Who wrote the article as if he were with your platoon when, in fact, he wasn't?

WITNESS: That's correct.

PRESIDING MEMBER: And that the article suggested that the incidents that you described yesterday arose from fire fights between the civilians, or the people in the vehicles, and you and your company?

WITNESS: That's correct.
Yes, sir.

PRESIDING MEMBER: And that you knew that not to be true, and it was at that point that you decided that you would accept, and as a result of what you have described the harassment from the local newspaper "The Mountaineer", that you decided that you would do the interview?

WITNESS: That's correct.
Yes, sir.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: So, you came forward in January 2004. You didn't know Mr. Hinzman at that point in time?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: And I assume -- well, I can't ask you if he knew you, but given that you hadn't given a statement to the press before January 2004, is there any way before January 2004 he might have known about you?

WITNESS: I don't know, unless Mr. Hinzman, you know, heard somehow through doing a Google search or looking to see if other soldiers felt the same way that he felt, but Mr. Hinzman contacted me through e-mail. My e-mail address is widely available, and asked if -- well, basically we kind of summarized to see if we felt the same way, and I concurred, he concurred, and he asked me if I would testify before the Canadians, and I agreed, and I had never met Jeremy before in my life, other than through the Internet.

MINISTER'S COUNSEL: Just for my own personal knowledge, what in a Google search would have brought your name up before January 2004? Were you on a chat site?

WITNESS: No Ma'am. I am computer illiterate. My wife has taught me how to surf the Net. The only thing that would have pulled up was my new recruiting office being opened in Silva (ph), North Carolina.

MINISTER'S COUNSEL: So, it's fair to say that your information about your experiences in Iraq were not widely available before January 2004?

WITNESS: That's correct, other than to the U.S. Marine Corps.

MINISTER'S COUNSEL: Of course.

WITNESS: I immediately started speaking out when I was in Iraq.

MINISTER'S COUNSEL: In terms of that, you stated that you hadn't actually witnessed any killing of non-combatants, for example, other than the one you were involved in. The non-combatants being -- let me start again.

You had not experienced any situation where you saw someone in the middle of surrendering who was indicating they were non-combatant that was shot, other than the one that you were involved in?

WITNESS: Let me make sure I'm understanding you. The only gentleman through all the killings that I can say, the one with his hands up ---

MINISTER'S COUNSEL: Yes.

WITNESS: --- but, personally, and after my investigation, my thorough investigation on the battlefield, after all of the incidences with the civilian casualties, there were no weapons or nothing to link them to being soldiers with the Iraq Army. There was nothing to link them to any type of insurgency or terrorist actions. That's what led me to believe that these were, in fact, just regular, average civilians.

MINISTER'S COUNSEL: Okay. But in terms of individuals who were in the process of surrendering to you, did you witness any killings of such individuals that were in the process of surrendering?

WITNESS: No. Just that one.

MINISTER'S COUNSEL: Just that one.
And would that have been a violation of the Geneva Convention to kill someone who was surrendering?

WITNESS: Yes.

MINISTER'S COUNSEL: Did you report this incident?

WITNESS: Yes.

MINISTER'S COUNSEL: And what did you do to report it?

WITNESS: I notified the psychiatrist that I went and saw in south of Karbala. At the First Marine Division Headquarters south of Karbala.

MINISTER'S COUNSEL: Anything else?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: Anything else to report the incident?

WITNESS: To the medical officer, Lieutenant Commander Wynn (ph), and Lieutenant Hong (ph), both of them medical personnel with the United States Navy.

MINISTER'S COUNSEL: Why would you notify medical personnel that you had violated the Geneva Convention?

WITNESS: Because I felt my life was in danger.

MINISTER'S COUNSEL: Can you explain that?

WITNESS: I was stripped of all of my weapons. I had no way to defend myself. Even after the Division psychiatrist deemed that I was not a threat to Marines or to myself, my Captain, Captain Dan Schmidt, stripped me of all of my personal defence.

MINISTER'S COUNSEL: I want to back up, because I'm not clear how we got to this point.

We have the incident where there is the shooting of this man who is in the process of surrendering, and then yesterday I understand that the Lima Squad (ph) Captain, who is ---

WITNESS: Company Gunner Sergeant.

MINISTER'S COUNSEL: --- Company Gunner Sergeant, immediately relieves you of command?

WITNESS: He radios to the Battalion Commander, Lieutenant Colonel Belcher (ph) of the situation and, after he gets off the horn, or the phone, he comes immediately over to our pause and starts explaining to the Lieutenant and I that we just shot an unarmed man that was trying to surrender, but he put it in -- that was a nice way of putting it.

MINISTER'S COUNSEL: So, at that point in time, were your weapons taken away?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: Okay. So, tell us what happened after you were informed you shot an unarmed man?

WITNESS: We were relieved of command shortly after that, after a very long, verbal confrontation with this Company Gunner Sergeant. The Battalion Commander, Lieutenant Colonel Michael Belcher arrived on the scene, pulled my Lieutenant, Lieutenant Kevin Shay, off to the side. They began to converse. The Colonel was very upset. Visually I could tell that he was very upset, and then afterwards the Lieutenant came to me and said, "Staff Sergeant, we are ordered to fall back." I said, "So, are you saying we are relieved of command, sir?" Then he said, "Yes."

Shortly, probably five minutes after we were relieved of command and I was going around making sure that the boys had packed up all of their gear properly, that nothing was left behind, was when the incident of the three

females and the child, while my Lieutenant Colonel was present on the scene when they murdered them.

PRESIDING MEMBER: And it was the Lima Company that had taken over that was involved in that incident?

WITNESS: Yes, sir.

MINISTER'S COUNSEL: So, you were relieved of command at that point by Lieutenant Colonel Belch (sic) and Lieutenant Shay?

WITNESS: Lieutenant Colonel Belcher.

MINISTER'S COUNSEL: Belcher, sorry. Now, you said the Colonel was upset. Which colonel was that?

WITNESS: Lieutenant Colonel Belcher.

MINISTER'S COUNSEL: Why was he upset?

WITNESS: I don't know. I didn't hear the conversation. I'm going by his expression on his face and his body language.

MINISTER'S COUNSEL: So, when you were relieved of command, what were you told to do?

WITNESS: We were told to fall back into the Rashid Military Complex and to stand down. We were basically ordered to rest.

MINISTER'S COUNSEL: How long had it been at that point that you had gone without sleep?

WITNESS: Forty-eight hours.

MINISTER'S COUNSEL: Was there any allegation or any suggestion in the process of all of this -- they've told you that you killed an unarmed man, and you

acknowledge you killed an unarmed man. Was there any suggestion that you had done so intentionally?

WITNESS: Nobody directly came up to us, but -- well, yes, Ma'am, I'm sorry. The Company Gunner directly came up to us and told us, "You shot an unarmed man."

PRESIDING MEMBER: That's the Lima Company Gunner?

WITNESS: Yes, sir, and I can't remember his name.

MINISTER'S COUNSEL: How would you relate to the Lima Company Gunner? Are you guys -- in terms of command, chain of command?

WITNESS: He and I are basically on the same level. We're both staff non-commissioned officers, as we're colleagues and peers.

MINISTER'S COUNSEL: So, I want to take us back another step. You said you were 48 hours without sleep. I just want to retrace what you were doing up until that point, and I'm just going to review what I think you told me yesterday, and if I'm wrong, just let me know.

So, I understand that you entered Iraq via Kuwait?

WITNESS: Yes.

MINISTER'S COUNSEL: You crossed the border and you establish a checkpoint north of An Nasiriyah?

WITNESS: Correct.

MINISTER'S COUNSEL: At that checkpoint, you only encounter one car?

WITNESS: That's correct.

MINISTER'S COUNSEL: That car waves a white flag?

WITNESS: That's correct.

MINISTER'S COUNSEL: You have no problem and that car is released without incident?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: Oh, that's the car that there was a dying child in that car?

WITNESS: Correct.

MINISTER'S COUNSEL: You attempt to resuscitate the child?

WITNESS: Correct.

MINISTER'S COUNSEL: The child cannot be resuscitated?

WITNESS: Correct.

MINISTER'S COUNSEL: And then that child -- the body is returned to the father of the child?

WITNESS: Correct.

MINISTER'S COUNSEL: And the car is allowed to proceed to bury the dead?

WITNESS: Correct.

MINISTER'S COUNSEL: At that point in time you receive a report that the Republican Guards are dressing as civilians?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: When did you receive that report?

WITNESS: At the Rashid Military Complex.

MINISTER'S COUNSEL: Okay. So, it was after you established the first checkpoint, but before you get

to the Rashid Military Complex or at the Rashid Military Complex that you get this report about the Iraqi Military dressing as civilians?

WITNESS: We were -- and to give you a better understanding, I will answer your question. We were in pacification. We were -- basically from the Town of Safan (ph) all the way up to Baghdad, on the outskirts of Baghdad, we were in pacification role. That's what we were ordered to do.

Once we got to the Rashid Military Complex, it was a completely different ballgame. That is when we started receiving the intelligence reports about the insurgents and the Fedayeen and Republican Guard.

MINISTER'S COUNSEL: Okay. Can you tell me what is at the Rashid Military Complex?

WITNESS: Yes. The part of the compound that I was in, there was a motor transport company, and the left side, the left side where the concrete wall it was a -- they described it as an Iraqi energy military complex. I have no idea what that means.

MINISTER'S COUNSEL: Did you think it could be a dangerous place?

WITNESS: No, Ma'am, because it was completely deserted.

MINISTER'S COUNSEL: Did you think that if it fell into the hands of Iraqis, it could be used for harm?

WITNESS: Yes, and we had basically done what's called Spray and Pray, where we discharged rounds into the building. We discharged 40-millimetre grenades into the building to try to flush out any type of snipers, but we still had to -- to reiterate, to backtrack, we still kept an eye on the building because of fear that a sniper or a sapper (ph) with an RPG could enter this building and fire at us.

