



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

ESTIMATES

(Budget Estimates)

THURSDAY, 17 JUNE 2004

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

Thursday, 17 June 2004

Members: Senator Sandy Macdonald (*Chair*), Senator Hutchins (*Deputy Chair*), Senators Chris Evans, Ferguson, Payne and Ridgeway

Senators in attendance: Senator Sandy Macdonald (*Chair*), Senators Brown, Chris Evans, Faulkner, Ferguson, Ferris and Payne

Committee met at 4.04 p.m.

DEFENCE PORTFOLIO

Consideration resumed from 1 June 2004

In Attendance

Senator Hill, Minister for Defence

Portfolio overview

Mr Ric Smith AO, PSM, Secretary of Defence

General Peter Cosgrove, AC, MC, Chief of the Defence Force

Budget summary (financial statements and improvement initiatives)

Mr Lloyd Bennett, Chief Finance Officer

Mr George Veitch, First Assistant Secretary Budgets and Financial Planning

Mr Noel Dobbie, Acting First Assistant Secretary Financial Services

Mr Jon Collings, Assistant Secretary Planning and Budgeting

Capability development

Lieutenant General David Hurley, AO, DSC, Chief, Capability Development Group

Air Vice Marshal Kerry Clarke, AO, Head, Capability Systems

Dr Ralph Neumann, First Assistant Secretary, Capability Investment and Resources

Capital budget (major capital equipment)

Dr Stephen Gumley, Chief Executive Officer, Defence Materiel Organisation

Mr John Peters, Head, Management Information Systems

Dr Ian Williams, Head, Land Systems

Major General Peter Haddad, AO, Commander, Joint Logistics

Air Vice Marshal John Monaghan, AM, Head, Aerospace Systems

Ms Shireane McKinnie, Head, Electronic Systems

Ms Ann Thorpe, Head, Materiel Finance

Mr Peter Morris, Head Industry Division

Commodore Trevor Ruting, RAN, Acting Head, Maritime Systems

Air Vice Marshal Norm Gray, Head, Airborne Surveillance and Control
Air Commodore John Harvey, Director General, New Air Combat Capability
Ms Mary Kelaher, Director General, Materiel People and Performance

Capital budget (major capital facilities projects)

Mr Alan Henderson, Deputy Secretary, Corporate Services
Mr Michael Pezzullo, Head, Infrastructure
Ms Chris Bee, Assistant Secretary, Strategic Planning and Estate Development
Air Commodore Brian Plenty, Director General, Headquarters Joint Operations
Command Project

Outcome 1: Command of operations in defence of Australia and its interests

Output 1.1: Command of operations

Output 1.2: Defence Force military operations and exercises

Output 1.3: Contribution to national support tasks

Vice Admiral Russ Shalders, AO, CSC, RAN, Vice Chief of the Defence
Force/Chief of Joint Operations

Major General Mark Evans, DSC, AM, Deputy Chief of Joint Operations

Outcome 2: Navy capability for the defence of Australia and its interests

Output 2.1: Capability for major surface combatant operations

Output 2.2: Capability for naval aviation operations

Output 2.3: Capability for patrol boat operations

Output 2.4: Capability for submarine operations

Output 2.5: Capability for afloat support

Output 2.6: Capability for mine warfare

Output 2.7: Capability for amphibious lift

Output 2.8: Capability for hydrographic and oceanographic operations

Vice Admiral Chris Ritchie, AO, RAN, Chief of Navy

Rear Admiral Rowan Moffitt, RAN, Deputy Chief of Navy

Mr Stephen Wearn, Director General, Navy Business Management

Outcome 3: Army capability for the defence of Australia and its interests

Output 3.1: Capability for special forces operations

Output 3.2: Capability for mechanised operations

Output 3.3: Capability for light infantry operations

Output 3.4: Capability for army aviation operations

Output 3.5: Capability for ground based air defence

Output 3.6: Capability for combat support operations

Output 3.7: Capability for regional surveillance

Output 3.8: Capability for operational logistic support to land forces

Output 3.9: Capability for motorised infantry operations

Output 3.10: Capability for protective operations

Lieutenant General Peter Leahy, AO, Chief of Army

Brigadier Michael Clifford, AM, CSC, Director General, Preparedness and
Plans—Army

Mr Lance Williamson, Director General, Corporate Management Planning—
Army

Outcome 4: Air Force capability for the defence of Australia and its interests

Output 4.1: Capability for air combat operations

Output 4.2: Capability for combat support of air operations

Output 4.3: Capability for surveillance and response operations

Output 4.4: Capability for airlift.

