

Thursday, 17 May 2018

1

2 (10.30 am)

3 SIR GEORGE NEWMAN: Good morning, everybody. Those who I've
4 seen before and those who I haven't seen before, good
5 morning.

6 THE SO WITNESSES: Good morning, sir.

7 SIR GEORGE NEWMAN: I will get myself organised.

8 We have a lot of people on the list for today.

9 I think some are going to be short. I know I've said
10 that before and they've turned out being long. But that
11 is what always happens in these occasions, it is always
12 difficult to estimate accurately.

13 I would like to start, please, this morning with
14 S055. Is he still outside? Could you see how far off
15 being ready he is?

16 (Pause)

17 S055

18 Examination by SIR GEORGE NEWMAN

19 SIR GEORGE NEWMAN: Good morning.

20 A. Good morning, sir.

21 SIR GEORGE NEWMAN: S055 I shall keep saying in order to
22 maintain your anonymity and not let anything slip.

23 Thank you for coming. I know you've had a busy time and
24 it is much appreciated.

25 A. Thank you, sir.

1 SIR GEORGE NEWMAN: The last time we spoke was a little bit
2 fractured, bearing in mind you were a long way away and
3 I think we had half a screen -- or hardly any screen but
4 a voice only.

5 A. That's right, sir, a video teleconference without the
6 video.

7 SIR GEORGE NEWMAN: That's right. Now you've had
8 an opportunity, I think thankfully of being briefed
9 this morning so you know what it is we are going to try
10 and do today?

11 A. Yes.

12 SIR GEORGE NEWMAN: We've had two days of hearing. We have
13 covered a lot, if I can say so. We have heard from
14 quite a number of Lifter2 witnesses, we've heard from
15 the liaison officer, and so we have a pretty good and
16 comprehensive understanding of what was going on. But
17 you are important to me because you were in fact the
18 commander?

19 A. Mm-hmm.

20 SIR GEORGE NEWMAN: And thus I want to get your
21 understanding and memory of things. I begin by asking
22 you, if you would, to look at your statement -- which
23 bundle is it, my bundle 2 -- which you made to this
24 investigation.

25 That is quite wrong, because of your

1 inaccessibility --

2 A. Sure.

3 SIR GEORGE NEWMAN: -- we haven't been able to succeed in

4 doing it. We've only had --

5 A. Is this the transcript from our teleconference?

6 SIR GEORGE NEWMAN: Well we haven't got that yet.

7 A. Okay.

8 SIR GEORGE NEWMAN: So we will cover the ground.

9 A. Okay.

10 SIR GEORGE NEWMAN: Okay. For various reasons, we haven't

11 done that and been able to get it to you. That's part

12 of the problem. But you did sign a witness statement

13 which I have in the bundle here and you might have in

14 front of you there, 20 August 2003. Have you got that?

15 If you haven't, Navina could you help.

16 A. Yes, sir, I do.

17 SIR GEORGE NEWMAN: Now I don't know when you last saw that,

18 but at least can we proceed upon the basis that you have

19 every reason to believe that the contents of that

20 statement are the best and true accurate record that you

21 could give at the time?

22 A. Yes.

23 SIR GEORGE NEWMAN: We can proceed on that basis?

24 A. Of course.

25 SIR GEORGE NEWMAN: Thank you. Now there are a number of

1 things I want to ask you about which will jog your
2 memory as to what's in that statement because everything
3 I'm going to ask you is based on that and any brief
4 recollections that I have of what we said on the video
5 link.

6 Do you remember the tasking and preparation that
7 there was once the liaison officer had indicated he
8 needed the support of the ARF and flight crew? Do you
9 remember that?

10 A. Yes, with reference to my statement I do, yes.

11 SIR GEORGE NEWMAN: Do you remember it now? Have you got
12 any independent recollection of it now?

13 A. Not in any great detail.

14 SIR GEORGE NEWMAN: Do you remember being at H-1?

15 A. Yes.

16 SIR GEORGE NEWMAN: You remember that circumstance, and do
17 you remember that day now independently, or the night as
18 it turned out to be, when you went off in order to pick
19 up the prisoners of war?

20 A. I don't independently recall the details of it but
21 I recall the evening and the morning, yes.

22 SIR GEORGE NEWMAN: The operation, can you remember this,
23 required at least a little rehearsal and preparation?

24 Do you remember that?

25 A. I do.

1 SIR GEORGE NEWMAN: Looking at the witness cipher guide,
2 which you have in front of you there -- do you see that?
3 A. Mm-hmm. Yes.
4 SIR GEORGE NEWMAN: You see SO39 there?
5 A. Yes.
6 SIR GEORGE NEWMAN: Is he someone who was involved in the
7 rehearsal and preparation?
8 A. Yes.
9 SIR GEORGE NEWMAN: And to what extent was he really in
10 charge of that because he was an experienced
11 individual at that time, wasn't he?
12 A. That's right.
13 SIR GEORGE NEWMAN: Was he largely in charge of that aspect
14 of the rehearsal?
15 A. It would be normal procedure for the NCOs within
16 a flight to be responsible for the rehearsals and
17 inspections as part of that op procedure. And as the
18 senior NCO within the flight, then that would be
19 something I would delegate to the platoon sergeant.
20 SIR GEORGE NEWMAN: Had you been on any type of mission of
21 this sort before in the course of your service or --
22 A. Not directly. Not directly of this sort or flavour.
23 SIR GEORGE NEWMAN: And forgive me for asking but I think I
24 need to, how old were you at the time?
25 A. I would have been --

1 SIR GEORGE NEWMAN: 15 years ago?

2 A. I would have been 22 years old.

3 SIR GEORGE NEWMAN: And in service for a few years?

4 A. Yes, I joined the service in early 2000, so three years

5 I'd been in the service.

6 SIR GEORGE NEWMAN: Commissioned?

7 A. I commissioned in July of 2000 and I started productive

8 service in May of 2001. So just shy of two years.

9 SIR GEORGE NEWMAN: Now you had presumably some form of

10 conversation with the liaison officer --

11 A. Yes.

12 SIR GEORGE NEWMAN: -- as to what it was that was going to

13 take place. Can you remember now -- again, gist not

14 exact words -- what, if anything, he said to you about

15 the nature and character of the prisoners of war it was

16 expected you were going to pick up?

17 A. Yes. So per my statement, the information that we had

18 would suggest that the prisoners who were held were

19 suspected Fedayeen Saddam terrorists.

20 SIR GEORGE NEWMAN: Did that have any impact on your

21 thinking for the men or your thinking generally about

22 the nature of the operation and how it should be

23 conducted?

24 A. Yes. It would be implicit that the individuals wouldn't

25 be uniformed combatants, therefore may be difficult

1 to identify, would be potentially extremist in nature,
2 extremist in motivation, and may use non-conventional
3 means of attack and indeed may have been -- may have
4 been embarked on some kind of non-conventional means of
5 attack when they were captured.

6 SIR GEORGE NEWMAN: All this conveys to me that this
7 operation had a heightened sense of tension about it
8 because of the nature of the people who had to be
9 handled?

10 A. I agree.

11 SIR GEORGE NEWMAN: Am I right with that?

12 A. Yes, absolutely.

13 SIR GEORGE NEWMAN: Obviously I would expect that you would
14 wish your men to be aware of this so that they could
15 behave appropriately?

16 A. Very much so. I consider that my duty of care.

17 SIR GEORGE NEWMAN: That was your duty of care.

18 A. (The witness nodded).

19 SIR GEORGE NEWMAN: At this time were you thinking of the
20 duty of care vis-a-vis your men but also thinking of, if
21 you were, the legal obligations that might arise
22 vis-a-vis the prisoners?

23 A. (The witness nodded).

24 SIR GEORGE NEWMAN: Were you conscious of that -- I'll call
25 it tension between the two, were you conscious of that?

1 A. Yes. I think I make reference to that in my statement,
2 that the nature of the prisoners would dictate that we
3 would have to take a very firm approach towards prisoner
4 handling. However, we are clearly bound by the laws of
5 armed conflict. Even if those particular combatants
6 are not, we still are. So clearly that does not obviate
7 us from our duties to maintain our SOPs in accordance
8 with the laws of armed conflict. And our training and
9 our preparation for the mission had included the skills
10 and drills that are associated with handling prisoners
11 in accordance with the law of armed conflict. That
12 said, I don't recall us having this particular group as
13 one of our likely target sets as it were. So we were
14 prepared for a uniformed combatant, a uniformed enemy
15 was our most likely opposition. So, yes, I would agree
16 that when it comes to, like these individuals are not
17 a uniformed enemy and are potentially violent extremists
18 in nature then, yes, that does -- that does up the ante,
19 as it were.

20 SIR GEORGE NEWMAN: I have been told, you may not recollect
21 but tell me if you do, that the warning time that you
22 had between the LO saying that this was a mission which
23 was on and the mission commencing was really
24 a relatively short period of time of say up to
25 45 minutes. Is that how you remember it?

1 A. Yes. Again per my statement, my statement refers to the
2 fact we were stood to for a prisoner handling mission
3 the day before which ultimately did not happen and we
4 were stood down from that task. And then the next day
5 was the day that this -- the order to undertake this
6 mission was issued and, yes, the preparation for said
7 mission was done in a compressed period of time. And
8 again, you know, as you will have seen in my statement,
9 the fact that we were handing prisoners over to
10 another nation, in this case the United States, at
11 a prisoner handling facility, that required a degree of
12 liaison as well. So there's a lot to fit into
13 a compressed period of preparation and that's why
14 certain tasks in that preparation have to be delegated
15 to suitably qualified and experienced NCOs.

16 SIR GEORGE NEWMAN: Were you present at any stage when
17 SO39 in particular was carrying out the preparation of
18 the men by way of instruction for it? Did you witness
19 it or participate, or were you off having to do other
20 things?

21 A. You are referring to what I would call rehearsals?

22 SIR GEORGE NEWMAN: Yes.

23 A. Yes, I was -- per my statement, I was around for some of
24 that. But there were also times during rehearsals when
25 I was liaising with the American --

1 SIR GEORGE NEWMAN: Facility?

2 A. -- staff at the facility, yes.

3 SIR GEORGE NEWMAN: What I understand to have been the
4 proposal, which was to a large extent fulfilled but not
5 quite to the letter in which it had been planned, was
6 that the prisoners of war would be hooded and cuffed,
7 brought to the respective helicopters involved, laid on
8 the hard metal floor of the helicopters, head to toes,
9 and essentially escorted, it was hoped, on a two to one
10 basis. Is that how you recollect it as being schemed?