MINISTER'S COUNSEL: And in all fairness, you weren't quite sure what was contained in the building; is that correct?

WITNESS: That's correct.

MINISTER'S COUNSEL: So, it could have been chemical weapons; it could have been anything in that building. You had not assessed what was inside the building?

WITNESS: That's correct.

MINISTER'S COUNSEL: So, I guess it's also fair to say, then, that in your mind this is something that Iraqi soldiers might want to get back to?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: No?

WITNESS: Because if they wanted to get back to it, then they would have put up more of a fight than they did. There was no fight.

MINISTER'S COUNSEL: Okay, but you did think it could be a legitimate target in terms of something that they would want to attack so it wouldn't remain in your hands?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: No?

WITNESS: The only reason that they would want to get in there is to place a well-trained sniper in that area to slowly pick us off one by one.

MINISTER'S COUNSEL: Okay. Then I'm trying to understand why you would want to secure this facility.

WITNESS: We were ordered to.

MINISTER'S COUNSEL: Do you know why you were ordered to secure the facility?

WITNESS: We were ordered to secure the facility so that we could continue to march north to take Baghdad. He who holds Baghdad, holds the key.

MINISTER'S COUNSEL: So, in order to protect this compound, the Rashid compound, from what I understand yesterday, you established a number of safeguards in order -- you established a roadblock; correct?

WITNESS: Correct.

MINISTER'S COUNSEL: And when you established that roadblock, you also established a number of what I will refer to as safeguards in order to try to flush out who was a combatant, or who was hostile and who was friendly, such as the signs, such as the warning shot? I'll go through it.

WITNESS: Right. Yes, I'm following you. Yes.

MINISTER'S COUNSEL: Okay. So, at that time there were signs in Arabic which you thought were ordering people to stop at a certain point before they approached you?

WITNESS: I don't know what they said.

MINISTER'S COUNSEL: But at that time you thought they said ---

WITNESS: Correct.

MINISTER'S COUNSEL: --- that they told -- that they were saying, "Stop where you are"?

WITNESS: Correct.

MINISTER'S COUNSEL: You also would fire a warning shot into the air?

WITNESS: Correct.

MINISTER'S COUNSEL: And at that time, you thought that that was an universal symbol for having people stop on their -- as a warning shot to tell them to stop where they are?

WITNESS: That's what we were trained to do, yes.

MINISTER'S COUNSEL: And you believed that that would be -- that's what you were taught would be an effective way to communicate, "You're not to come any further"?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: Okay. What was the warning shot designed to do?

WITNESS: I had already voiced my command or I had voiced my opinion to my command I wanted combat engineers to come in and to actually build roadblocks, to dig up the parts of the concrete, to build a barrier, and I was denied.

PRESIDING MEMBER: Okay. So, what was the function of the warning shot, then?

WITNESS: The function of the warning shot was an audible warning. Verbal, audible, then fire.

MINISTER'S COUNSEL: Well, there was verbal ---

WITNESS: Stop.

MINISTER'S COUNSEL: --- stop.

WITNESS: Stop.

MINISTER'S COUNSEL: There was a sign ---

WITNESS: Fire.

MINISTER'S COUNSEL: There was a fire; there was a stop.

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: So, it isn't until all of those things fail and the people keep coming into what is called from the Green Zone into the Red Zone, it's not

until all those things fail and they enter the Red Zone that you actually fire?

WITNESS: That's correct.

MINISTER'S COUNSEL: Okay. So, I mean, although after the fact you found out they were civilians, at that time were you fearful when they were coming towards you that they were actually combatants?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: You weren't?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: Even the first time one came towards you?

WITNESS: The only time that I actually felt that my life was in danger when these vehicles came at us was a semi-tractor. It didn't have the trailer on it. That is the only time I can honestly say that I felt it was a fog of war incident and that it was a legitimate, justified shooting, because it was a semi-tractor which could do a substantial amount of damage. In fact, this tractor turned the corner and didn't even enter completely into our Red Zone, but my Marines open fired on it, anyway, and even after me yelling at them to cease fire. It was kind of an instant panic when you see a tractor-trailer bearing down on you, but when the tractor-trailer started coming, it didn't even reach our Green Zone yet, it turned the corner and we still continued to fire. The cab was engulfed with flames. The driver of the tractor-trailer jumped out and was on fire running down the road.

PRESIDING MEMBER: Let's return to Ms. Chisholm's question.

WITNESS: Yes, sir.

PRESIDING MEMBER: She asked whether you were fearful when the first car came towards this roadblock, checkpoint, whatever you want to call it, whether you were fearful at all that there were combatants, non-civilians in the car, and you said you weren't fearful.

WITNESS: No. No, sir, I was not.

PRESIDING MEMBER: And why is that?

WITNESS: I could tell just by looking at them that they weren't -- they were dressed in traditional, they were older style vehicles. It wasn't -- the motor on the thing, you could hear the pistons banging against the cylinder walls. They could barely even creep past 35 miles an hour.

PRESIDING MEMBER: So, it was -- let's see if I have this right -- that your visual observation of the occupants; is that right? What they were wearing?

WITNESS: And the style of the vehicle.

PRESIDING MEMBER: And the style of the vehicle.

WITNESS: Yes, sir. If it was a Mercedes, I would have been worried. If it would have been a Pijero (ph) or a Mitsubishi, SUVs, that's common over there, I would have been worried, but these were older 1970 model Toyotas that could barely even run. You could hear the pistons banging against the cylinder walls half a block.

PRESIDING MEMBER: So, you had not received any intelligence reports, or encountered to that point, any problems with older people in the kinds of civilian attire that you described driving older 1970 Toyotas?

WITNESS: That's correct.

PRESIDING MEMBER: So, based on your experience and lack of intelligence reports to the contrary, you were not fearful that these were combatants?

WITNESS: That's correct.

PRESIDING MEMBER: These drivers.

WITNESS: These were average, almost poverty level individuals.

PRESIDING MEMBER: Thank you.

WITNESS: Yes, sir.

MINISTER'S COUNSEL: But you had received intelligence, from what I understand, that there were individuals dressed as civilians committing suicide bombings?

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: Were there any details of -- any descriptions of those individuals?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: Any description of their vehicles?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: Did you have any reason at the time to doubt the intelligence reports that people were committing suicide bombings by dressing as civilians?

WITNESS: Yes. I wasn't doubting the validity of the actual bombings. I was doubting the intelligence reports that were causing paranoia among my troops, and the level of how they were deciphering these terrorist attacks that was causing paranoia within my troops, and causing them to have an even faster trigger finger than normal.

MINISTER'S COUNSEL: So, I just want to talk first about the level, and then talk about the paranoia.

So, it wasn't that the actual suicide bombings didn't happen, and you don't dispute that.

WITNESS: I don't dispute that.

MINISTER'S COUNSEL: It's the fact that you're concerned that it raised the awareness of the troops and made them frightened?

WITNESS: That's correct.

MINISTER'S COUNSEL: Made them
paranoid?

WITNESS: That's correct.

MINISTER'S COUNSEL: But wasn't the
whole purpose of this to warn people that civilians -- people were
dressing as civilians in order to make them targets?

WITNESS: I'm sorry,
break that down.

MINISTER'S COUNSEL: I mean what was
the purpose of disseminating this information?

WITNESS: The purpose of
disseminating the information was to give the knowledge to the
Marines, but there are ways to disseminate knowledge that doesn't
create a panic or a paranoia, much like after 9/11. Americans, I
don't know about Canadians, have been transfixed that every Arabic
person within the United States could be a potential terrorist.
There's a difference between disseminating information and
disseminating paranoia and hatred.

MINISTER'S COUNSEL: And you thought
the dissemination was based on hatred?

WITNESS: In my opinion,
at the level of the intelligence reports, yes.

MINISTER'S COUNSEL: Why?

WITNESS: Because it was
directing. It was saying that possible insurgents from Turkey,
Syria, Iran were coming in and mounting these terrorist attacks,
and that they had no uniforms, that they were blending in with the
every-day population, that they were mounting guerrilla and
terrorist-style tactics against American and allied forces. If
that doesn't cause paranoia to a 20 to 25-year-old on a
battlefield, I don't know what does.

MINISTER'S COUNSEL: I understand what you're saying, but are you saying that this wasn't true that these people weren't coming in?

WITNESS: I'm saying it didn't happen to me and to my platoon.

MINISTER'S COUNSEL: Okay, that doesn't -- you're not suggesting that it didn't happen anywhere?

WITNESS: I'm not suggesting that it didn't happen anywhere; I'm suggesting that it didn't happen to my platoon, and those intelligence reports brought about an increased paranoia within my platoon.

MINISTER'S COUNSEL: I mean, weren't the reports generated in order to alert your group or your platoon that these things were happening to others and it could potentially happen to you?

WITNESS: I had never heard, and to this day, anyone from Seventh Marines Regiment coming under this type of attack.

MINISTER'S COUNSEL: Right, and how many days had the invasion been going on at that point in time?

WITNESS: A month.

MINISTER'S COUNSEL: One month?

WITNESS: Yes.

MINISTER'S COUNSEL: So, how fine tuned was the intelligence at that point in time? Do you have any idea?

WITNESS: I think the intelligence was a faux pas from the very beginning, because there were no weapons of mass destruction.

MINISTER'S COUNSEL: Right. So, I mean, the intelligence, in all fairness to them, might have sent this out as a general warning, because they didn't know where to expect this to happen.

WITNESS: Yes, I agree with that. Yes.

PRESIDING MEMBER: Just so I understand, you're not saying that there weren't insurgents from other countries that have come to fight the Americans in Iraq?

WITNESS: That was what we were being told. I don't know. I never physically saw or came in contact with anybody from Syria, Turkey, or Iran.

PRESIDING MEMBER: Okay. I understand that, but you've read reports ---

COUNSEL: Well, if I may, Mr. Chair, I don't think it's this Witness' task to testify about a report that he has read. I mean, the reports have their validity, whatever it is, but for him to adopt a report, when he has no independent evidence, in my submission, would have no weight.

PRESIDING MEMBER: Well, his evidence was that he had not personally come across any insurgent from another country, and my question is: Is he saying that that didn't happen?

COUNSEL: How would he know that?

PRESIDING MEMBER: Well, he would know it by having read it, by having spoken to others.

COUNSEL: If the question is: Did you ever read that this was so, I think that's a fair question, but to have him adopt a conclusion, I don't see what weight that could be given to that, with respect.

PRESIDING MEMBER: Okay. And I will decide on the weight, but I'm not asking him to adopt a conclusion. I'm simply asking him whether he has read -- and I will ask you again -- whether you have read any reports of insurgents from countries other than Iraq that have been apprehended or killed in Iraq who came to fight the Americans, or came to fight on the side of the other Iraqi insurgents?

WITNESS: No, sir. Also the reason I can say that is because much like Canada, Iraq is a

hodgepodge, it's a melting pot of different ethnic groups. That would be like me saying I'm from Ireland, I'm Irish, Scots or Irish American, and that would be like a Scotch/Irish American Marine fighting in Iraq. Iraq is a hodgepodge militant pot of different cultures. I even saw Africans.

PRESIDING MEMBER: Just to make myself clear, I'm talking about either citizens of another country, or stateless persons, in the case of Palestinians, who came to Iraq to fight against the Americans. Are you aware of that having happened through reading or through your conversations with others?

WITNESS: I've read recently, just recently that there are these types of individuals that are coming into Iraq now, not then. Now.

PRESIDING MEMBER: So, by drawing the distinction between then and now, is it your belief that that was not happening at the time that you were in Iraq?

WITNESS: That's correct.
Yes, sir.

PRESIDING MEMBER: So, you believe that those intelligence reports not only engendered paranoia, but were untrue?

WITNESS: My personal feelings, yes. They were a tool that was utilized to create a fear and paranoia within the Marines that allowed them to accelerate the battle. We were always told that Baghdad was going to be the key. It was basically a joyride from Safwan (ph) to the Rashid. Once we got to Baghdad, we knew that it was time to put on our game faces, and it was true, because the intelligence reports changed, everything changed, the mentality, because he who holds Baghdad, holds the key. You cannot successfully overthrow Iraq without taking Baghdad.

PRESIDING MEMBER: So, once again, you believed that the intelligence reports that were received, that there were foreigners, if I can put it that way, who were fighting on behalf of the insurgents in Iraq, that it was propaganda, it was untrue propaganda, and it was meant to raise the paranoia and the...if I can put it...the temperature of the environment?

WITNESS: That's correct.

COUNSEL: Could I just
make one comment, Mr. Member? You asked whether these people
might be fighting on behalf of the insurgents, but I presume you
meant the Government of Iraq?

PRESIDING MEMBER: Yes.

COUNSEL: Yes, okay.

PRESIDING MEMBER: At that point,
I guess it wasn't clear.

COUNSEL: Oh, it was
clear.

PRESIDING MEMBER: Well, that's
something to be argued, I guess.

WITNESS: In our whole
trek up to Baghdad, we were in pacification mode.

PRESIDING MEMBER: Yes, you
mentioned that, and then I think you mentioned that everything
changed when you got to the Rashid Military Complex.

WITNESS: Everything
changed.

PRESIDING MEMBER: Yes.

WITNESS: The
intelligence reports, the mentality, everything changed.

MINISTER'S COUNSEL: Okay. I'm
confused and I'm sorry I'm repeating myself, but I think you have
given two different answers, and I want -- my notes indicate that
and I want to make it clear.

I'm not disputing you said that
these intelligence reports increased the paranoia level, you've
made that clear, but you've also said at one point that you
thought they were untrue.

WITNESS: Yes.

MINISTER'S COUNSEL: Okay. How would you know that -- well, let me go back, because before I asked you ---

WITNESS: I don't think that they were untrue. I think that they were heightened.

MINISTER'S COUNSEL: So, they were exaggerations?

WITNESS: Correct.
That's the word.

MINISTER'S COUNSEL: Okay, because before you said they were untrue.

WITNESS: They were ---

MINISTER'S COUNSEL: And now you say they are exaggerations.

WITNESS: Correct.

MINISTER'S COUNSEL: How can you -- what was the basis of your belief at that time that they -- I mean, hindsight is 20/20. At that particular moment, how could you have possibly known that intelligence reports from other parts of the country were exaggerations or not?

WITNESS: In my 12 years in the Marine Corps, if you're going to fight a war and if you're going to be successful at fighting a war, you have to react as soon as the war kicks off. That would be like -- and I will give you an example, and I will have to put this in a violent way -- if you knew that I wanted to cause physical harm to you, what would you do? If you knew that I was out there and I wanted to cause physical harm to you, what would you do?

MINISTER'S COUNSEL: Sorry, you can't ask me questions.

WITNESS: Okay. Well, I would tell you what I would do. I would first take pre-emptive

steps. I would go down to the police department, file a restraining order. That's the first means.

Then when I got back to my house, I would do whatever I could to secure that area. Then I would have my neighbours, maybe a half a city block or a block away, say, "Look, this guy drives a Red Dodge Intrepid. If you see this, can you please let me know?"

MINISTER'S COUNSEL: Okay.

WITNESS: So, what I'm trying to explain to you, Ma'am, that type of precautionary measure is the same thing that you do in war. In order for you to fight a war, you fight from the very beginning, and I'm telling you from the very beginning we did not fight. We did not fight for Iraq. The Iraqi people let us in that country under the understanding that we were there to overthrow Saddam, and then we were going to raise or lift the U.N. sanctions so that we could provide medical and humanitarian support, which we did not do.

So, the Iraqis, under the assumption that we were going to provide all of this and get rid of Saddam Hussain, let us in Iraq and we did a joyride all the way up to Baghdad, passing out candy along the way. We came under one direct attack, we've already talked about that, and then once we got into Baghdad, every Marine knew that the rules were going to change, because he who holds Baghdad, holds the key. I thought that we were going to be under constant fire from the very beginning. The Iraqis did not have the military to fight us. We destroyed their military during the first Gulf War, and if we can take it a step further, I found ammunition and tanks that were American ammunition and tanks, that were left over from the Iran/Iraq War that they drove out to the battlefield just to make it look like there was a tank there.

MINISTER'S COUNSEL: Okay, but it still doesn't get to my question, which was, I mean ---

WITNESS: What is your question?

MINISTER'S COUNSEL: Okay. You're saying that the basis of your belief is your experience, that this is a propaganda tool in order to heighten paranoia, and I'm suggesting to you that ---

at your house --- WITNESS: If I called you

let me finish. MINISTER'S COUNSEL: No, no, please

can't interrupt her. You have to wait until she finishes the question. PRESIDING MEMBER: Please, you

WITNESS: Yes, sir.

MINISTER'S COUNSEL: You're suggesting this was a paranoia tool and I'm putting to you an alternative possibility, which was it may have been -- it may have resulted in increased paranoia, but its allegation and its basis, the basis of the allegations were essentially true and they were designed to put people in a precautionary state of mind, and to make sure that they recognized all of the legitimate threats they were facing.

WITNESS: No, Ma'am. No, Ma'am. If I called you from a cellular phone two blocks away from your house and told you I'm coming to get you, how would that make you feel? I will tell you your heart would be beating out of your chest and you would be absolutely out of your mind full of paranoia and fear. So, no, Ma'am, I don't agree with that.

MINISTER'S COUNSEL: I mean, if the reports are true, is it not just ---

WITNESS: There's a difference between giving ---

PRESIDING MEMBER: No, no, sir. Once again, you have to wait until she finishes the question. She won't interrupt you, I'll make sure of that.

WITNESS: She takes long pauses, sir. I'm used to...

MINISTER'S COUNSEL: I will try to be a bit faster.

COUNSEL: I wonder where that comes from.

MINISTER'S COUNSEL: The reports are true and have some foundation. Just because you didn't have the same experience as others doesn't mean that you weren't entitled to the same information that everyone else had before them.

WITNESS: Say that again?

MINISTER'S COUNSEL: I mean perhaps you didn't encounter any -- you call it a joyride from your invasion to Baghdad and you came under fire once.

WITNESS: Correct.

MINISTER'S COUNSEL: Isn't it legitimate to say that other people didn't have it so easy; other people did come under fire; other people were attacked by people dressed as civilians; other people did have situations where they were actively attacked while trying to come into Iraq?

WITNESS: No, Ma'am, because I was the tip of the spear. I was ---

MINISTER'S COUNSEL: There were no other individuals ---

WITNESS: --- on the front lines.

PRESIDING MEMBER: Wait, wait, wait, let him finish.

WITNESS: I was on the front lines. You don't get any closer than where I was at. Ma'am, I'm in the Infantry ---

MINISTER'S COUNSEL: Right.

WITNESS: --- combined anti-armour team. I was a part of a reconnaissance that was 10 to 15 miles in front of the rest of the battalions in enemy lines the entire time.

MINISTER'S COUNSEL: Okay.

WITNESS: I'm telling you I only came under contact, direct fire one time. I am, we were the tip of the spear.

MINISTER'S COUNSEL: Okay. From that direction. Were there invasions from other areas?

WITNESS: You would have to get a witness from the Third I.D. You would have to get a witness from the Royal Marines. I can't speak for them.

MINISTER'S COUNSEL: All right.

WITNESS: I can tell you about for First Marine Division ---

MINISTER'S COUNSEL: I understand that, but what I'm saying is, is it the case that the intelligence would vary from area to area, or would they give a general warning to everyone based on the experiences of a limited amount of individuals?