11 A. Yes, sir. With reference to my statement, yes,
12 absolutely.

13 SIR GEORGE NEWMAN: What gives me joy on some of these
14 occasions is that I know what is in the statement and
15 what I am really probing for are the things that might
16 not be in the statement but might be important.

17 A. Mm-hmm.

18 SIR GEORGE NEWMAN: So could you have a certain measure of
19 flexibility --

20 A. Mm-hmm.

21 SIR GEORGE NEWMAN: -- in your recollection. Don't worry
22 too much about whether something is in the statement or
23 isn't. It's not what I'm on at. I just want to hear
24 from you in your own words, from your own recollection
25 as best you have it --

1 A. Absolutely.

2 SIR GEORGE NEWMAN: -- today?

3 A. And I'll tell you when I think it's supposition.

4 SIR GEORGE NEWMAN: Well it doesn't even have to be
5 supposition. It can be something which you believe to
6 be right --

7 A. Mm-hmm, yes, sir.

8 SIR GEORGE NEWMAN: -- and is not necessarily covered in the
9 statement. It's not part of my task to engage in
10 tricking you out as it were. What I'm trying to do is
11 to draw out from you what this was all about and what it
12 was like. Okay?

13 A. Mm-hmm.

14 SIR GEORGE NEWMAN: So that's the scheme of things.

15 A. Mm-hmm.

16 SIR GEORGE NEWMAN: Anything more that you can tell me which
17 you think I might need to know or should know before you
18 uplift from H-1 in order to go off to the Australians?

19 A. I think we discussed previously that the number of
20 prisoners that we were planning to handle changed during
21 the preparation for the mission and indeed from what
22 I recall -- well it grew. From what I recall, the final
23 number that we had prior to lifting on the operation, in
24 reality the number of prisoners was in fact higher than
25 that.

1 SIR GEORGE NEWMAN: And significantly higher?

2 A. Yes.

3 SIR GEORGE NEWMAN: There are figures around in my recollection --

4 it was anticipated it might be 40?

5 A. Yes.

6 SIR GEORGE NEWMAN: And when you get there the reality is

7 that you are having to deal with 63?

8 A. Yes, I would --

9 SIR GEORGE NEWMAN: Those are the figures anyway.

10 A. Yes, I would have to refer to the numbers. But, yes,

11 and indeed, you know, I remember being concerned by the

12 fact that the number was changing. And I recall that

13 the American personnel who ran the handling facility

14 were also concerned that these were rather large

15 numbers.

16 SIR GEORGE NEWMAN: Right. Anyway, let's get you all into

17 your respective helicopters. You're flight commander in

18 Heli 1 as you call it?

19 A. Yes.

20 SIR GEORGE NEWMAN: You are accompanied by the liaison

21 officer?

22 A. Mm-hmm.

23 SIR GEORGE NEWMAN: And of course the flight crew, and the

24 liaison officer has at least one signaller?

25 A. Yes.

1 SIR GEORGE NEWMAN: Now in your gisting guide -- you have
2 that document there?

3 A. I do.

4 SIR GEORGE NEWMAN: The penultimate entry I think on the
5 right-hand side, HQ 1 Middle East. Is that where you
6 understood any signal from the LO signaller would be
7 going? Is that as you understood it the nature of the
8 communications which were going to take place?

9 A. Yes. That was where the -- that's where the principal
10 headquarters were.

11 SIR GEORGE NEWMAN: Yes.

12 A. And the ops room.

13 SIR GEORGE NEWMAN: Had you had any contact with them before
14 this op went off or was --

15 A. Personally?

16 SIR GEORGE NEWMAN: Yes, personally. Or through somebody
17 you instructed to make contact?

18 A. I think we'd had -- we'd had communications.

19 SIR GEORGE NEWMAN: So they were well aware of the stages of
20 the operation?

21 A. Yes.

22 SIR GEORGE NEWMAN: And the point of departure?

23 A. Yes. My recollection is the task came from them to the
24 smaller headquarters at H-1.

25 SIR GEORGE NEWMAN: Yes.

1 A. And then to us.

2 SIR GEORGE NEWMAN: Yes, and so that is -- and then to the
3 LO and then from the LO down to you as it were, or up to
4 you or along to you, whichever?

5 A. Yes.

6 SIR GEORGE NEWMAN: In terms of communication, did you have
7 any means of communication between your Lifter1 and the
8 chalk commander on Lifter2? Did you have any
9 independent means, personal means, of communicating?

10 A. In flight or on the ground?

11 SIR GEORGE NEWMAN: Both.

12 A. So the radio communications in flight other than the
13 aircraft radio systems -- so those that are discrete to
14 the aeroplane as opposed to those that are carried on
15 somebody's person -- that sort of communication would be
16 difficult. Even now, 15 years later, that continues to
17 be difficult. So if you were going to talk from one
18 aircraft to the other you'd probably do it through the
19 aircraft communication systems whilst you're in flight.

20 SIR GEORGE NEWMAN: Do you remember now, was there much
21 communication between the two helis as they went off
22 to the pick up point?

23 A. From -- I'm taking this from my statement, but my
24 recollection is that, yes, the liaison officer was
25 plugged into a headset for the -- for Lifter1 and the

1 chalk commander from the ARF on Lifter2 was plugged into
2 a headset on that aeroplane. Those individuals would
3 have been able to hear what was going on, potentially
4 not able to talk on that radio network.

5 SIR GEORGE NEWMAN: Okay. Now I'm going to take you forward
6 to the pick up point unless there is anything you want
7 to jog me about. So we get to the pick up point. Two
8 helis go down, and are put down. As I understand it, you, in
9 company with the liaison officer, go in order to liaise
10 with the Australian forces?

11 A. Mm-hmm.

12 SIR GEORGE NEWMAN: Correct?

13 A. Yes.

14 SIR GEORGE NEWMAN: Do you remember somebody coming from
15 Heli2, Lifter2? If you don't, it doesn't matter.

16 A. I don't but --

17 SIR GEORGE NEWMAN: Let's go --

18 A. It would have been -- it would have been --

19 SIR GEORGE NEWMAN: Chalk commander?

20 A. It wouldn't surprise me if the chalk commander had come
21 with us.

22 SIR GEORGE NEWMAN: Exactly. So you go to the Australians.
23 Now tell me, what happens when you talk to the
24 Australians? Give me the general gist of it as you
25 remember, and where these EPW are.

1 A. So they are -- we were -- we put down just off a road.
2 I don't recall which direction the road was in, but the
3 road was within sight. And the prisoners were held by
4 the -- were secured by the Australians. The
5 Australians' vehicles were present, as was a coach which
6 was the target vehicle. And my recollection is that
7 during the discussion it became clear that the prisoners
8 perhaps had not been prepared as we would have expected
9 them to have been prepared ready for transit.

10 SIR GEORGE NEWMAN: What do you mean by that?

11 A. It became apparent later that the searching had not
12 been as thorough as it would otherwise have been,
13 certainly not as thorough as we would have wanted it to
14 be. Likewise, the methods of restraint were not those
15 that we would have used in our own SOPs.

16 SIR GEORGE NEWMAN: This is the plasticuffs?

17 A. Yes. And likewise when dealing with -- as we discussed
18 via teleconference, when dealing with a uniformed
19 combatant it would be usual to try and identify those
20 that were -- those personnel that were detained and
21 that's clearly one -- that's clearly one thing when
22 you're dealing with a uniformed combatant who is in
23 a uniform, who carries an ID card or identity discs or
24 something else. It's quite something else when the
25 individual has none of the above.

1 SIR GEORGE NEWMAN: Quite.

2 A. Likewise, you're probably aware that we didn't have
3 an interpreter. I don't know whether the Australians
4 had an interpreter. But our ability to gain some of
5 that information and to carry out tactical questioning
6 was certainly impinged by that.

7 SIR GEORGE NEWMAN: And they weren't hooded as I understand
8 it, whereas you would expect them to be hooded by the
9 Australians?

10 A. Yes, so we would expect that if you were taking -- if
11 you were taking prisoners into a sensitive area or
12 transiting to a sensitive place or undergoing some kind of
13 sensitive activity in and around them, you would expect
14 them to be deprived of sight.

15 SIR GEORGE NEWMAN: So did the Australians give you any
16 means of identifying who it was you were picking up?

17 A. I recall that some documentation was provided to us, but
18 it was provided collectively in a bag as I remember.

19 SIR GEORGE NEWMAN: In a bag?

20 A. Not all that much use when you then try and apply
21 documents from a bag to individuals.

22 SIR GEORGE NEWMAN: No, no. So you essentially had a bag
23 that you remember being given?

24 A. Yes.

25 SIR GEORGE NEWMAN: Which was a bag of documents, and with

1 you having an opportunity to see what the documents were
2 or just understanding that they were some form of --

3 A. I don't recall us examining the documents.

4 SIR GEORGE NEWMAN: You didn't have a chance to examine them?

5 A. I'm confident they would have been written in Arabic
6 anyway.

7 SIR GEORGE NEWMAN: Quite. And a bag with money in it, do
8 you remember that?

9 A. I recall that, yes.

10 SIR GEORGE NEWMAN: A bit easier to remember?

11 A. Yes.

12 SIR GEORGE NEWMAN: Do you remember the sum involved now?

13 A. I don't.

14 SIR GEORGE NEWMAN: One figure I've heard in the last day or
15 so is over US\$600,000, something of that sort. Who took
16 the bags, the bag with the money and the bag with the
17 documents? Was it you or the LO?

18 A. From my statement I think those bags were passed to the
19 LO.

20 SIR GEORGE NEWMAN: To the?

21 A. To the LO.

22 SIR GEORGE NEWMAN: The LO. The men then, your men, knew
23 the drill. There was a question of getting the EPW onto
24 the respective helicopters?

25 A. After having made good the shortfalls of --

1 SIR GEORGE NEWMAN: Searching?

2 A. Searching and restraints, yes.

3 SIR GEORGE NEWMAN: The searching was quite productive, as
4 I understand in the sense that things were found which
5 had not been --

6 A. Yes.

7 SIR GEORGE NEWMAN: -- taken off them?

8 A. As I alluded to earlier, it became apparent that the
9 initial search clearly hadn't been as thorough as it
10 might have been because things were found during the
11 second search, including, I recall, a knife being found.

12 SIR GEORGE NEWMAN: A knife?

13 A. Yes.

14 SIR GEORGE NEWMAN: Now when the loading began, as
15 I understand it, it had been intended that the loading
16 would take place, so far as possible, evenly distributed
17 between the two helicopters?