WITNESS: I can tell you that on the battlefield you have to give men a reason to fight. You have to give them a purpose and a cause to fight. It's not a natural reaction to put a bullet in somebody's head. Marines train for that, but you still have to be coaxed into doing it, and what better way than to over inflate propaganda or intelligence reports to ensure that this happens? These are the tactics that we've been using since Vietnam and that we use in countries, such as Venezuela and in Third World countries, and, yes, that is a standard operating procedure in psychological warfare. You can look that up in any military manual.

MINISTER'S COUNSEL: Okay. Have you ever been part of intelligence or reconnaissance units?

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: During what wars?

WITNESS: This war.

MINISTER'S COUNSEL: So, were you part of the intelligence that came forward that said the insurgent -- people were dressed as civilians?

WITNESS: No, Ma'am. These were intelligence reports that we were receiving from higher.

MINISTER'S COUNSEL: Do you know where those reports would have come from?

WITNESS: From Headquarters Marine Corps in Washington, D.C., that wasn't even there.

MINISTER'S COUNSEL: Would they have been filtered from other intelligence units?

WITNESS: As far as I know, from Central Intelligence Agency.

MINISTER'S COUNSEL: Were you the only intelligence unit in Iraq?

WITNESS: Well, I think you're misunderstanding. A reconnaissance unit gathers information. You understand the definition of reconnaissance?

MINISTER'S COUNSEL: Yes, sir.

WITNESS: Well, reconnaissance units gather information and then report to higher. Then they take that report and filter it up to a higher chain of command. Once they have made a final determination, that intelligence report that I gave them slowly trickles back down.

MINISTER'S COUNSEL: Okay. So, you were part of a reconnaissance unit?

WITNESS: That scouted 10 to 15 miles ahead into enemy territory, yes, Ma'am.

MINISTER'S COUNSEL: Were you the only reconnaissance unit in Iraq?

WITNESS: No, Ma'am.

of an intelligence unit?
MINISTER'S COUNSEL: Were you part

WITNESS: Yes, Ma'am.

the only intelligence unit in Iraq?
MINISTER'S COUNSEL: And were you

WITNESS: No, Ma'am.

could I interrupt for a moment?
COUNSEL: Mr. Chair,

PRESIDING MEMBER: Certainly.

COUNSEL: I would like to
be able to take just a two-minute break for personal reasons right
now. I don't want to interrupt my friend to the extent possible.

PRESIDING MEMBER: When shall we
take our morning break? I guess if we go till one, we shouldn't
take it now, it's too early.

MINISTER'S COUNSEL: If my friend
needs a break now, I don't have a problem with taking our morning
break now.

COUNSEL: Or I could just
take a couple of minutes.

PRESIDING MEMBER: What would you
prefer, Ms. Chisholm? You're the one who is questioning now.

MINISTER'S COUNSEL: Honestly, I
will leave it up to my friend.

COUNSEL: I will take a
morning break, if that's all right?

PRESIDING MEMBER: Okay.

COUNSEL: Thank you.

PRESIDING MEMBER: So, we will be
back at 11:00.

We're back on record after our morning break. I just wanted to, once again, thank the members of the public who are here and the members of the media who are here for the manner in which they have been conducting themselves during the course of the hearing. It has not been disruptive, I don't believe, to the parties, and I'm grateful for your being respectful of the process and of the parties.

However, the fact that the hearing is public doesn't mean that I'm entitled to speak to any of you. Much as some of you would like to speak to me, and I'm sure I would like to speak to you, that's just not possible. So, please don't consider me rude if I indicate to you that I'm unable to speak to you, but none of us would want to do anything to be an obstacle to ensure that Mr. Hinzman receives the fairest possible hearing.

I'm going to ask all of you, those of you who have cell phones, once again to turn your cell phones off, and we will proceed through probably till one p.m. So, if there are any of you here who need to leave before one p.m., I would ask you to do so now so that it's not disruptive. Thank you very much.

I'm going to ask Ms. Chisholm to continue with her cross-examination.

MINISTER'S COUNSEL: Thank you. So, when we left off, we were talking about the intelligence reports, and you thought they were exaggerated; correct?

WITNESS: Exaggerated and over inflated, yes, Ma'am.

MINISTER'S COUNSEL: And the purpose of that was to -- what was the purpose of over exaggeration?

WITNESS: To instil an essence to fight. That's a personal opinion.

MINISTER'S COUNSEL: Okay, that is a personal opinion. In your personal opinion, was this over exaggeration designed so that soldiers would target civilians?

WITNESS: No, Ma'am. It was an over exaggeration to instil the will to fight.

MINISTER'S COUNSEL: Do you think the Army would ever, in your opinion, encourage soldiers to kill civilians?

WITNESS: You would have to talk to somebody in the Army.

MINISTER'S COUNSEL: How about the Marines?

WITNESS: Can you repeat the question?

MINISTER'S COUNSEL: Was there anything that led you to believe that as part of this policy of over exaggeration, that they really wanted more civilian casualties?

WITNESS: I don't believe that was the intent of the U.S. Government, no.

MINISTER'S COUNSEL: And there were never any orders given by you or received by you to target civilians?

WITNESS: No, Ma'am.

MINISTER'S COUNSEL: One second, please. Okay. I just want to go back to your discharge from -- your relief from duty after the incident at the military compound.

WITNESS: Yes.

MINISTER'S COUNSEL: The incident where there was not -- like, someone who was surrendering who was killed. I just want to go through the timeline.

So, this individual was killed and you were relieved of command.

WITNESS: Yes, Ma'am.

PRESIDING MEMBER: What date was that; do you recall?

WITNESS: Yes, I want to say the actual, I didn't bring it with me, but I want to say it was around March 20 -- no, excuse me, March -- no. April 9th or 10th. I'm sorry, I didn't bring the actual report with me of that day that Mr. Ron Harris wrote.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: Okay. And at that point in time when you were relieved from command, you were told to remove yourself from the scene and get some rest. That's the impression I got. Is that correct?

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: When did you return to command?

WITNESS: The following morning, zero six.

MINISTER'S COUNSEL: What were your duties at that point?

WITNESS: Full combat.

MINISTER'S COUNSEL: In the same location?

WITNESS: No, Ma'am. We moved out to the Baghdad Stadium. Near the Baghdad Stadium.

MINISTER'S COUNSEL: How long did you remain at the Baghdad Stadium?

WITNESS: Till about -- we arrived there around ten in the morning and we left to actually physically go in the stadium around 18:00 that night.

MINISTER'S COUNSEL: Just to backtrack, at this point in time, you haven't reported anything to your supervisors or to your superiors regarding your concerns

about civilian losses, or about the actions that you took at the -
- when you shot the person surrendering?

WITNESS: No. I did.

MINISTER'S COUNSEL: You did. Who, at that time, had you vocalized your concerns to?

WITNESS: My lieutenant.

MINISTER'S COUNSEL: In what way did you do that? Can you tell me what you said?

WITNESS: Do you want the actual words?

MINISTER'S COUNSEL: Yes.

WITNESS: "What the fuck are you doing, sir?"

MINISTER'S COUNSEL: You said that to him?

WITNESS: Yes, Ma'am.

PRESIDING MEMBER: Could you tell me when that was?

WITNESS: It was later on. It was actually before the incident with the gentleman with his hands up. It was after a couple of the civilian casualties had already occurred.

MINISTER'S COUNSEL: Okay, but I'm wondering about is the incident that you were involved in where you shot the person surrendering. Did you ever report that to your superiors?

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: When did you do that?

WITNESS: After we secured the Baghdad Stadium.

MINISTER'S COUNSEL: So, how long afterwards would that be? Like, in terms of hours, days, weeks?

WITNESS: Less than 16 hours tops. I had to wait till I was physically in front of the commanding officer, Captain Dan Schmidt, and that was when he asked me what was wrong and I told him that today was a very bad day, we killed a lot of innocent civilians, and he looked at me dead in my eyes and said, "No. Today is a good day." And he walked off. So, I figured that was the end of the discussion.

MINISTER'S COUNSEL: But did you tell him, you know, what it was in particular that was disturbing you? Like I mean -- what I'm trying to get at is: We've seen you suggesting that you shot at civilians, and you have acknowledged that you thought they weren't civilians, but they might well have been combatants. You would never be sure until -- sorry?

COUNSEL: I don't know if that was the testimony. I think, as a matter of practice, my friend is required to state the evidence clearly as part of her question, and I don't think the evidence was that he thought they might be combatants. I don't think that has been his evidence.

PRESIDING MEMBER: I agree with that, Ms. Chisholm.

MINISTER'S COUNSEL: All right. Let me rephrase.

To your knowledge, you had never -- you had fired on these vehicles, four vehicles in total; is that correct?

WITNESS: Over the 48-hour period?

MINISTER'S COUNSEL: Yes.

WITNESS: Sir, if you want, I can actually draw a diagram of all the vehicles. It's hard for me, I have to sit down with a pen and paper, this vehicle, this vehicle. I can draw the actual Rashid Military Complex with the vehicles. I mean field expedient, of course, and

the Baghdad Stadium incident. We can count the vehicles and the bodies.

PRESIDING MEMBER: I appreciate your offer to do that. I don't believe it will be necessary for the purposes of this hearing for you to do that, but I would like you to answer Ms. Chisholm's question.

COUNSEL: If I may, Mr. Member? I'm not sure his evidence has been that there were four vehicles in all, and that's what was in Ms. Chisholm's question.

PRESIDING MEMBER: Well, that's why I have asked him to answer the question. I've asked him to answer -- she asked whether, in fact, he shot at four vehicles, and that's what we were waiting for the answer to, and if you need to use paper and pencil yourself ---

COUNSEL: You want some?

WITNESS: Yes, yes. I just want to make sure ---

PRESIDING MEMBER: If it will help your memory ---

WITNESS: Yes, sir.

PRESIDING MEMBER: --- to do that, I have no problem with that, but I really don't require it for the purposes of this hearing. If it assists you, by all means.

WITNESS: I just want to make sure I give an accurate account.

PRESIDING MEMBER: I understand. So, the question was: We heard evidence -- did we hear evidence that you shot at four vehicles? I guess the first question is: Was it four vehicles, or was it more or less?

WITNESS: Yes, sir. Give me just a minute, sir.

PRESIDING MEMBER: Yes, take your time.

WITNESS: Seven.

MINISTER'S COUNSEL: Okay. Were those vehicles all in the Red Zone?

WITNESS: All but the tractor-trailer.

PRESIDING MEMBER: That was the semi -- part of the semi that you testified turned before it hit the Red Zone?

WITNESS: Yes, sir.

MINISTER'S COUNSEL: I'm sure you will correct me if I'm wrong, but you thought the tractor-trailer was an imminent danger and you fired upon it outside of the Red Zone because you thought you were in imminent danger?

WITNESS: That was a direct fog of war.

MINISTER'S COUNSEL: Fog of war. So, what I'm trying to understand is, only one of those cases involved someone who had identified themselves clearly as a non-combatant by putting their hands up; correct?

WITNESS: Run that by me one more time. Just to make sure I understand.

MINISTER'S COUNSEL: Okay. Of those seven vehicles ---

WITNESS: Yes?

MINISTER'S COUNSEL: Okay. So, there's six in the Red Zone?

WITNESS: Correct.

MINISTER'S COUNSEL: And out of those six, the one that strikes me, and maybe I'm -- the one that strikes me as the most obvious is the one where the individual identified himself by putting his hands up and indicating he was a non-combatant. That individual was the one where he had clearly

made a gesture to you, which is internationally accepted that he was not participating, he's a non-combatant?

WITNESS: Now you're getting into -- and I will answer your question, but do you want a personal or do you want a textbook?

MINISTER'S COUNSEL: Textbook.

WITNESS: Well, a textbook is anybody that fails to stop that comes into the Red Zone is considered a combatant.

MINISTER'S COUNSEL: Okay. So -- but at the time he puts up his hands, he is indicating to you that although he's in the Red Zone, he's not a combatant anymore.

WITNESS: That's correct.

MINISTER'S COUNSEL: So, he's the one individual that if there's any, sort of, fog of war allegation, he's clearly not caught under that, because he's clearly identified to you that he's not a combatant?

WITNESS: That's correct.

MINISTER'S COUNSEL: Okay. So, for that particular ---

PRESIDING MEMBER: Sorry, just before you continue. Is this the one that you described who, in fact, had been hit? He had been shot?

WITNESS: Yes, sir.

PRESIDING MEMBER: So, before he came out, he had been shot, put his hands up, and he was the one that was crying about his brother?

WITNESS: No, sir.

PRESIDING MEMBER: No, it's not the one?

WITNESS: No, sir.
That's the red Kia.

PRESIDING MEMBER: That's the red Kia, okay, but this one had been shot?

WITNESS: To my knowledge, he had to have been shot at least once, with the first burst of ammunition that we put into the vehicle, he had to have been hit, but he still had the capability for him to exit out of the vehicle. A five-five-six round, that's the type of ammunition that we use in an M-16, basically it decompassitates (ph) unless you hit the heart directly or you hit the brain, of course, but it's not -- because it's a NATO-approved weapon, NATO-approved weapons are designed to be humane.

PRESIDING MEMBER: So, you believe that he was hit before he exited and put his hands up?

WITNESS: Yes, sir.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: So, of all of the incidents that you are describing, this is the one where someone is in the Red Zone, but has, in a sense, trying to take himself out of the Red Zone by putting his hands up and saying he's not hostile?

WITNESS: That's correct.

MINISTER'S COUNSEL: What paperwork - I mean so, this is clearly someone who is a non-combatant, and yourself and members of your company have fired on him; correct?

WITNESS: That's correct.

MINISTER'S COUNSEL: Is this a violation of the Geneva Convention?

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: What did you do to bring forward this violation to your superiors?

WITNESS: I don't want to repeat it again, but it's what I told to my Lieutenant.

MINISTER'S COUNSEL: Okay, but that's asking him what he was doing. I'm asking what you brought forward in terms of your own actions.

WITNESS: I incorporated new SOPs within the platoon.

MINISTER'S COUNSEL: Did you ever inform your superiors that you thought you had violated the Geneva Convention?

WITNESS: Since day one.

MINISTER'S COUNSEL: In this particular instance?

WITNESS: Yes.

MINISTER'S COUNSEL: How did you do that?

WITNESS: Verbally.

MINISTER'S COUNSEL: Was that when you said, "Today is a bad day"?

WITNESS: That was the first time. I wasn't able to complete what I meant, because the Captain, by every right, doesn't even have to talk to a staff sergeant.

MINISTER'S COUNSEL: So, how did you vocalize to your superiors, other than to ask him what the 'f' are you doing? How did you vocalize you had concerns that you, personally, had violated the Geneva Convention in this instance?

WITNESS: It wasn't until the Division psychiatrist. I explained to him the situation.

MINISTER'S COUNSEL: When did that take place?

WITNESS: Around May 5th, while I was still in country.

MINISTER'S COUNSEL: But the actual incident took place when? In March?

WITNESS: No. April.

PRESIDING MEMBER: April 9th or 10th.

WITNESS: Yes.

MINISTER'S COUNSEL: April 9th or 10th. Why did you not make an official report or allegation at that point in time?

WITNESS: I don't think you understand the chain of command, Ma'am, and how it works. I'm a Staff Sergeant. I have every right to question my men that are below me. If I go to another individual that is a higher rank, especially an officer, that individual doesn't even have the -- doesn't even have to talk to me, if they don't want to.

MINISTER'S COUNSEL: Okay. The individuals who fired on this individual in the Red Zone who indicated they are non-combatant, were any of those people your superiors?

WITNESS: I'm sorry, repeat that.

MINISTER'S COUNSEL: The Red Zone incident with the guy with his hands up, were any of those people your superiors that fired upon him?

WITNESS: Yes, we all fired.

MINISTER'S COUNSEL: You all fired, and some of the people who fired were lower than you in terms of chain of command?

WITNESS: Correct.

MINISTER'S COUNSEL: Were any of them higher?

chain of command ---

WITNESS: Higher in the

MINISTER'S COUNSEL: Yes.

myself?

WITNESS: --- than

MINISTER'S COUNSEL: Yes.

Lieutenant.

WITNESS: Yes. My

lieutenant. So, did you indicate to the people lower on the chain of command to you that what they had done was wrong?

MINISTER'S COUNSEL: Your

WITNESS: Yes.

to write them up for it?

MINISTER'S COUNSEL: Did you attempt

worried about being tried as a mutineer.

WITNESS: No. I was

by informing your men that they had violated the Geneva Convention, that you would be tried as a mutineer?

MINISTER'S COUNSEL: So, you thought

When you're on the battlefield there's a time and place to bring things up. Whenever you're in a battlefield or a combat situation, you don't do the timeout and say, "Okay, listen, all bad guys go away. Let's go ahead and sit down and discuss this." And then once everything is done, then we go back to playing G.I. Joe. It doesn't work like that.

WITNESS: No, Ma'am.

Have you at any time brought forward a written complaint or an allegation against the people below you for the actions they committed on that day?

MINISTER'S COUNSEL: Fair enough.

WITNESS: Yes, Ma'am.

did you do that?

MINISTER'S COUNSEL: You have. When

WITNESS: When I went and saw the Division psychiatrist. The Division psychiatrist took the notes, and also on my medical discharge there was an official medical report that was written, and it says on the official medical report, "Patient states becoming very distressed over seeing numerous civilian casualties."

MINISTER'S COUNSEL: Right, but I'm curious, because is it typical that you would bring forward allegations of Geneva Convention violations to a medical officer?

WITNESS: You can bring up to anybody. The Geneva Convention is within everybody's right. It just depends on whether that individual wants to hear you.

MINISTER'S COUNSEL: All right, but in terms of bringing it forward into a forum where individuals would be punished for what they did ---

WITNESS: Yes.

MINISTER'S COUNSEL: --- have you attempted to take action to ensure that they are punished for violating the Geneva Convention?

WITNESS: Yes.

MINISTER'S COUNSEL: How did you do that?

WITNESS: By verbally saying I'm going to press charges. Then I was told, "Staff Sergeant, you're not even worthy of being a Marine."

PRESIDING MEMBER: When did that happen?

WITNESS: In Iraq.

PRESIDING MEMBER: When?

WITNESS: May 2nd timeframe.

PRESIDING MEMBER: Who did you tell that to?

WITNESS: The medical officer and to the lieutenant.

PRESIDING MEMBER: So, on May 2nd you told the medical officer and the lieutenant that you intended to bring charges against the men for shooting the civilian?

WITNESS: Yes. They were intending on bringing charges on me for being a conscientious objector. I told them that I intended on bringing charges against them for violating the Geneva Conventions.

MINISTER'S COUNSEL: I'm curious why you use the word "charges" for conscientious objector. Is that something that you would face penalties for in the Army?

COUNSEL: In the Marines.

MINISTER'S COUNSEL: In the Marines, sorry. I mean, judicially, not extrajudicially, but in a -- you use the word "charges" as a legal term. Is there a legal punishment for being a conscientious objector?

WITNESS: No. I think I'm putting that out of context. There is no charges. However, there is a blackball system within the military that if you file a petition for C.O. status, that pretty much, you're giving yourself a death sentence. I've known Marines to have been beaten severely either by their peers, harassed, sexually harassed, raped.

PRESIDING MEMBER: Well, right now what we're talking about is that you told the medical officer, you testified, and the lieutenant that you were going to lay charges against the men for firing at this civilian.

WITNESS: The lieutenant, yes.

PRESIDING MEMBER: You told the lieutenant this?

WITNESS: I told the lieutenant.

PRESIDING MEMBER: And the medical officer, or not?

WITNESS: Yes, I told the medical officer, as well, as well as the Division psychiatrist, and the assistant medical officer, the executive officer.

PRESIDING MEMBER: We're talking about May 2nd now.

WITNESS: Yes, sir.