18 A. The plan was for 15 prisoners for the chalk, with seven
19 and eight --

20 SIR GEORGE NEWMAN: With seven and eight?

21 A. -- being the split. Yes.

22 SIR GEORGE NEWMAN: But it ended up with ten and five?

23 A. That's true.

24 SIR GEORGE NEWMAN: It's Helil which had the five and Heli2
25 which had the ten?

1 A. That's correct.

2 SIR GEORGE NEWMAN: Were you aware of that from before you
3 set off back to H-1?

4 A. Before we left --

5 SIR GEORGE NEWMAN: Did you think about whether you were
6 going to do anything about that or even them out, or
7 what?

8 A. Yes.

9 SIR GEORGE NEWMAN: What was your position on that?

10 A. Sir, as we discussed previously -- and I understand the
11 imperatives of the Australian armed forces. Their
12 mission had been to stop this coach, intercept this
13 coach, and to detain the people that were on it or
14 associated with it. I wasn't aware of their next
15 mission, but it's apparent that they did have another
16 mission and they wanted to get shot of these prisoners
17 and then move on with their next mission. So
18 I understand their imperative to offload said prisoners
19 as quickly as possible, for us to extract them and put
20 them into a place of detention.

21 SIR GEORGE NEWMAN: Right.

22 A. But I recall, and you will have seen it in the
23 statements, that the loading of the -- whilst we were
24 trying to take a measured approach to the loading of the
25 prisoners per our plan, for reasons of their own

1 imperative the Australians were trying to rush the
2 process. And I think I made reference in the statement
3 to the Australians trying to load prisoners themselves
4 onto the helicopters. Clearly what we'd rehearsed was
5 that we would have taken over the prisoners, we would
6 then control the preparation of and the loading of and
7 the transit of, and then the unloading and the handover.
8 Clearly the plan starts to fall down when someone gets
9 inside that plan and starts accelerating it for you or
10 trying to accelerate it --

11 SIR GEORGE NEWMAN: That's probably the explanation as to
12 why it turned out as it did?

13 A. Yes.

14 SIR GEORGE NEWMAN: The Australians were keen to get on with
15 it?

16 A. Yes, and I understand that. And you will have seen in
17 my statement that there was a conversation between the
18 chalk commander of the second helicopter and myself,
19 during which we discussed whether we were content to
20 crack on with the uneven mix. So, yes, we were aware of
21 it, we discussed it and we decided to crack on for
22 reasons of operational imperatives.

23 SIR GEORGE NEWMAN: I should have asked you this perhaps
24 before, a little earlier. But before I move on to the
25 return journey, can you remember now the nature of the

1 instruction or guidance that was given in the rehearsal
2 to the ARF members as to how they should deal with, for
3 example, a non-compliant prisoner of war? Can you
4 remember the ambit of what it was they were instructed
5 to do?

6 A. Yes. I guess the principle is that you should regain
7 control of a non-compliant individual and that may
8 require you to put the non-compliant individual on the
9 ground, regain control and then move that person to
10 where you need them to be. And then should they
11 continue to be a problem, then again you would have to
12 again assert control, regain control.

13 SIR GEORGE NEWMAN: How do you assert control? What is it
14 you are doing?

15 A. Clearly there is a language barrier and the environment
16 is confusing and loud and dirty and everything else. So
17 the most direct way of communicating with a prisoner who
18 may or may not be deprived of his sight and then who
19 can't understand what you are saying is through physical
20 means.

21 SIR GEORGE NEWMAN: What's the physical range of movement
22 that you remember the men being told about?

23 A. Sorry, the range of movement?

24 SIR GEORGE NEWMAN: What are they meant to do? Are they
25 meant to tickle them or hit them, or what?

1 A. Yes, so per my statement, you would take positive
2 control of the individual probably from behind. You'd
3 then place the non-compliant individual on the ground
4 and then you could -- you'd kneel on the prisoner such
5 that he couldn't move around, re-establish control,
6 re-fasten any bindings that may have come loose.
7 I mean, that's why in an ideal world you would have two
8 handlers per prisoner -- so that one person wouldn't find
9 themselves overwhelmed.

10 SIR GEORGE NEWMAN: Now as you will appreciate, as the
11 fact-finder in this investigation, I have to get us
12 close to the reality of all this. Just words by way of
13 instruction or words which involve phrases such as
14 "non-compliant" don't really convey anything to me
15 because they are not real terms. I mean obviously
16 I know what they mean. But I have to get inside the
17 nature of this operation.

18 A. Mm-hmm.

19 SIR GEORGE NEWMAN: The nature of the people who were being
20 dealt with, the hazards and the extent of the physical
21 interplay that there has to be. I've vented that at
22 this stage because we have been just been talking about
23 getting control, getting somebody on the ground, sitting
24 on them or whatever else. You see, in the real world --
25 and I want you to tell me whether I am entering this

1 real world with accuracy or common sense or not. I have
2 now a picture of a group of men, your ARF members?

3 A. Mm-hmm.

4 SIR GEORGE NEWMAN: Faced with keeping control over a number
5 of men they believe to be highly dangerous, in
6 an environment as cramped as the back of a helicopter,
7 where there is danger to the whole crew and grouping of
8 people should someone break loose?

9 A. Mm-hmm.

10 SIR GEORGE NEWMAN: Where there are weapons, namely guns,
11 bayonets and so on, on the aircraft. Now this is not
12 a walk in the park.

13 A. No.

14 SIR GEORGE NEWMAN: Nor is it a police arresting operation
15 on the streets of Brixton.

16 A. I've never been involved in one, but yes.

17 SIR GEORGE NEWMAN: We all know what we are talking about.

18 A. Yes.

19 SIR GEORGE NEWMAN: Therefore I am trying to get into the
20 reality of what this is all about. So we have dangerous
21 men, potentially fighting in order to be free?

22 A. (The witness nodded).

23 SIR GEORGE NEWMAN: Who if they do get free can cause havoc
24 and catastrophic circumstances?

25 A. Absolutely.

1 SIR GEORGE NEWMAN: Now, I hope understanding the way in
2 which things are, I expect this to be a pretty rough
3 handling of people if things look as though they could
4 get out of control. Am I right?

5 A. I think that's fair, I think it's the -- we are governed
6 by rules of engagement. One of the principles of rules
7 of engagement is the use of that force which is
8 necessary to avert a threat or a danger to yourself or
9 others. I would say that the threat posed by these
10 individuals was real. And you have to factor in the
11 fact that the gunners in question on the whole are
12 relatively young. We are looking at this -- we, all of
13 us, are looking at this now through the context of
14 a British military that has been engaged in operations
15 since 2001 actually, but certainly the lion's share of
16 us, and all the people sat behind me, since 2003. And
17 it's easy now to look at this as -- this type of
18 operation as something which is relatively routine.
19 An unidentified, potentially extremist in nature, terrorist
20 in nature, body of people who you have detained and
21 you're now transiting, we now could look at that and
22 say: oh, yes, we've been doing that for some time. But
23 the expectation that we had for this conflict was that
24 we -- for a start we didn't have any of that background.
25 Some of the personnel on the flight, not myself

1 included, had experience of operations in Northern
2 Ireland, where again we're dealing with non-uniformed
3 extremists. But it didn't look like this and of course
4 in Northern Ireland, by and large, you speak the same
5 language as the individual.

6 So, yes, it's fair to assume that in a scenario
7 where the expectations of the gunners involved were
8 upset somewhat by the fact that the individual didn't
9 fit the target set that we thought we were going to
10 operate against, and then the nature of the context
11 you've described, being on an aircraft at night,
12 a situation that had developed rapidly, that we'd
13 prepared for relatively rapidly, that continued to
14 evolve and then you find yourself in a position where
15 you are operating -- you're dependent on the work that's
16 been done in this case by Australian forces who you
17 hadn't had the opportunity to rehearse with, or even to
18 talk to prior to arriving at the site. And you are
19 dependent to a large degree on the activity that they've
20 done, and to take in good faith the activity they've
21 done.

22 Then, yes, that creates a -- that creates doubt in
23 the minds of the individual and myself included. And
24 when you find yourself facing a threat then you're going
25 to use the principles of minimum force as you see fit in

1 order to control what could become a threat. So
2 a struggling person: why is that person struggling? Why
3 is that person trying to stand up? The person can't --
4 the person can't be allowed to stand up, so he must be
5 removed back to a position where he is under control.
6 So, yes, that would involve physical contact.
7 Regardless of the fact that the person can't understand
8 what you are saying, it's fair to assume that there will
9 be shouting, there will be the use of physical guidance
10 and, you know, minimal physical force in order to regain
11 control of what could become a potentially catastrophic
12 threat.

13 SIR GEORGE NEWMAN: Thank you. The only thing I would just
14 like to dwell on with you because it's part of this
15 terminology which I find on these occasions tends to
16 distract from reality?

17 A. Mm-hmm.

18 SIR GEORGE NEWMAN: I'm not in doubt that your men and
19 everybody understood a phrase which was to be in their
20 mind - "minimum force"?

21 A. Mm-hmm.

22 SIR GEORGE NEWMAN: But I want you, as now an experienced
23 soldier, to inform me about how it really is.

24 A. Mm-hmm.

25 SIR GEORGE NEWMAN: I may be instructed or know that minimum

1 force is to be used, but what amounts to minimum force
2 is the question and the problem.

3 A. Mm-hmm.

4 SIR GEORGE NEWMAN: You can have somebody shouting in your
5 ear for kingdom come "minimum force", but it doesn't
6 mean anything.

7 A. Mm-hmm.

8 SIR GEORGE NEWMAN: What I take to mean something in this
9 situation, into which I have to project myself in order
10 to come to proper conclusions, is that I'm dealing with
11 a gunner, I will call them for convenience, who is
12 having to handle a man who could potentially be
13 dangerous and violent, who is attempting to stand up and
14 if he succeeds in getting too far can put the whole
15 aircraft at risk.

16 A. Mm-hmm.

17 SIR GEORGE NEWMAN: And as you seek to get him down --
18 fearful -- courageous men as they may be but fearful for
19 themselves and for their colleagues -- I just don't buy
20 this idea that men in that situation say, "Oh this is
21 minimum force, therefore what I'm going to do is only
22 do that which I think I need to do in order to get him
23 to the ground". What I think will happen is that,
24 according to the assessment of the individual at the
25 time, the man who is resisting and being a threat is

1 going to be treated with a very quick, short, sharp, and
2 maybe quite tough, physical onslaught in order to get
3 him back on the ground where he is in a state nearer to
4 being under control. Now I am not exaggerating, am I?

5 A. No.

6 SIR GEORGE NEWMAN: This is the reality of it?

7 A. No, and we use the phrase "minimum force" against
8 a spectrum of force. So the spectrum of force goes from
9 verbal through lethal, lethal to one person or lethal to
10 many. You can see that the business that we're in,
11 myself and the people sat behind me, there are examples
12 when you would find that the minimum force that is
13 necessary to avert a certain type of threat or danger to
14 yourself or others could fall anywhere along that
15 spectrum. As a guidance, it would be fair to assume
16 that a physical threat would be met by physical force.
17 It would be fair to assume that a lethal threat would be
18 met by lethal force.