PRESIDING MEMBER: Okay. Then you testified that -- tell me if I'm right -- that it was in response to them having said that they were going to lay charges against you for -- and you originally said for being a conscientious objector, and then you corrected that. Ms. Chisholm asked you whether it was an offence or there was a penalty for being a conscientious objector and you said there wasn't.

WITNESS: The first charges -- I'm sorry. The first charges that they implied was the destruction of government property.

PRESIDING MEMBER: Right, that's what you testified to yesterday.

WITNESS: Yes, sir, and then later on they decided to add the conscientious objector, and I explained to them that if they wanted to try me or push conscientious objector status upon me for not wanting to kill innocent civilians, then I will see them in court. After I said that, they dropped all charges or all punitive actions against me. They decided to leave that one alone.

PRESIDING MEMBER: So, they threatened to force you to claim conscientious objector status?

WITNESS: That's what they were wanting me to do. I told them -- to add more, I told them that I am not an assassin, I am not a mercenary. If I wanted to kill innocent civilians, I could have went down to South America and already retired by now, and probably had three or four million in the bank. I'm not an assassin. The Marine Corps that I live in or that I worked for does not kill innocent civilians.

PRESIDING MEMBER: Ms. Chisholm?

MINISTER'S COUNSEL: Thank you. So, the first charges were the destruction of government property.

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: And then there was an allegation or a suggestion that you were a conscientious objector?

WITNESS: Yes, Ma'am.

MINISTER'S COUNSEL: This was May 5th?

WITNESS: Correct.

MINISTER'S COUNSEL: Then at that time, that's when you said that you were intending to bring charges?

WITNESS: That's correct.

MINISTER'S COUNSEL: So, did it happen in that order?

WITNESS: No, Ma'am. I was medi-vac'd (ph) out, immediately out of Iraq.

MINISTER'S COUNSEL: When was that?

WITNESS: May 15th.

MINISTER'S COUNSEL: Okay. But I want to get the order of who said what. So, they tell you, you are going to be charged for destruction of government property and you are a conscientious objector.

WITNESS: Correct.

MINISTER'S COUNSEL: Now, in relation to your allegation that you were going to bring charges, did that happen before or after they brought those allegations?

WITNESS: That happened before. I started voicing my concern about the civilian casualties before they brought up the charges.

MINISTER'S COUNSEL: Right, but in terms of the charges specifically for that event of the killing of the gentleman in the Red Zone who had indicated he's a non-combatant, when did you tell them you wanted to press charges on that matter?

WITNESS: Immediately after, while we were in the Baghdad Stadium.

PRESIDING MEMBER: So, that would have been April 8th or 9th?

WITNESS: Yes, sir.

MINISTER'S COUNSEL: What did you -- did you make a written report at that time, or anything like that?

WITNESS: I made a verbal.

MINISTER'S COUNSEL: An oral report?

WITNESS: Yes.

MINISTER'S COUNSEL: What was the -- how did you make that oral report?

WITNESS: Basically, I told the First Sergeant, First Sergeant Humphries (ph), that I wasn't comfortable with killing innocent civilians, and I explained to him why.

MINISTER'S COUNSEL: I'm sorry, I want to stop you there, because I don't want to talk about the general complaint you had; I want to talk about the specific shooting of this civilian. I'm wondering if that was part of your April 9th and 10th discussion with the Sergeant?

WITNESS: Yes.

MINISTER'S COUNSEL: Okay. So, can you tell me about that portion of the discussion?

WITNESS: It was a very brief discussion. When you start talking about legalities with Marines, they start becoming very scared. I explained to him what was going on, what had happened, and he looked at me and said, "Staff Sergeant, you're playing a very dangerous game." At that time I felt I better start growing eyes in the back of my head.

MINISTER'S COUNSEL: Okay. So, this was in April, and then April 5th -- sorry, May 5th, that's when the allegation that you are a conscientious objector, the destruction of government property comes forward?

WITNESS: Correct.

MINISTER'S COUNSEL: In terms of the discussion with the psychiatrist and the lieutenant, when did that occur?

WITNESS: That happened around ---

PRESIDING MEMBER: I think he said May 2nd.

WITNESS: Yes.

PRESIDING MEMBER: Is that right?

WITNESS: No, sir. The discussion with the command group happened at the beginning of the month, around May 2nd, and then after the discussion ended with them, they weren't going to take action. That's when I requested to go see the Division psychiatrist. So, that was around the 5th or 6th, request to see the Division psychiatrist. I let them know. Also let the executive officer for our medical detachment around that same time, I let them know, as well as the official battalion sergeant. So, all of that, but the first one was around May 2nd with the First Sergeant, because you have to go through a series of chain of command. You just can't go up to the commanding officer and say, "Hey, sir, can I talk to you?" You have to go through a chain of command. My direct chain of command was the First Sergeant.

MINISTER'S COUNSEL: Did you ever separate, in terms of your complaints, the various incidents, or

were they lumped as a general concern you had about killing of civilians?

WITNESS: Repeat that.

MINISTER'S COUNSEL: In terms of the incident with the guy with his hands up, did you put that in a separate category, or was that all part of your -- was that all part and parcel of your complaint or your allegations to your superiors about your issues?

WITNESS: All of it was. That was, of course, the number one, but all of the civilian casualties was a major concern.

MINISTER'S COUNSEL: You were med-vac'd (ph) out May 15th?

WITNESS: Yes.

MINISTER'S COUNSEL: Can you explain how this came to be?

WITNESS: After I saw the Division psychiatrist, he immediately said, "I'm going to recommend that you are medi-vac'd out of the country." I went back to my commanding officer, I handed him a sealed envelope, he read it, he became very verbally abusive. Of course, as a Marine, you don't say anything, you stand there at the position of attention, and you let him speak until he is done. Then I was ordered stripped of all of my weapons and ammunition, and I was then taken to an abandoned schoolhouse where I waited there for a ride back to Kuwait.

Once in Kuwait, I was there for approximately five or six days, and then I was told that once I get back State side, I was to report in immediately to the battalion or the Naval Hospital Psychiatric Department to undergo evaluation.

PRESIDING MEMBER: Yesterday you testified that, I believe that you testified, that you were diagnosed with severe depression and post-traumatic stress syndrome?

WITNESS: Yes, sir.

PRESIDING MEMBER: Did you know that after you saw the psychiatrist and before you were medi-vac'd out? In other words ---

WITNESS: Yes, sir.

PRESIDING MEMBER: --- did the psychiatrist tell you what his diagnosis was?

WITNESS: Yes, sir, and right there immediately he gave me a hundred-count bottle of Zoloft and sleeping medication.

PRESIDING MEMBER: And he told you what his diagnosis was?

WITNESS: That's correct.
Yes, sir.

PRESIDING MEMBER: And you mentioned that you gave a report in an envelope?

WITNESS: Yes, sir.

PRESIDING MEMBER: To your commanding officer?

WITNESS: Yes, sir.

PRESIDING MEMBER: Did you have a copy -- were you given a copy of that report?

WITNESS: It was a sealed envelope. I was ordered to hand it directly to the commanding officer. I never read it, sir.

PRESIDING MEMBER: And you never got a copy of it?

WITNESS: No, sir. I know that it was of dire straights by the look on the Captain's face as he was reading it and as verbally abusive as he came after completing reading it.

PRESIDING MEMBER: Do you believe that -- was it your belief that the contents indicated that indeed he had diagnosed you as being severely depressed and having post-traumatic stress syndrome, and that you should be sent back to the United States for evaluation in the Naval Hospital?

WITNESS: That's correct.
Yes, sir.

PRESIDING MEMBER: That's what you believe was in the envelope?

WITNESS: And also the reason why, because of the civilian casualties. You had to put a reason why. The doctor just can't say because the command has to know why is this person going back State side. What happened, this Marine was given a clean bill of health in January for combat duty and now, a couple of months later, he's diagnosed with major depression and PTSD. So, what happened between point A and point B.

PRESIDING MEMBER: Thank you.

WITNESS: Yes, sir.

MINISTER'S COUNSEL: So, how soon after you were diagnosed -- sorry, let me start again.

When exactly were your weapons taken away?

WITNESS: It was May 7th.

MINISTER'S COUNSEL: Was that before or after your diagnosis?

WITNESS: That was after my diagnosis.

MINISTER'S COUNSEL: How soon after?

WITNESS: As soon as I arrived back to the battalion area.

MINISTER'S COUNSEL: So, as soon ---

WITNESS: And I handed the letter to -- I'm sorry -- and I handed the letter to the Captain. After he got done with his verbal abuse, he then ordered me to hand over my weapons. The First Sergeant -- I'm sorry, the First Sergeant was also present, First Sergeant Humphries, and the First Sergeant told the Captain that he didn't feel that it was right for him to take my side arm, my pistol, but he still insisted, because it clearly -- the doctor, the psychiatrist stated to me and asked me several times, "Staff Sergeant, are you a threat to yourself? Are you a threat to other Marines?" I said, "No, sir. I've done enough killing to last me a lifetime."

MINISTER'S COUNSEL: So, by asking you those questions, did you think perhaps the psychiatrist thought you were suicidal?

WITNESS: He was trying to probe to find out if I was suicidal, or if I had any ambitions on shooting any of my platoon members.

MINISTER'S COUNSEL: And the medication that he prescribed you, I don't know what Zoloft is. Do you know what it is?

WITNESS: Yes. It's an antidepressant.

MINISTER'S COUNSEL: It's an antidepressant.

PRESIDING MEMBER: And sleeping pills you mentioned.

WITNESS: Yes.

MINISTER'S COUNSEL: So, when you got back State side, I'm wondering if you reported as ordered?

WITNESS: Yes.

MINISTER'S COUNSEL: What happened from there?