19 SIR GEORGE NEWMAN: Forget the terminology. Just take the
20 facts we know of this situation.

21 A. Yes, okay.

22 SIR GEORGE NEWMAN: We have a dangerous man or someone believed to
23 be a dangerous man, perhaps a strong one.

24 A. Mm-hmm.

25 SIR GEORGE NEWMAN: Some of the evidence I've heard is that

1 the particular individual was quite a hefty individual.

2 A. Mm-hmm.

3 SIR GEORGE NEWMAN: There is he standing up or attempting to
4 stand up in the back of an aircraft, presenting all the
5 risks I have indicated to you, and the only way of
6 making it safe is to get him to the ground?

7 A. Yes.

8 SIR GEORGE NEWMAN: And the measures you take to get him to
9 the ground are not going to be so refined as all that.
10 They are going to be whatever, at that moment in the
11 height of tension and requirement of the time, is needed
12 to get him to the ground?

13 A. Yes, as seen through the eyes of --

14 SIR GEORGE NEWMAN: As seen through the eyes of the man
15 involved?

16 A. Yes, because --

17 SIR GEORGE NEWMAN: Because he's the one who has to deal
18 with it?

19 A. Again, you know, the reality is -- it's as deemed
20 necessary by the individual or the individuals --

21 SIR GEORGE NEWMAN: Yes.

22 A. -- who are interpreting the threat. So in the
23 circumstance you describe, yes, I think it would be
24 entirely appropriate for the use of physical force. It
25 probably isn't appropriate or -- both in terms of the

1 threat and probably in terms of the scenario -- in order
2 to use a firearm, for instance.

3 SIR GEORGE NEWMAN: Yes, quite.

4 A. That would probably be excessive.

5 SIR GEORGE NEWMAN: Well exactly. That is why I want to
6 break away from this almost mantra which I hear of
7 minimum force. Nobody knows what the minimum force is
8 that's needed to get a particular large man, who is
9 being obstructive and difficult and threatening, to the
10 ground. It may be that you put him to the ground with
11 a blow or by means which were not strictly the minimum,
12 but you don't measure the minimum at that stage. There
13 is nothing for you to measure the minimum by. What you
14 have to do is get him to the ground?

15 A. Yes.

16 SIR GEORGE NEWMAN: Now you don't do it, as you say, by
17 getting out a butt of a rifle and whacking him round the
18 back of the head. But you get him to the ground as the
19 moment there requires?

20 A. Yes.

21 SIR GEORGE NEWMAN: Okay. Right, we've done that.

22 A. As I say, we're -- you referred to it as a mantra and
23 perhaps it can be seen as such. But this is part of our
24 training.

25 SIR GEORGE NEWMAN: I know and I'm not demeaning it.

1 A. This is ingrained.

2 SIR GEORGE NEWMAN: I'm not demeaning it, I'm not intending
3 to demean it. Of course, as a lawyer and as a judge,
4 I know what all these phrases are.

5 A. I understand that.

6 SIR GEORGE NEWMAN: And I know how important they are. But
7 people are not standing round in the aircraft reading
8 their SOPs and working it out, they are dealing with a real
9 situation.

10 A. Absolutely.

11 SIR GEORGE NEWMAN: That's what I am trying to deal with.
12 All right?

13 A. Absolutely.

14 SIR GEORGE NEWMAN: So you get somebody who is then put to
15 the ground -- let's assume he's put to the ground. But
16 he is still struggling?

17 A. Yes.

18 SIR GEORGE NEWMAN: More force has to be used, correct?
19 I mean that's what you would expect?

20 A. Probably the continued application of force as opposed
21 to an escalation of force --

22 SIR GEORGE NEWMAN: Yes.

23 A. -- I think is how I would describe it.

24 SIR GEORGE NEWMAN: In the end the picture I wanted to get
25 to -- and I wanted your help and guidance on. The

1 picture I get to is a situation in which there is a very
2 low level of tolerance --

3 A. That's fair.

4 SIR GEORGE NEWMAN: -- for resistance?

5 A. Yes.

6 SIR GEORGE NEWMAN: Because the risks are so high, the
7 atmosphere is so heightened, that you don't run the risk
8 of a guy who's already succeeded in standing up and
9 you've got to the ground -- who is apparently still
10 struggling to get up again. You don't take the risk
11 he's going to get very far in his second attempt to get
12 up?

13 A. Yes.

14 SIR GEORGE NEWMAN: So there is still force used?

15 A. Yes, and you should -- I guess it's worth saying, it
16 might sound obvious, but the appetite for risk changes
17 throughout a mission like this. And there will be
18 certain critical points of the mission where the threat
19 to everybody else, or indeed to the mission itself, is
20 much higher. So you have described the catastrophic
21 event that could take place if the individual were able
22 to damage the aircraft in some way, shape or form, thus
23 that everybody's life was at risk. By the same token,
24 if you were holding some prisoners in a desert, then the
25 impact is not as catastrophic.

1 SIR GEORGE NEWMAN: It's not, exactly.

2 A. So there are stages of a mission such as this where
3 every individual is carrying out their own assessment of
4 the threat based upon their training, their experience,
5 their orders and their SOPs.

6 SIR GEORGE NEWMAN: Yes.

7 A. And the challenge -- you will be well practised in this,
8 but the process of assessing that risk is one that takes
9 place through the information that the individual has
10 available to them at the time and place that they are
11 in. What do I see with my eyes? What do I hear with my
12 ears? I don't have time to ask the person to the left
13 or right of me or indeed to refer to a superior officer
14 or NCO for orders or instructions. I have to act given
15 the situation that faces me. And the nature of our
16 business is that we have to empower and trust the
17 individuals to be able to make those judgments based
18 upon their own interpretation of the threat, otherwise
19 you wouldn't get anything done.

20 SIR GEORGE NEWMAN: Quite. Now let me just tax you to help
21 me in this way. I have seen photographs of the Chinook.

22 A. Mm-hmm.

23 SIR GEORGE NEWMAN: I have seen photographs of it set up in
24 a way in which it was set up on 11, 12 April 2003. As
25 a lighter addition to this preamble, I have even had

1 large pieces of the floor brought to me in my office in
2 Horse Guards in order for me to -- I'm not quite sure
3 what it was in order for me to do, but they were brought
4 to me. So for quite a number of days I looked at these
5 very solid pieces of metal.

6 A. It's a shame they didn't put you in the back of one.

7 SIR GEORGE NEWMAN: I could have requested that.

8 A. Save cluttering up your office.

9 SIR GEORGE NEWMAN: But I might have felt I'd lived with
10 them for long enough. Now it's one thing to put a man
11 down with force in the desert?

12 A. Mm-hmm.

13 SIR GEORGE NEWMAN: Some people might say well that's
14 convenient, at least he's going down onto sand.

15 A. (The witness nodded).

16 SIR GEORGE NEWMAN: It's quite another thing to put a man
17 down with force onto the solid floor that I've seen.
18 So I have to ask myself, and this is where your
19 experience, authority and your help is needed for me,
20 what is the risk of injury occurring to an individual
21 when he is put to the floor in the sort of circumstances
22 which we're talking about? Do it if you like on a scale
23 of -- as doctors constantly ask you to do these days,
24 how painful is it on a scale of one to ten. Just tell
25 me on a risk scale of one to ten, how risky do you think it

1 is that there will be not just a bruise but perhaps
2 a significant injury to somebody put down in that way?
3 Just give me an idea from your experience.

4 MR HOLT: I'm sorry to interrupt, I'm just a little bit
5 anxious. Can I just mention it. This witness isn't
6 an expert and we're asking him really to give expert
7 evidence, aren't we?

8 SIR GEORGE NEWMAN: Expert about what?

9 MR HOLT: About the degree of risk of substantial injury by
10 being placed on a floor.

11 SIR GEORGE NEWMAN: Well, I'm asking him to give me his
12 experience.

13 MR HOLT: And we don't know --

14 SIR GEORGE NEWMAN: He's got the benefit of experience,
15 which I haven't.

16 MR HOLT: We don't know if he has any experience of placing
17 anybody on a hard metal floor.

18 SIR GEORGE NEWMAN: Do you want me to follow that up,
19 Mr Holt?

20 MR HOLT: That's why I mention it.

21 SIR GEORGE NEWMAN: Do you feel able to express a view to me
22 on this topic?

23 A. Yes, I think I do.

24 SIR GEORGE NEWMAN: Why do you say that?

25 A. Because what we're referring to is -- we're -- do I have

1 experience of restraining individuals? Yes. Do I have
2 experience of restraining individuals in different
3 environments and circumstance? Yes. Am I able to make
4 a judgment about whether or not an individual may or may
5 not be injured by going from his standing height to the
6 floor if the floor is hard? Yes, I think that's common
7 sense.

8 SIR GEORGE NEWMAN: I would have thought so.

9 A. I wouldn't -- clearly I caveat that by the fact I'm not
10 a doctor.

11 SIR GEORGE NEWMAN: No.

12 A. But, yes, if -- I suppose there is a reasonable chance
13 that an individual will sustain some kind of physical
14 injury if they are taken from their standing height to
15 the ground and the ground is hard and they do so without
16 the benefit of -- or the full benefit of their senses;
17 for instance, if they don't have the ability to see and
18 if they don't have the ability to fully break their fall
19 because they are restrained. That's common sense. By
20 the same token, you will understand that that risk is
21 balanced by -- balanced against the risk to everybody
22 else. So I know we're not fond of the phrase, but the
23 rule of minimum force would apply: to use such physical
24 force as necessary to avert the danger to oneself and
25 those others around us. There will be some risk to the

1 individual. But that is a decision made -- there is
2 some risk to the individual being restrained. But the
3 individual doing the restraining would judge that
4 through their eyes at that time and in that circumstance
5 then there was no other way to avert the risk to
6 everybody else. So that person would have to be
7 restrained.

8 SIR GEORGE NEWMAN: Yes.

9 A. They would consider that risk was appropriate in the
10 circumstances.

11 SIR GEORGE NEWMAN: So what you're saying --

12 A. It shouldn't be excessive.

13 SIR GEORGE NEWMAN: So what you're saying to me is that you
14 think it would be quite a good idea if I used my common
15 sense?

16 I mean I'm partly dealing with Mr Holt's
17 observation, but essentially it's common sense?

18 A. My judgment is that of course if I was to go from -- if
19 I was to fall over on this floor, which is fairly hard,
20 there is a chance that I would hurt myself.

21 SIR GEORGE NEWMAN: Yes, and if somebody was trying to make
22 sure you did go down onto it there is a chance you'd hurt
23 yourself?

24 A. Yes.

25 MR HENDERSON: Sir, I wonder if might ask ...

1 SIR GEORGE NEWMAN: You would like to say something.

2 MR HENDERSON: If I may, sir, because as I understand it
3 what the witness and others are saying is that this
4 needs to be viewed in the context of what was the
5 threat.

6 SIR GEORGE NEWMAN: I said that.

7 MR HENDERSON: Yes, indeed, sir, and you've heard some
8 evidence about that. But just in terms -- just to
9 explore it slightly further, sir, you've heard about
10 this holdall of money, some US\$600,000. Perhaps, sir,
11 the witness could be asked whether there was anything
12 else which suggested what -- whether that money had any
13 particular purpose.

14 SIR GEORGE NEWMAN: I know what you mean. It's slightly off
15 the point I am on at the moment.

16 MR HENDERSON: Sir, I would suggest it does go to what might
17 have been going through people's mind: what threat was
18 being presented? Was it a threat that was realistic?
19 Was this person dangerous? And I would suggest, looking
20 at that holdall of money, together with something else
21 which might have indicated a purpose for it, would make
22 that a very potentially high risk.

23 Sir, there is another aspect as well -- perhaps at
24 this point, if that question could just be asked before
25 I move on to the next one because I think it would

1 depend on that.

2 I can indicate what my second question would be, in
3 terms of re-think --

4 SIR GEORGE NEWMAN: I need to understand the nature of the
5 first question, Mr Henderson, first of all. What is the
6 actual question?

7 MR HENDERSON: What I am referring to, sir, if I may put it
8 now.

9 SIR GEORGE NEWMAN: You can refer to anything you like. It
10 is open house and nothing is secret.

11 MR HENDERSON: Right, sir. There has been reference, sir,
12 to a bounty letter, which indicated that this was what
13 this money was for, a price of £5,000 on the head of
14 every US soldier.

15 SIR GEORGE NEWMAN: I haven't ascertained from anybody yet,
16 and I'll certainly find out from this witness and indeed
17 find out from any general indication I get from anybody
18 else, as to whether they were at the material time aware
19 of the contents, all of them, of that particular -- were
20 you aware of a bounty letter?

21 A. I take the point. You will know that -- from my
22 statement on page 7, that I have said that we found out
23 the contents of that letter after the event.

24 SIR GEORGE NEWMAN: After the event?

25 A. Yes.

1 SIR GEORGE NEWMAN: So you weren't at the time we're talking
2 about --

3 A. Not of those specifics, but I take the point that these
4 people who we believed to be extremist -- based upon the
5 intelligence that we had been afforded and the
6 intelligence we understood about the tactics and
7 procedures employed by said extremist grouping. The
8 money is suspicious, but the fact of the matter is that
9 even without that money, given the intelligence -- as we
10 discussed earlier, these people are deemed to be a high
11 threat. High threat, asymmetric in nature -- and what
12 I mean by that is not conventional threats that are
13 employed by a uniformed enemy in accordance with the
14 laws of armed conflict. So you could expect that these
15 individuals would be extremist of view, extremist of
16 motivation, extremist of method; in some, very, very
17 dangerous, not necessarily concerned for their own
18 lives. So --

19 SIR GEORGE NEWMAN: Well, I mean, I have all that.

20 A. The money is a factor.

21 SIR GEORGE NEWMAN: Are you happy with that Mr Henderson?

22 MR HENDERSON: I am happy.

23 SIR GEORGE NEWMAN: I wasn't in any doubt about that.

24 MR HENDERSON: The witness has confirmed that was the
25 intelligence, that was part of the briefing. So I would

1 submit that would be in people's minds and, sir, the
2 conned aspect --

3 SIR GEORGE NEWMAN: Do you know whether the men on the
4 aircraft, at the time they were returning from the pick
5 up, were aware of this piece of intelligence?

6 A. About the money in particular?

7 SIR GEORGE NEWMAN: I will ask them if necessary.

8 A. Maybe they --

9 SIR GEORGE NEWMAN: I suspect chalk commander was from his
10 body language.

11 A. Maybe they were, but perhaps I can recover back to my last
12 statement. The money is a factor but judged against the
13 intelligence is almost an irrelevance. It just adds to
14 the context.

15 SIR GEORGE NEWMAN: It adds to this tension?

16 A. These are bad and dangerous people.

17 SIR GEORGE NEWMAN: Yes, okay. Fine. All right. Well we
18 have been a bit diverted from what I really did want by
19 way of help and some reality --

20 MR HENDERSON: Sir, I'm sorry, I did have a supplementary on
21 that as well.

22 SIR GEORGE NEWMAN: Is it on the same topic?

23 MR HENDERSON: It's in terms of the threat, sir.

24 SIR GEORGE NEWMAN: Can we deal with it --

25 MR HENDERSON: Indeed, sir.

1 SIR GEORGE NEWMAN: It doesn't sound as if it's
2 controversial.

3 MR HENDERSON: No, but I would suggest, sir, it is
4 confirmation that you should get from at least one of
5 these witnesses at some stage. On behalf of those I am
6 representing I would like that question to be asked.

7 SIR GEORGE NEWMAN: All right, tell me.

8 MR HENDERSON: Sir, it did transpire -- again this may not
9 be what they were briefed at the time, but it was
10 subsequently identified, I believe, that one of these
11 detainees that was collected was a very high value
12 number in the so-called deck of cards. So, again, my
13 submission on that would be that this goes to the
14 general context of what this mission was all about. Not
15 necessarily there are going to be people who are high
16 value in this deck of cards, but it just -- it colours
17 the context of how dangerous, potentially, these people
18 were and whether that might have been going through
19 their minds.

20 SIR GEORGE NEWMAN: I didn't think I downplayed
21 the dangerousness of it. Some people might even have
22 suggested I'd overplayed it, but I take the point.

23 Ultimately it's all for me, Mr Henderson.

24 MR HENDERSON: Yes, it is.

25 SIR GEORGE NEWMAN: It's all for me.

1 Do you want to make any comment on that?

2 A. No. We've discussed the threat as everyone was briefed.
3 They were briefed as to the threat by me in accordance
4 with the best information we'd been given.

5 SIR GEORGE NEWMAN: Yes. Now let's move on if I may because
6 I'm very anxious about the time. We have a busy day.
7 I'm not criticising anybody apart from myself.

8 We now get back to H-1, shall we? When you get back
9 to H-1 you and the LO, as I understand it, go across to
10 the US facility; is that right?

11 A. This is the point at which we are about to -- we've just
12 arrived?

13 SIR GEORGE NEWMAN: You've just arrived back with your 15.

14 A. Not to the facility but to the reception part.

15 SIR GEORGE NEWMAN: To the reception --

16 A. Not to the facility itself.

17 SIR GEORGE NEWMAN: No, to the American reception group?

18 A. Yes.

19 SIR GEORGE NEWMAN: At that time, do you remember the gist
20 of what it is you say to them?

21 A. We explained the number of detainees we had on hand.
22 And I had been told over the radio that -- either over
23 the radio or face-to-face, I forget which. But I had
24 been told that I think at least one of them was
25 unconscious, believed to be unconscious, and one of them

1 was without his prosthetic legs. So we'd need a vehicle
2 in order to --

3 SIR GEORGE NEWMAN: Do you remember where you were when you
4 received that information? Were you still around H-1
5 or?

6 A. It would have been at H-1.

7 SIR GEORGE NEWMAN: At H-1?

8 A. Because it --

9 SIR GEORGE NEWMAN: Sorry, I meant at helicopter 1. You
10 were still around your own helicopter, were you?

11 A. I would have been --

12 SIR GEORGE NEWMAN: If you had a face to face, it would have
13 been an individual speaking to you?

14 A. It would have been the chalk commander.

15 SIR GEORGE NEWMAN: The chalk commander?

16 A. Yes. Yes, I have to refer to my statement but it is ...
17 (Pause)

18 Yes, as I've said in my statement, I was talking to
19 the US commander and visiting SO39 at the
20 second helicopter. We'd had a conversation.

21 SIR GEORGE NEWMAN: And you are now talking about a conversation
22 with the chalk commander?

23 A. SO39, yes, and also with SO53.

24 SIR GEORGE NEWMAN: And did you see this unconscious
25 individual?

1 A. Not with my own eyes, but I have no reason to doubt --

2 SIR GEORGE NEWMAN: No, no, no. And is there anything more
3 about that conversation which you can tell me?

4 A. Yes, we requested that a vehicle be brought up because
5 we -- as we discussed on the teleconference, this wave
6 was not the end of the mission. This wave was merely
7 the first wave of several. We knew that. We also knew
8 that the strong preference was that this mission was
9 completed during the hours of darkness. So there is
10 a degree of expediency required in order to hand these
11 individuals over, recover back to the Australian forces
12 and then do it all again, and then potentially again and
13 again. So, yes, you know, chief amongst my concerns was
14 to expediate the handover of the first chalk of
15 prisoners into the hands of the American forces who
16 were -- as I have alluded to, they were running
17 a prisoner handling facility. That was their primary
18 mission.

19 So whereas we were prepared and trained for many
20 missions, their primary mission was to take receipt of
21 and then handle and process prisoners. So they were
22 well placed to take these personnel off our hands. We
23 could then reconfigure ourselves, redeploy and do it all
24 over again.

25 SIR GEORGE NEWMAN: Do you remember now having any curiosity

1 yourself as to what you pursued (inaudible), as to how
2 it was that there was somebody unconscious?

3 A. I don't recall it as being -- I don't recall it as being
4 overwhelming in my mind. My concern was to crack on and
5 to continue with the mission. Clearly it's a factor
6 that one of the individuals that we've collected at some
7 point most probably walked on to a helicopter and is now
8 unable to walk off. That is a factor, but it doesn't
9 detract from the reality that we need to continue with
10 our mission.

11 SIR GEORGE NEWMAN: So you didn't follow through on the
12 information you were given by making inquiries as to --

13 A. Not detailed inquiries, no.

14 SIR GEORGE NEWMAN: Do you make any inquiries, to be honest?

15 A. I don't recall.

16 SIR GEORGE NEWMAN: No.

17 A. I would --

18 SIR GEORGE NEWMAN: You really attempted to deal with the
19 situation you'd had reported to you rather than get to
20 the bottom of how it occurred, is that right?