WITNESS: I was ordered to report into Dr. Dexter (ph), and I told her the same thing that I told you all here today. I went into the same -- well, more

detail about the civilian casualties, and at the end of the conversation, she looked at me and she said, "I don't deal with conscientious objectors. This is a matter that is going to have to be brought up with the chaplain." And I looked at her and I said, "If you're going to label me as a conscientious objector for not wanting to kill innocent civilians, then I will see you in court." I got up and I excused myself. The next day I was ordered to report into the Regimental Sergeant Major, the Regimental Sergeant Major of 7th Marines, Sergeant Major Butts (ph), and he pulled me into the office and sat down and started explaining to me how I had seven more years to retire, why did I want to throw away my career, that I was a stellar Marine, never been in any trouble before, never had court-martials, non-judicial punishment. What is wrong with my brain housing group? And why am I taking this to the extent that I am?

I explained to him that I didn't want his benefits, I didn't want his money, I didn't want his retirement, that we killed innocent civilians, and that I plan on telling anybody and everybody that will listen. He became very angry. He stood up, slammed his fist on the desk and said, "Well, you do understand that there might be certain legal repercussions that come across for your actions?"

After I was dismissed, I went down to the store, I bought a copy of the "Marine Corps Times". In the back of the copy of the "Marine Corps Time" there was a legal advertisement. I contacted a lawyer by the name of Mr. Gary Myers (ph) out of Washington, D.C. Mr. Myers was also a defence attorney at the May Lai Trials in Vietnam, and I explained to him what happened, what was going on. He contacted my psychologist, explained to them how I was feeling, what was happening. He contacted the Regimental Sergeant Major, explained to him, and after that the Marine Corps was even nice enough to say, "You know what, Staff Sergeant? You don't even have to come into work anymore. All you have to do is report in at 07:30 to let us know that you are alive. I think it's quite clear what your intent is, and that you were going to be medically discharged out of the Marine Corps. Thank you. Have a nice life."

PRESIDING MEMBER: When you say that he contacted your psychologist, who are you referring to? Dr. Dexter or someone else?

WITNESS: Dr. Dexter.

PRESIDING MEMBER: And she was a psychologist, not a psychiatrist?

WITNESS: That's correct.

MINISTER'S COUNSEL: Did you want to be medically discharged at that point?

WITNESS: At that point, yes.

PRESIDING MEMBER: Just so I understand the motivation behind your saying, "If you're going to say that I'm a conscientious objector, then I'll see you in court", "Because I killed civilians, I'll see you in court", let me just see if I understand what your thinking was, that you were not a conscientious objector.

WITNESS: Correct.

PRESIDING MEMBER: What you objected to was the killing of civilians?

WITNESS: Correct. Yes, sir.

PRESIDING MEMBER: So, you took umbrage; you objected, if I could, to her saying that you are a conscientious objector?

WITNESS: That is correct.

PRESIDING MEMBER: Because you didn't believe you were a conscientious objector.

WITNESS: I have no quarrels about killing the enemy on the battlefield, yes, sir.

PRESIDING MEMBER: Right. Your quarrel is with killing civilians.

WITNESS: Yes, sir.

PRESIDING MEMBER: Okay. And were you encouraged to make an application by anyone for conscientious objector status?

WITNESS: No, sir. I was verbally advised, but not formally written. I was verbally advised.

PRESIDING MEMBER: And you never made an application ---

WITNESS: No, sir.

PRESIDING MEMBER: --- for conscientious objector status, because you weren't one.

WITNESS: Correct.

PRESIDING MEMBER: Thank you.

MINISTER'S COUNSEL: Once you returned State side, did you pursue any of the charges against your colleagues for what you viewed as killing of civilians?

WITNESS: I've been very verbal. All the local Congressmen, I know the local Congressmen, personally, in my hometown area, they all know. They have dismissed it as being a fog of war.

My question to the U.S. Government is: How is a six-year-old child with a bullet hole in its head a fog of war? How can you label a six-year-old child as an insurgent or a terrorist?

MINISTER'S COUNSEL: Did they ever allege that the killing of the individual, who had surrendered to you, was a fog of war situation?

WITNESS: Never.

MINISTER'S COUNSEL: So, did you pursue that?

WITNESS: Never.

MINISTER'S COUNSEL: Do you think you should have been charged in that incident?

WITNESS: Am I a war criminal? Is that what you're asking?

MINISTER'S COUNSEL: No. I'm asking if you should have been charged or faced penalties for shooting someone who was raising their hands in the air and surrendering?

WITNESS: I take full responsibility for my actions.

MINISTER'S COUNSEL: In your own mind, is there a difference between shooting someone who is surrendering because you're tired and exhausted versus someone who is intentionally killing civilians?

WITNESS: No, Ma'am. Marines are trained, sleep deprivation, mental torment, muscles so sore you will puke. Marines don't sugarcoat anything. The training that we go through, sometimes you're up for longer than 48 hours. That is something that is automatically instilled into you. Sleep deprivation to a Marine or to an Army Ranger is nothing. It's part of the training.

MINISTER'S COUNSEL: So, intent shouldn't be a factor in any of this?

WITNESS: Ma'am ---

MINISTER'S COUNSEL: Intent.

WITNESS: Intent?

MINISTER'S COUNSEL: Yes.

WITNESS: What do you mean "intent"?

MINISTER'S COUNSEL: Well, what I mean, what I'm suggesting is there is gut reaction and impulse reaction to shoot someone who you think is imminently threatening you versus deliberately gunning down people that are civilians.

WITNESS: We deliberately
gunned down people that were civilians.

MINISTER'S COUNSEL: Right, but what
I'm asking you is: Is there a difference between the motivation
behind that being fear and over reaction versus being ordered
directly to do so and performing those orders?

WITNESS: I'm still not -
- you're going to have to break that down a little bit more.

MINISTER'S COUNSEL: Okay. So, in
your mind, if someone has -- is frightened and is being told that
there are insurgents dressed as civilians -- I mean, whether or
not these are true, the people are legitimately frightened. It's
an excessive force situation, for example.

WITNESS: Yes, it's an
excessive force that is being applied to the individual Marines.
It is an excessive force on their psychological state of mind.

MINISTER'S COUNSEL: And their
reaction, as well, is to use excessive force?

WITNESS: Correct.

MINISTER'S COUNSEL: It may not be
that they are committing war crimes; it's that they are using
excessive force.

WITNESS: They are being
pushed to use excessive force.

MINISTER'S COUNSEL: This is
different than being ordered directly to kill people that they
know are civilians?

WITNESS: You have to
break that one ---

MINISTER'S COUNSEL: In your mind---

WITNESS: You're going to
have to break that one down.

MINISTER'S COUNSEL: In your mind, is there a difference between pushing someone to the brink or, you know, Marines using excessive force versus what happened in May Lai where I'm deliberately gunning down women and children?

WITNESS: I'm going to honestly tell you that I became so concerned because I felt that my Marines were honestly enjoying it. You know, when you're on the battlefield, you can tell the true nature of a man. So when you're on the battlefield, there's a little mechanism inside your brain that switches it's the flight and fight-type of mindset. You become -- there are two ways that you can either go. You can either derive on your conscience while you're on the battlefield, or you can become a psychopath, and I saw plenty of Marines become psychopaths. It was just in their nature, they enjoyed killing. Doesn't mean ---

PRESIDING MEMBER: They enjoyed---

WITNESS: --- that they were bad -- sir?

PRESIDING MEMBER: I didn't mean to interrupt you. Please continue.

WITNESS: It doesn't mean that they are bad people; doesn't mean that they are bad Marines. It just means that they enjoy killing. Then there are some Marines that don't enjoy killing. They let their conscience guide them, but how do you turn a psychopath off once you get him in the motion? It's hard.

PRESIDING MEMBER: You talk about once you get Marines on the battlefield, and my understanding was that you're only under fire once on your way to Baghdad; is that right?

WITNESS: Yes, sir.

PRESIDING MEMBER: All right. Do you believe that the soldiers that were under your command and the Lieutenant who was above you, who shot at these vehicles, that they enjoyed shooting at these vehicles after it was determined that, according to your testimony, they posed no threat?

WITNESS: I am saying that, sir. There are several members in my platoon that I felt were a danger to Iraqi civilians.

PRESIDING MEMBER: And did you do anything about that?

WITNESS: I verbally talked to them, yes. At one point I even suspended one from being a gunner. I pulled him off the lines for a 24-hour period.

PRESIDING MEMBER: Okay. And the others you believed, this one included, took some joy from having killed what you ultimately determined to be unarmed civilians?

WITNESS: Yes, sir.

PRESIDING MEMBER: Why do you believe they took joy in that?

WITNESS: Because they were psychopaths, sir.

PRESIDING MEMBER: They were all psychopaths?

WITNESS: Sir?

PRESIDING MEMBER: They were all psychopaths?

WITNESS: No, not all of them. A few of them, but you want a psychopath in war. I think you're misunderstanding. It's not human nature to kill. It's not in our human -- it's not in our mindset, it's not in our psyche. It has to be something that's instilled into you. That's what the Marine Corps does. They instil that little switch inside your brain that allows you to kill. However, there are some people that enjoy killing. They join the Marine Corps with a hope and the intent that some day they will go on the battlefield and they will be able to carry out what it is they enjoy doing, and they're doing it in a legal way.

I have met these people in the Marine Corps; I have dealt with them; and I've been in charge of them.

PRESIDING MEMBER: Okay. What I'm trying to understand is this: Was there any distinction in the mindset of individuals who killed people who were ultimately determined to be combatants and those who were ultimately determined to be non-combatants?

WITNESS: I'm sorry, can you ---

PRESIDING MEMBER: In other words, did they take greater joy when they found that the people who they killed had, in fact, been armed, had explosives, et cetera, or was it equal that whether they had arms or didn't have arms, didn't matter, they took joy in killing people?

WITNESS: They took joy in killing people.

PRESIDING MEMBER: Even people who they determined ultimately didn't pose a threat to them?