21 A. That's fair. My concern was the entire mission, not
22 merely one person in the mission.

23 SIR GEORGE NEWMAN: Did you see the Humvee vehicle or
24 vehicles coming from the US forces to the helicopters?

25 A. I recall one -- I'm sure it was one vehicle, yes.

1 SIR GEORGE NEWMAN: Do you --

2 A. I do believe it was a Humvee.

3 SIR GEORGE NEWMAN: Pardon?

4 A. I do believe it was a Humvee.

5 SIR GEORGE NEWMAN: Do you remember seeing anything by way
6 of body or person transported into it or carried away in
7 it, or what? If you don't remember, then tell me.

8 A. I recall one of the prisoners being carried by one of my
9 gunners, on his back. It was the individual that had
10 lost his prosthetics.

11 SIR GEORGE NEWMAN: His legs, yes. He has given his
12 evidence and he has given me that account. Do you
13 remember anything else?

14 A. I don't recall the -- I don't recall watching --

15 SIR GEORGE NEWMAN: Do you recall how the problem of the
16 unconscious EPW was dealt with, how it was resolved?

17 A. I didn't observe the carriage off, no.

18 SIR GEORGE NEWMAN: You didn't observe the carriage,
19 movement or anything else?

20 A. No.

21 SIR GEORGE NEWMAN: At this stage, had anything been said to
22 you about a possible reason why he was unconscious or
23 not moving?

24 A. Not that I recall.

25 SIR GEORGE NEWMAN: Now that's basically it, is it, so far

1 as your recollection of the unloading before you set off
2 again in order to pick up from the Australians? Or is
3 there anything you can be jogged into remembering now?

4 A. I guess the other thing I would add is the ... the
5 context of the unloading phase. So again, reading
6 through the statements, you can probably be forgiven for
7 thinking this is like unloading personnel at an airport
8 and it's not. So it's still a desert. It just happens
9 to be a different bit of desert. It's still nighttime.
10 There are still the conflicting priorities and
11 imperatives of two nations who each have two different
12 missions. So our own mission is clearly to finish this
13 task. We are approximately one-third of the way in.
14 And then the mission of the -- our American colleagues
15 which is to receive said prisoners, process them, put
16 them into secure holding for further processing. So
17 their -- you will recall that earlier, prior to
18 departure, they'd expressed a concern about how many
19 prisoners there were. I recall that they were still
20 concerned. I recall that their -- you know, they were
21 concerned. They were going to take these individuals
22 off us. But frankly our own mission was to transport
23 them and hand them over. It didn't much concern me
24 where they ended up as long as they were secured and
25 that these people who were a threat were transitioned

1 from my call sign on to somebody else, thus that I could
2 continue my mission and that these individuals were
3 secured and no longer a threat to friendly forces who
4 were at large.

5 So, yes, I recall there being -- I wouldn't regard
6 them as heated discussions, but certainly discussion at
7 the hand-off point. The hand-off point, I don't recall
8 that we did the thorough documentation of transfer until
9 later. It was dark, it was dirty, it was clearly windy,
10 noisy, blah, blah, blah. And so, yes, the context is
11 everything.

12 SIR GEORGE NEWMAN: All right. I am going to take a break
13 now because the transcriber likes to have a break.

14 I could do with a break. There are one or two things
15 I want to discuss with my team here. There may be some
16 more questions, but I want to try and prune my scheme so
17 far so that we can move on if possible. All right?

18 We will say 12.05.

19 (11.57 am)

20 (A short break)

21 (12.07 pm)

22 SIR GEORGE NEWMAN: Right. S055, I'm going to give you
23 a break. I think I have finished insofar as the
24 questions I have of you, but I don't want you to go.
25 You understand?

1 A. I do, sir.

2 SIR GEORGE NEWMAN: So could you withdraw to a seat which
3 will now become available because I would like SO38 to
4 come forward.

5 A. Thank you.

6 SIR GEORGE NEWMAN: Thank you.

7 SO38

8 Examination by SIR GEORGE NEWMAN

9 SIR GEORGE NEWMAN: I just need my file. Do sit down.
10 I just need my file, SO38. But in the meantime, while
11 we are getting that, you have signed a statement to this
12 investigation, haven't you?

13 A. I have, sir.

14 SIR GEORGE NEWMAN: Are you content that I can take that as
15 your reliable and accurate account of --

16 A. Yes, sir.

17 SIR GEORGE NEWMAN: -- these events. You have also seen the
18 other material that became available in the earlier
19 investigations and you are content that I should see
20 that as your record and your account; is that right?

21 A. Yes, sir.

22 SIR GEORGE NEWMAN: Thank you. Now you have been here for
23 each of the days?

24 A. I have, sir.

25 SIR GEORGE NEWMAN: So you have heard an awful lot. You

1 have heard an awful lot from me.

2 A. Sir.

3 SIR GEORGE NEWMAN: You know what I'm on at and you probably

4 know, as a result of this morning, what it is in

5 particular I need to get to grips with. But let's take

6 you first of all to -- with my guidance, and then I'm

7 going to leave you to do the best you can as you know

8 that this is the way I prefer to do it.

9 A. Yes, sir.

10 SIR GEORGE NEWMAN: Your role really I've accurately got,

11 have I, as the link man?

12 A. Yes, the link man, sir, and to process the EPWs.

13 SIR GEORGE NEWMAN: And as the link man, just give me a link

14 man duty, an example of a link man duty?

15 A. A link man duty, I was always one step behind SO39

16 because the PRRs were useless under the conditions that

17 we were working in. So there were no comms. I always,

18 sir, made sure I was always situated so I could see our

19 boss and the LO and was able to pass on hand signals if

20 needed.

21 SIR GEORGE NEWMAN: Right. Now when the loading began at

22 the pick up point, there came a time when there was

23 an EPW who was brought to Lifter2 who was causing

24 trouble; isn't that right?

25 A. Yes, sir. There was an EPW causing trouble. But also

1 I was dealing with -- the Australian forces had brought
2 across two EPWs, left them at the back of the Chinook on
3 their own. So I was just in the process of starting to
4 get hold of them and load them on to the Chinook when
5 an incident happened behind me. So I've got two EPWs --
6 I'm only carrying a pistol. I have two EPWs, one in
7 each hand, and then I've got an incident happening
8 behind me.

9 SIR GEORGE NEWMAN: Can you remember now how full the
10 helicopter was at this stage? You were getting towards
11 full up as I would guess?

12 A. We were -- where the incident happened, and where I was,
13 was actually on the ramp.

14 SIR GEORGE NEWMAN: And do you remember now how many gunners
15 there were with you to enlist or get help from at this
16 time? Were there any inside the helicopter?

17 A. There was no one else to assist, sir. They all had
18 their own jobs and were doing their jobs. I was actually
19 shouted or grabbed hold of that the incident was
20 happening. So I turned round and took control of that.

21 SIR GEORGE NEWMAN: Now the incident -- were you able to
22 deal with the EPWs the Australians had left before you
23 then turned to deal with the -- let's call it the
24 incident for the moment. Were you able to deal with
25 them?

1 A. It all happened so fast, sir, and with the conditions it
2 was very difficult. But I remember pulling off --
3 sorry, let me have a look at the ...

4 SIR GEORGE NEWMAN: Take your time.

5 A. I think it was SO61 who then took control of the EPWs
6 that were left, and then I took control of the EPW that
7 was causing the problem.

8 SIR GEORGE NEWMAN: Remind me, who had -- who had brought
9 the EPW who was causing trouble? He was on his own,
10 wasn't he? And I've heard from him, haven't I? I've
11 heard from him? Looking down the list there, do you
12 remember?

13 A. Who had the EPW that was causing trouble, sir?

14 SIR GEORGE NEWMAN: 44?

15 A. SO44, sir.

16 SIR GEORGE NEWMAN: Yes, it's 44.

17 A. Yes, sir, I believe.

18 SIR GEORGE NEWMAN: So SO44 who I did hear from yesterday,
19 didn't I?

20 A. Yes, sir.

21 SIR GEORGE NEWMAN: SO44 brings along or comes along with
22 this EPW on his own and he has somebody who is causing
23 trouble and he can't control, as I understand it?

24 A. That's correct, sir.

25 SIR GEORGE NEWMAN: Is he quite a big man? Not SO44, but

1 the EPW.

2 A. He was, sir, yes. I put in my first statement he was
3 a very stocky gentleman and that's -- you know the
4 height and things, I don't remember. But he was a big
5 call sign.

6 SIR GEORGE NEWMAN: He was a big call sign?

7 A. He would have been a number 2, if you were playing
8 rugby, on the second row to that.

9 SIR GEORGE NEWMAN: Can you give me a broad picture of what
10 it was he was doing which was causing a problem for
11 SO44?

12 A. His arms had come free, sir, he was flailing them
13 around. And the way I've described it in the past he
14 was milling with his hands.

15 SIR GEORGE NEWMAN: That means this, this sort of movement?
16 (Demonstrated)

17 A. Yes, sir. His hood was hanging off the back of his head
18 and had come free, and he was kicking and punching out.
19 So --

20 SIR GEORGE NEWMAN: He was --

21 A. He was a threat, sir, to the aircraft.

22 SIR GEORGE NEWMAN: He was quite a figure for one man to
23 control?

24 A. Yes, sir.

25 SIR GEORGE NEWMAN: At this stage when he was doing this,

1 was he on the ramp or being brought up the ramp or had
2 he even not got as far as the ramp?

3 A. He was on the ramp, sir.

4 SIR GEORGE NEWMAN: He was on the ramp?

5 A. Yes, sir.

6 SIR GEORGE NEWMAN: So you tell me what you then did rather
7 than me feeding you the line.

8 A. Okay, sir. I swept his feet from underneath him.
9 I grabbed him by the back of the neck and the middle of
10 the back, and expected to find a belt or something like
11 that. But it was a dishdash they were wearing. So I had
12 hold of his material, the back of the neck and I put him
13 to the floor, sir.

14 SIR GEORGE NEWMAN: And did you have to turn him in order to
15 get him to the floor so that he was lying across the
16 back towards the ramp, is that how you had to do it?

17 A. No, sir. With -- in hindsight, with the way that he was
18 acting, the counterbalance was already going forward and
19 I had come from the position of behind anyway.

20 SIR GEORGE NEWMAN: Right.

21 A. And when I got him to the floor, sir, and put him in
22 an arm lock, which is a goose neck, which was taught in
23 Northern Ireland, and kept him there until we tried to
24 put the handcuffs on him.

25 SIR GEORGE NEWMAN: Did you succeed in putting the cuffs on

1 him?

2 A. I didn't at that point, sir, no.

3 SIR GEORGE NEWMAN: Did anybody?

4 A. Not to my recollection, sir, no, because we were then --

5 he was under control and then we were dealing with the

6 two that had been left at that ramp door. I was also under

7 pressure from the air loadie to move people forward

8 because we needed to get everybody on.

9 SIR GEORGE NEWMAN: Now I want to make sure that I'm not

10 making any assumptions which are incorrect. In all the

11 material I have looked at, over all these months, I have

12 been inclined to assume that the man who you described

13 as flailing his arms around and causing trouble for S044

14 was in fact the man who at the end of the carry back

15 journey was lying motionless at the back of the

16 aircraft. Am I right in making that assumption or in

17 error?

18 A. I think it is an assumption, sir. No one could tell you

19 whether that was that detainee. We then had another

20 detainee that stood up later on in the flight.

21 There's -- it's an assumption, sir, yes.

22 SIR GEORGE NEWMAN: How safe?

23 A. How safe an assumption? Well, I wouldn't bet on it,

24 sir. There was total confusion on the back of that

25 aircraft at that point because we had two extra

1 detainees and one that was misbehaving, never mind with
2 the conditions and everything else. You could hardly
3 see on the back.

4 SIR GEORGE NEWMAN: Let's see if we can get to it together. I've
5 had evidence that the individual who was motionless and
6 probably was dead, or certainly was declared dead later,
7 was in a pool of urine at the time that you had landed.
8 Does that help you to identify to me whether that
9 individual was the man you had struggled with and got to
10 the ground and had put down on the back of the aircraft?
11 Does that help?

12 A. I noticed that individual, the one I put to the floor,
13 had pissed himself, to excuse the expression.

14 SIR GEORGE NEWMAN: No, no.

15 A. But I'm quite certain that he wasn't the only gentleman
16 who had done that on the back of the aircraft.

17 SIR GEORGE NEWMAN: I see.

18 A. Because they were so scared.

19 SIR GEORGE NEWMAN: Scared?

20 A. Yes.

21 SIR GEORGE NEWMAN: Well who wouldn't be?

22 A. Sir. And I have since done this at different levels, as
23 a job later on in my career, and it's quite -- perfectly
24 normal.

25 SIR GEORGE NEWMAN: So the urine pool doesn't help me in

1 following through the train of events to identify the
2 individual?

3 A. To my mind, no, sir.

4 SIR GEORGE NEWMAN: What about the numbering then on the
5 back? Again these are all assumptions I make from the
6 paperwork, which is not always the best way to get to reality.
7 I have an image in my mind of the ramp having been down,
8 the last -- obviously the last person up the ramp is
9 then laid at the back, but the ramp needs to go up?

10 A. Yes, sir.

11 SIR GEORGE NEWMAN: But it can't go up because it's too much
12 of a squeeze with too many people there, correct?

13 A. Sir.

14 SIR GEORGE NEWMAN: Now is the person who is the last on, in
15 my image, up against the ramp, is he the person who at
16 the end of the journey is motionless?

17 A. I don't know, sir, if that is the gentleman that was
18 unconscious. When we landed my job as the link man was
19 straight off the aircraft as I watched SO39 go over to
20 Lifter1 to discuss what was happening next. By the time
21 I've turned round and kept that link, people are being
22 brought off. So the order has been mixed. But I can
23 tell you --

24 SIR GEORGE NEWMAN: So the order has changed?

25 A. I can tell you that the gentleman that was put to the

1 floor was number eight and we had two more behind us which
2 then became my 10.

3 SIR GEORGE NEWMAN: Well that's helpful. So the one you're
4 talking about as being put to the floor, he's the one
5 who has caused trouble for SO44?

6 A. Sir.

7 SIR GEORGE NEWMAN: Is that correct? He's put to the floor
8 and he's number eight?

9 A. He was number eight at that point.

10 SIR GEORGE NEWMAN: Right.

11 A. But then we've been told by the --

12 SIR GEORGE NEWMAN: Surely.

13 A. -- air loadie to move everybody forward.

14 SIR GEORGE NEWMAN: Okay. Now going back, you've got him to
15 the floor. Is he on his front or -- as again I assume,
16 I've assumed he's on his front with his head facing the
17 deck rather than facing upwards; is that right?

18 A. He landed on his side. I rolled him on to his front and
19 then I put his arm up the middle of his back and held
20 him in a goose neck while I tried to get assistance to
21 put the plasticuffs on. But, as I've said, I couldn't
22 continue that motion because we still had two more
23 behind us to deal with, and the pressures of moving
24 people forward and the fact that we wanted to take off.

25 SIR GEORGE NEWMAN: So did you then call for assistance to

1 deal with the one you had in the lock, is that what you
2 did?

3 A. I didn't call for assistance, sir. People came and
4 assisted me.

5 SIR GEORGE NEWMAN: Okay. So they enabled you to release
6 your grip and they took over, is that it?

7 A. Yes, I was able to put somebody with the detainee while
8 I tried to get the other two on and move everybody
9 forward.

10 SIR GEORGE NEWMAN: And have I heard from that -- I think
11 I have heard from that person who was then, what,
12 sitting on his back; is that right?

13 A. There is confusion, sir. Sat on his back, sat on his
14 bum, sat on his legs, he was sat on the person
15 controlling him.

16 SIR GEORGE NEWMAN: Right, and is that S058? The third
17 page, last page.

18 A. That's correct, sir.

19 SIR GEORGE NEWMAN: So we've got S058 sitting on his back
20 somewhere. What's your recollection, was he still
21 moving at that stage?

22 A. Yes, sir.

23 SIR GEORGE NEWMAN: Was he moving in a way which showed he
24 had some resistance in him --

25 A. Yes.

1 SIR GEORGE NEWMAN: -- and life?

2 A. Yes, sir.

3 SIR GEORGE NEWMAN: From my own understanding, he hadn't
4 given up, from what it was that had been done to him?

5 A. No, sir. It was determined, sir, it was determined.
6 And that's why I felt we needed to stop that threat
7 there and then. Having the briefing that we'd had,
8 knowing the aircraft and everybody was vulnerable, it
9 was to stop that in its tracks and carry on.

10 SIR GEORGE NEWMAN: When did you next come back to see what
11 the position was in relation to this chap, do you
12 remember? You had other things to do, I know, but you
13 then take off. Do you come back in the course of the
14 journey back and see how S058 is getting on with the
15 situation?

16 A. S058? Is this while we're in flight, sir?

17 SIR GEORGE NEWMAN: Yes, in flight?

18 A. Yes, I did go back and try and check that he had stayed
19 compliant and was being compliant, because he'd been the
20 one that had caused this trouble, and he was being
21 compliant.

22 SIR GEORGE NEWMAN: And was he?

23 A. Yes, sir, he was. He was still moving around but being
24 compliant.

25 SIR GEORGE NEWMAN: You've heard me this morning on my

1 troubles with the word "compliant", wonderful word from
2 the English dictionary that it is.

3 A. Okay, sir, in language terms --

4 SIR GEORGE NEWMAN: In language terms?

5 A. He was doing what we were asking of him, but he was
6 still moving.

7 SIR GEORGE NEWMAN: He was still moving?

8 A. Yes, sir.

9 SIR GEORGE NEWMAN: Looking at the nature of the movement
10 that he had, did he look as though he was somebody who
11 still had potential for causing trouble?

12 A. Not at that time, sir, no.

13 SIR GEORGE NEWMAN: Because he was being properly guarded
14 and sufficiently firmly guarded, is that it?

15 A. Yes, sir.

16 SIR GEORGE NEWMAN: Did you have any, yourself, occasion to
17 deal with that individual again physically?

18 A. No, sir.

19 SIR GEORGE NEWMAN: Tell me about the other one, the other
20 EPW who was standing up at some stage and had to be
21 restrained. Tell me about him.

22 A. It's very similar, sir. He'd got loose, stood up and
23 was put back down on to the ground.

24 SIR GEORGE NEWMAN: Was that after takeoff?

25 A. Yes, sir. The main problem was the Australians had put

1 their hands to the front with the thumbs. The
2 plasticuffs around the thumbs were slipping off their
3 thumbs. They weren't tight enough -- tightly enough
4 applied. But we made the decision at the pick up point
5 not to re-plasticuff everybody but to leave them as they
6 had been done. Which, you know, with the bagging and
7 tagging, sir, what I've written down there, I think
8 there's a misunderstanding on that. The tagging is when
9 the details of the person, the EPWs, is written down with as
10 much information as we can and -- either with a piece of
11 string put round their neck with a tag on or the tag put
12 within them, so that when it gets to the processing they
13 have that intelligence, because --

14 SIR GEORGE NEWMAN: Go on?

15 A. So I picked up the bag of intelligence from the
16 Australians -- actually it was an American call sign
17 that gave me the bag. We're going back now.

18 SIR GEORGE NEWMAN: Yes, yes.

19 A. And the Australians had searched the EPWs to
20 an extent -- not thoroughly because there were weapons
21 and identifications and all sorts of different things
22 found. And I took that bag with all the ID and
23 everything in it and I handed that over to the LO at the
24 end, at the end of the mission; not after the first run
25 but after the third run.

1 SIR GEORGE NEWMAN: After the third run?

2 A. Yes, and when you keep going on about bags, sir, there
3 were four bags initially when I got across to the line
4 where the EPWs were.

5 SIR GEORGE NEWMAN: Right. One with money, did you know
6 that?

7 A. I knew one was money, sir.

8 SIR GEORGE NEWMAN: Were the contents of the others similar, namely
9 odds of documents and a mixture of various documents or
10 identification?

11 A. I later found that one was -- this is difficult because
12 you go forward and backwards, but I later found that one
13 was jewellery and gold and such things, along with the
14 money, and then the other two bags I didn't see what was
15 inside but the -- sorry, the other bag I didn't see what
16 was inside, but the bag that was handed to me was the
17 one with the documentation in it.

18 SIR GEORGE NEWMAN: You never had a chance to look at the
19 documentation, as I would understand it?

20 A. No, sir. No. I didn't have an interpreter, sir. We
21 asked for an interpreter --

22 SIR GEORGE NEWMAN: No, I mean --

23 A. -- time and time again before we went out on that job,
24 but we didn't have an interpreter. There were
25 interpreters available, but one couldn't be freed to

1 come with us.

2 As the gentleman before me said, we've been doing
3 operations now since 2001. Now it would be SOP to have
4 an interpreter with you. When this happened it wasn't
5 an SOP to have an interpreter with you. The language
6 barrier was massive.

7 SIR GEORGE NEWMAN: Massive.

8 A. In Ireland, from previous service you could escalate by
9 just clearly shouting at someone at the top of your
10 voice to get them to back down. You couldn't do that
11 there.

12 SIR GEORGE NEWMAN: So in fact you would have expected and
13 hoped that the tagging, which you have helpfully pointed
14 out really means identification tags, simply hadn't been
15 done but you would have hoped that would have been done;
16 is that right?