WITNESS: Members of my platoon have been interviewed by CNN. These allegations have been investigated by news media in the United States. The CNN reporter called me back and said, "Yes, Mr. Massey, we have contacted several members of your platoon, and one of them expressed to me that he did kill innocent civilians, and that if he was..." if I can give you his exact quote, "...if he was going to fucking apologize, it will be a snowball's chance in hell."

PRESIDING MEMBER: Did he tell you why he said that? Did the CNN rep tell you why he said that?

WITNESS: No, sir. I do know that he was a little shocked.

PRESIDING MEMBER: Do you believe that it could be because at the time that he shot the individuals, that he didn't know whether the person was a combatant or a non-combatant?

WITNESS: I think they enjoy shooting either way, sir.

PRESIDING MEMBER: Thank you.

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

RPO: I don't have any questions.

PRESIDING MEMBER: I don't have any questions. I will ask ---

COUNSEL: I may not have any either, but I just want to do a quick check here.

Mr. Massey, one of the things that you talked about in response to Ms. Chisholm's questions, you sort of indicated that there is some sort of system for reporting of civilian casualties. Did I understand that correctly?

WITNESS: Yes, sir.

COUNSEL: In our materials, and I haven't been able to find it, but I'm quite sure it's in there, there's a suggestion from the U.S. Government that they actually do not count Iraqi civilian casualties. Are those two points not contradictory?

WITNESS: It is, sir.

COUNSEL: Is it your understanding that each and every civilian casualty is counted by the military?

WITNESS: It is indeed, sir, because there is a formal investigation that takes place right there on the spot.

COUNSEL: And if the person is determined to be a combatant as opposed to a civilian, is there any investigation which occurs in that case?

WITNESS: The investigation stops right there.

COUNSEL: I see.

PRESIDING MEMBER: Well, how is it that the investigation continued or started, actually, with

respect to the incident that you described and that is described in the materials that was caught on the video of the person who had been a combatant and was shot in the head?

WITNESS: I'm sorry, I misunderstood the question.

PRESIDING MEMBER: Wasn't there an investigation of that incident?

WITNESS: I believe there still is a continued investigation.

PRESIDING MEMBER: Right.

WITNESS: Yes, sir.

PRESIDING MEMBER: And that was a combatant.

WITNESS: He was no longer a combatant, because he was unarmed. Now he goes under POW status.

PRESIDING MEMBER: Okay, I'm sorry. What I meant by that was that he had been a combatant?

WITNESS: At one time, yes, sir.

PRESIDING MEMBER: Okay. And so, I guess the investigation will determine whether he posed a threat or not, et cetera, whether he would be considered a combatant or not, I would take that.

WITNESS: Yes, sir.

PRESIDING MEMBER: I want to make it clear that what I meant was that he had been a combatant, not that he was then a combatant.

WITNESS: Correct. Yes, sir.

PRESIDING MEMBER: Because that's the unknown, what exactly was his status, and what did the Marine

who shot him perceive his status to be, and what are the standing orders for soldiers under those circumstances?

WITNESS: Standing orders for soldiers under that circumstance is to take that person into custody and treat the wounds, protect for shock, and turn him over to medical personnel to ---

PRESIDING MEMBER: I think you testified yesterday that the procedure -- and I don't know whether it was a standing order -- the procedure is that you do a visual inspection; right?

WITNESS: Yes, sir. Yes, sir.

PRESIDING MEMBER: And then if you -- unless you can see that the person has, for example, you mentioned his hands clenched, so he may be holding a grenade, or under the back, that there's something under the back that could be a weapon, that you would then pat the person down.

WITNESS: Yes, sir.

PRESIDING MEMBER: Right?

WITNESS: Yes, sir.

PRESIDING MEMBER: And assuming that there were no problems, that the person would then be taken into custody and be given immediate medical attention.

WITNESS: Yes, sir.

PRESIDING MEMBER: Is that right?

WITNESS: Yes, sir, that's the proper procedure of what you're supposed to do.

PRESIDING MEMBER: All right, and is the procedure that you described yesterday and that I just summarized, is that part of -- do you know if it's a standing operating procedure or a standing procedure?

WITNESS: That's something that's taught from day one at boot camp, sir.

PRESIDING MEMBER: Right, but is it actually written down somewhere?

WITNESS: Yes, sir, handling of POWs is a class that's taught at the School of Infantry. It is taught from day one that you go into boot camp how to properly treat and handle POWs.

PRESIDING MEMBER: And it begins with the visual inspection?

WITNESS: Yes, sir. Safety is first and then treat the wounded.

PRESIDING MEMBER: Thank you.

COUNSEL: Ms. Chisholm asked you a question about whether you had ever brought up the specific incident concerning the person who had raised his arms and surrendered, but who was, nonetheless, shot. I think your answer was that you had talked about all of the incidents in general; is that right?

WITNESS: Yes, sir.

COUNSEL: Is there some reason that you didn't distinguish between the hands-up incident and the other incidents?

WITNESS: Well, when I talked to my superiors about it, I threw all of them in together. All of the civilian casualties were a concern with me. So, I put them all into one nutshell as I was explaining my case to them.

COUNSEL: Another point that I think arose from my friend's questioning, you indicated that after these incidents in which civilians were killed, you went to the Lieutenant and you said, "Sir, what the 'f' are you doing?" Correct?

WITNESS: Correct.

COUNSEL: Had he given an order to shoot? Or why were you fastening the blame on him? Because I understood that all the Marines shot.

WITNESS: No, sir. The reason I was pointing my finger at him directly, because his vehicle was lead vehicle, his vehicle was the first one to open fire. So, his vehicle was number one in the convoy of the staggered Humvees. Mine was always in the middle, because I didn't have an armoured Humvee.

COUNSEL: And he did?

WITNESS: Yes, sir.

PRESIDING MEMBER: And do you know whether he fired before the vehicle was in the Red Zone?

WITNESS: I can't really honestly -- I don't know, sir. I know that -- because I was busy doing something. I was checking the lines when the cars would come in. So, by the time I got up to the front of the formation, he was already firing. So, I can't say whether or not he fired. All I know is I visually saw him firing, but I don't know when he did, when he started.

PRESIDING MEMBER: Well, I may have misunderstood your testimony yesterday, but I thought your testimony was that none of the vehicles were fired upon until they entered the Red Zone.

WITNESS: That's correct, sir. I'm sorry, I misunderstood your question. I thought you were asking me did I see him fire before the vehicles got into the Red Zone?

PRESIDING MEMBER: That was my question.

WITNESS: The only time - when I saw him fire, the vehicles were already in the Red Zone.

PRESIDING MEMBER: Okay. Thank you.

COUNSEL: But it was your observation that he was the first to open fire? Did you say that?

WITNESS: Yes, and his vehicle, as well, because his vehicle was number one. So, shots came from his vehicle.

COUNSEL: Does that fact have any implications for the other Marines along the sides of the road at the checkpoint? In other words, does that -- are they to take anything from the fact that the Lieutenant's vehicle opened fire?

WITNESS: Yes, because he's the leader in charge. You know, leadership by example. So, if the Lieutenant is doing it, then obviously it's okay.

PRESIDING MEMBER: But as I understand the standing order as you described it, the others wouldn't require a direct order from him to fire before doing so; it's enough that the vehicle entered the Red Zone.

WITNESS: Correct.

PRESIDING MEMBER: At that point, they are entitled to fire?

WITNESS: Correct, yes.

PRESIDING MEMBER: So, it's not that they had to wait until he ordered them to fire?

WITNESS: Correct. There was never -- nobody ever gave us a direct order to fire. We had already ---

PRESIDING MEMBER: Because you had a standing order.

WITNESS: Correct. Yes, sir.

COUNSEL: All right, those are my questions. Thank you very much, Mr. Massey.

PRESIDING MEMBER: Mr. Massey, I would like to thank you very much for your attendance.

WITNESS: Thank you, sir.

PRESIDING MEMBER: As I mentioned, I know that some of this, talking about these memories will have been painful for you, and I certainly want to wish you every success with whatever you choose to do in the rest of your life. Thank you very much for being here. We very much appreciate it. I'm sure Mr. Hinzman does.

WITNESS: Thank you, sir.

PRESIDING MEMBER: Good luck to you.

WITNESS: Thank you.

COUNSEL: Mr. Member, I do not have any more witnesses or evidence. If I could just look out the door to see that his ride is available?

PRESIDING MEMBER: Sure. Take a short break. Nobody leave.

I'm back on record. I'm told that if I request that we have written transcripts available as soon as possible, there's a good chance that will happen, and that it will take at least a week. I mean, clearly they should be made available to the parties as soon as possible. I'm going to leave it to Mr. Hawkins, our communications advisor, to take care of that and to then liaise with Miss Dragaitis and our Case Officer so that we can ensure that they are delivered to you as soon as possible.

So, any other matters?

COUNSEL: No.

PRESIDING MEMBER: So, written submissions from Counsel for the claimants by January 4th, 2005, reply from the Minister's Counsel by January 24th, 2005, and any reply to the Minister's Counsel by Mr. House by January 31st, 2005.

I would like to thank you all most sincerely for the high level of your participation in this hearing. It has been a pleasure, frankly, to preside over this hearing. It has been a pleasure for me to meet you, Mr. Hinzman, and your family.

CLAIMANT #1: Likewise, sir.

PRESIDING MEMBER: And I want to wish you, regardless of the outcome of my decision, every success to both you and your family.

CLAIMANT #1: Thank you, sir.

PRESIDING MEMBER: And to have a fine safe holiday season, a joyous holiday season.

CLAIMANT #1: Thank you, sir. You, too.

PRESIDING MEMBER: And to all of you, too, and to you out there. Thank you very much for your patience.

This matter is adjourned for submissions.

I HEREBY DECLARE THAT THIS IS A TRUE
TRANSCRIPT OF THE TAPE AND THAT I
HAVE SWORN THE OATH OF SECRECY

Lucy McClelland 94040381

FOR: XL TRANSCRIBING INC.

December 12, 2004

XL Transcribing Inc.