17 A. Yes, sir, and we in fact -- can I go back?

18 SIR GEORGE NEWMAN: Yes, please.

19 A. When we had the rehearsals and the jobs were given out
20 to people, I took my time to take from the rest of the
21 gunners their plasticuffs and sandbags, because each man
22 carries their own individual prisoner of war handling
23 kit. That became condensed then in my day sack so
24 I could deal with the detainees when we arrived if they
25 were not already ready for us. I even went to the extent

1 of ripping up ration packs so we had tags with us if we
2 needed, and we then left them with the Australians after
3 the first lift so they could carry on that process but
4 they didn't.

5 SIR GEORGE NEWMAN: All right. So far as SO44's problems are
6 concerned, the EPW, the one you told me that you got to
7 the ground?

8 A. Sir.

9 SIR GEORGE NEWMAN: You had in a lock while he was there,
10 and then SO61 I think then took over?

11 A. Yes, that's correct, sir, yes. Yes. No, not 61, sir.

12 SIR GEORGE NEWMAN: No.

13 A. 58.

14 SIR GEORGE NEWMAN: 58.

15 A. Sir, can I, may I?

16 SIR GEORGE NEWMAN: Yes. As I have said so many times,
17 I would much rather you had the floor. This is your
18 chance to tell me. This is not a court of law under
19 which I am trying to keep things on all the usual rails.

20 A. Right.

21 SIR GEORGE NEWMAN: I want you to tell me about it. I have
22 to work this one out.

23 A. I don't understand the normal court of law, but at the
24 start of this job it was overemphasised, in my opinion,
25 of the dangers that we were facing. In fact I think

1 some of the people were whipping the younger gunners
2 into a part of a frenzy as in you've got very
3 experienced soldiers, but this is the first time
4 they've gone into a proper operation and that was
5 actually trying to be dulled down so we could keep that
6 throughout the mission. The shock of capture was always
7 being, you know, getting told to us, to keep the shock
8 of capture, you know. Like you were saying about words,
9 what is the shock of capture? It's all right sitting in
10 a lesson and being told this is the shock of capture,
11 but how do you maintain that shock of capture?

12 Under the conditions that we were working in and in
13 the time frame we had, the blokes did that blind to
14 make sure that job went, you know, properly,
15 professionally, and to the extent everybody was being
16 praised when we got back, to the extent I myself got
17 called into the office when we got back to the squadron
18 to be given -- to be put forward for a MID for the safe
19 of the people on that aircraft, to then find out a month
20 later that people were coming down and accusing me of
21 things. And even that process didn't go well because
22 they were telling us that the air loadies and the pilots
23 were accusing us and telling us that these things had
24 happened, when we knew they hadn't happened, but we
25 didn't even feel safe to talk, the way the SIB were with

1 us when they came and did the first investigations
2 if -- I wouldn't even call it investigations.

3 SIR GEORGE NEWMAN: Thank you. But you need to help me.

4 A. I will, sir.

5 SIR GEORGE NEWMAN: I still have to resolve how it is that
6 potentially somebody who was very alive, and one might
7 say very alive and very kicking, at the beginning was
8 possibly somebody who at the end, if not dead, was near
9 dead. So I have to get assistance from those who were
10 there, and you are the best person to tell me, what
11 happened? What could have happened to have caused this
12 person to have got close to death, if not die, on the
13 aircraft? Something must have happened. Can you help
14 me, without attempting medical speculation as to whether
15 or not he had a heart attack, which is -- one can never
16 rule out anything. But in terms of what you say went on
17 on board, your belief, possibility of understanding
18 this, where does that point to? Is it in fact, as I was
19 endeavouring to lay out this morning, that when he was
20 manhandled, and I am not critically talking about the
21 degree of force or whatever, but when he was manhandled
22 he suffered in some way as a result of that? Am
23 I speculating beyond --

24 A. No, sir.

25 SIR GEORGE NEWMAN: -- what happened, or can you help me?

1 A. The detainees, POWs, EPWs, whatever, you want to call
2 them had been stopped at a VCP. They were already
3 bagged and plasticuffed when we picked them up. We
4 couldn't see their faces. We didn't know what had
5 happened to them. We didn't know if there had been
6 a contact. We didn't know if there had been a rough and
7 tumble before we picked the detainees up. We just took
8 them into our custody and did our mission to take them
9 back to the Americans.

10 What happened to them before they came into our
11 custody -- no one has even looked at that. That was a hard
12 stop VCP on a road with what we were being told were
13 suspected suicide bombers, with the money and the gold
14 and everything to be able to do that. No one has talked
15 about what happened at the stop, at the hard stop.
16 Everybody is talking about what happened on the
17 aircraft. The gentlemen could have already been in
18 that or some degree of a casualty before we even took
19 them over.

20 SIR GEORGE NEWMAN: They could have been. But if I am
21 thinking along the lines of the person who ended up
22 being the casualty being somebody --

23 A. Who is the casualty, sir? Sorry, who is the casualty?

24 SIR GEORGE NEWMAN: Well, there is somebody at the end of
25 this journey who is dead or near dead.

1 A. Yes, there is, sir.

2 SIR GEORGE NEWMAN: And I want to know how that came about,
3 you see.

4 A. I understand that, sir, and I am trying to explain to
5 you we don't know who that casualty was. Was it the
6 first detainee that stood up? Was it the second
7 detainee that stood up?

8 SIR GEORGE NEWMAN: Those are the two candidates.

9 A. Was it number 7 on the pack of cards who was wanted by
10 [REDACTED]? That was the level of people that we were
11 picking up.

12 And so, I am being fair, sir, I am not saying it
13 didn't happen. It could have happened on the chopper,
14 but also it could have happened anywhere else. They
15 went into the American custody. I went to that facility
16 the next morning. It could have happened there. I saw
17 that facility with my own eyes. That isn't the sort of
18 facility that anybody sat in this room would want to be
19 going to.

20 SIR GEORGE NEWMAN: No, but he was already buried by the
21 next day.

22 A. How do you know that, sir, sorry?

23 SIR GEORGE NEWMAN: I have seen information to that effect.

24 A. Right. But I've never been privy to that information,
25 sir, sorry.

1 SIR GEORGE NEWMAN: He was buried within hours.

2 A. Okay, sir.

3 SIR GEORGE NEWMAN: In response to my question, you are
4 giving me a line of possibility which I must think about
5 and I will.

6 A. Sir.

7 SIR GEORGE NEWMAN: But on the line that I began with,
8 namely that, whichever of the two it was who were
9 standing up and causing trouble, who do you think got
10 the heaviest response in order to put him down, the
11 first one or the second one?

12 A. I think that's not an unfair question, because
13 I understand what your job is, sir, but I put them both
14 down robustly because I needed to --

15 SIR GEORGE NEWMAN: So they needed to --

16 A. -- for the safety of that chopper. And when you were
17 asking earlier about the necessary force, I didn't
18 actually think before I got hold of the person: what
19 force am I going to use?

20 SIR GEORGE NEWMAN: No.

21 A. I thought: you are stopping what you are doing and you
22 are not going any further, and that person was put under
23 control, both people were put under control.

24 SIR GEORGE NEWMAN: You think, in terms of the degree of
25 force which was used by you, each of them got about the

1 same?

2 A. Yes, sir. I didn't treat anybody any different.

3 SIR GEORGE NEWMAN: It's all right. So I am not able to
4 conclude one way or the other who was the person who
5 subsequently died or was dead by that. But there were
6 two people who were unconscious or believed to be
7 motionless on arrival. Can I take it that it is safe
8 for me to conclude that those were the two you had
9 manhandled?

10 A. I put myself in your shoes, sir. You've been putting
11 yourself in our shoes. If I was sat where you are, that
12 would be a fair assumption.

13 SIR GEORGE NEWMAN: Right. That's a very fair, very frank
14 answer.

15 Somebody put a bag back on one or the other of them.
16 I think it was you, wasn't it? You had to refasten the
17 bag and tape it; is that right?

18 A. That wasn't taped at that point, sir, it was just a bag
19 put over his head.

20 SIR GEORGE NEWMAN: Right. Was it taped at some stage?

21 A. At the beginning the tape was spoken about, the tape was
22 told by the SMULO to take that with us and we took that
23 with us. But we didn't use it at that point. It was
24 used on one or two at the start, but then with time
25 pressures and the fact that they were already ready for

1 us to pick up we just went with them.

2 SIR GEORGE NEWMAN: Right. Do you know what happened when
3 the Americans examined the body, as it turned out to be,
4 of the deceased person? Because I think the material
5 suggests that he is somebody who had been bagged and
6 that bag had been taped. Is that something within your
7 knowledge?

8 A. That's the first time I'm aware of that, sir. The first
9 time I heard that someone was dead was when I went to
10 the centre the next morning. And that's not by my own
11 choice to wander across there, I went because one of our
12 officers was going and we went with him as is --
13 because we always buddy up and go in twos or fours, you
14 know, went across with him.

15 SIR GEORGE NEWMAN: Now you heard the liaison officer giving
16 evidence the other day on Tuesday, didn't you?

17 A. Yes, sir.

18 SIR GEORGE NEWMAN: I know this conversation didn't take
19 place with you or I believe it didn't take place with
20 you but with one or other of the gunners who was on the
21 back of the ramp. But you remember his account was
22 that, "I went to the ramp, spoke to a gunner about the
23 motionless body and he said, 'I think he may be dead'."
24 And the LO was saying to me, and has said it in his
25 statement, "I said to him he's either dead or he isn't."

1 And he was told, "I think he's dead". Right. I'm
2 reciting that for you.

3 A. Yes. Okay, sir.

4 SIR GEORGE NEWMAN: Did he ever mention to you that that is
5 what had been said to him when he went to the ramp?

6 A. The LO, sir?

7 SIR GEORGE NEWMAN: The LO.

8 A. No, sir.

9 SIR GEORGE NEWMAN: As I understand it, the LO left H-1
10 that -- call it the day, later on, some hours after
11 these events and before you, in company with the chalk
12 commander and others, and commanding --

13 A. What do you mean by left, sir, sorry?

14 SIR GEORGE NEWMAN: Departed. He left, he was no longer at
15 H-1. He didn't stay there for much time afterwards.
16 There was a debrief, you remember that?

17 A. Yes, there was a debrief.

18 SIR GEORGE NEWMAN: With him?

19 A. Yes.

20 SIR GEORGE NEWMAN: And he mentioned anything then about a dead man?

21 A. Not at the debrief, no.

22 SIR GEORGE NEWMAN: When did you first hear about the dead
23 man?

24 A. The next morning by the Americans. The SMULO didn't --
25 he didn't give a debrief. Our debrief really was by our