Air Marshal Angus Houston, AO, AFC, Chief of Air Force

Ms Grace Carlisle, Assistant Secretary, Resource Planning—Air Force

Air Commodore John Harvey, Director General, New Air Combat Capability

Outcome 5: Strategic policy for the defence of Australia and its interests

Output 5.1: Strategic and international policy, activities and engagement

Output 5.2: Military strategy and capability analysis

Mr Shane Carmody, Deputy Secretary, Strategy

Outcome 6: Intelligence for the defence of Australia and its interests

Output 6.1: Intelligence

Mr Ron Bonighton, AM, Deputy Secretary Intelligence and Security

Mr Frank Lewincamp, PSM, Director, Defence Intelligence Organisation

Mr Steve Merchant, Director, Defence Signals Directorate

**Outcome 7: Superannuation and housing support services for current and retired
defence personnel**

**Output 7.1: Superannuation and housing support services for current and retired
defence personnel**

Mr Lloyd Bennett, Chief Finance Officer

Mr George Veitch, First Assistant Secretary, Budgets and Financial Planning

Mr Jon Collings, Assistant Secretary, Planning and Budgeting

Ms Alice Dobes, Assistant Secretary, Treasury and Tax Management

Business processes

Defence Science

Dr Tim McKenna, First Assistant Secretary, Science Policy Division

Mr Maurice Hermann, Assistant Secretary, Science Industry and External
Relations

Inspector General

Mr Claude Neumann, Inspector General

Chief Information Officer

Brigadier Peter Lambert, Acting Deputy Chief Information Officer

Corporate Services

Mr Alan Henderson, Deputy Secretary, Corporate Services

Mr Mike Pezzullo, Head, Infrastructure Division

Mr David Kenny, Head, Information Systems Division

Brigadier Mike Swan, Acting Head, National Operations Division

Air Commodore Simon Harvey, Director General, Defence Legal Service
Commodore Mike Smith, Director General, Defence Education, Training and
Development

Public Affairs

Mr Mark Cunliffe, First Assistant Secretary, Ministerial Services and Public
Affairs

People

Defence Personnel

Rear Admiral Brian Adams, AO, RAN, Head, Defence Personnel Executive

Mr Peter Sharp, First Assistant Secretary, Personnel

Colonel Geoff Stacey, Acting Director General, Defence Health Service

Ms Sue Parr, Acting First Assistant Secretary, Personnel

CHAIR—I welcome Senator Robert Hill, the Minister for Defence, General Cosgrove, Chief of the Defence Force, Mr Ric Smith, the Secretary of the Department of Defence, and officers of the Defence organisation. The committee will continue its consideration of the estimates of the Department of Defence, beginning with the portfolio overview and major corporate issues. We will then move on to outputs, business processes and people. When officers are first called upon to answer a question they should state clearly their names and positions. When written questions on notice are received the chair will state for the record the name of the senator who submitted the questions and the questions will be forwarded to the department for an answer. The committee has resolved that Thursday, 22 July is the return date of answers to questions taken on notice at this hearing. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege and I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the parliament.

The committee will adjourn for dinner between 6.30 p.m. and 7.30 p.m. and it will adjourn and 10.30 p.m.. I remind everybody that mobile phones are to be switched off in the hearing room. Minister, do you or Mr Smith or General Cosgrove wish to make an opening statement?

Senator Hill—No, but we have a lot of potential witnesses sitting behind us. I do not want them to sit here all afternoon and night unnecessarily. I would appreciate some guidance as to when they might be called upon.

CHAIR—I understand from members of the committee that there will be some guidance given after five o'clock, because Senator Evans will be returning at five o'clock and he has some other matters, apart from matters to be pursued by Senator Faulkner, which may be of a wider variety. So perhaps if we can wait until five o'clock or until Senator Evans returns we might get some guidance as to what he wishes to question the officers on later in the evening.

Senator Hill—So you want them all to remain at the moment? Is that what you are saying?

CHAIR—I am.

Senator FAULKNER—I will commence, Mr Smith, by asking you questions in relation to your statement at lunchtime on Tuesday, 1 June, 2004, which you made on behalf of you and

General Cosgrove. Can you indicate to the committee why you felt you were unable to make that statement any earlier and a day and a half into the estimates hearings?

Mr Smith—As I said during the hearings two weeks ago, I had been briefed over the weekend after I returned from Perth on the discovery of the ICRC working papers and on other debriefs that had taken place in my absence. But I have to say, as I think I said last time, that throughout Monday I remained unclear and uncertain about what a number of aspects of what I had been told meant. That was clarified in my mind during Monday and Monday evening.

By Tuesday morning, the CDF and I thought we needed to make a statement because we recognised that the evidence that Defence had given throughout the previous day had not been as cogent or coherent as we would have wished. We wanted to pull our position together cogently. That was the purpose of the statement. In doing that, I hoped that would correct things that I had said on the Monday in relation to a couple of areas, particularly in relation to a statement I had made to the effect that ADF officers were not aware of mistreatment or abuses before the public reports in January.

Naturally, what I say about them not knowing of abuses—by which I mean the significant abuses that have since led to criminal and disciplinary charges and so on—stands, because that continues to be our view. But what was much clearer to me, having reflected on it all through Monday and having reread the reports, was that those reports did embrace what I called mistreatment; what the experts would now prefer, they tell me, that I had called ill-treatment. I had hoped that the remarks that I made then, at lunchtime on Tuesday, would have corrected the record; and if they did not, then I regret that, but it stands corrected now.

Senator FAULKNER—Can I ask you, General Cosgrove, given the state of your knowledge as at the commencement of the Senate estimates hearing on the Monday, whether you had given any thought to the appropriateness of making a statement earlier than Tuesday lunchtime?

Gen. Cosgrove—The secretary and I were constantly reviewing the accuracy of the statement which was, at least in one particular, open to question but we resolved that we would answer the questions that were put to us as honestly as we could, we would attempt to find extra information to illuminate what we would eventually correct as honestly as we could and as quickly as we could and we sought to make that correction when we felt that we could confirm some parts of the statement but obviously as our answers from, I think, some time on Monday morning started to indicate that there were flaws in our statement of Friday.

Senator FAULKNER—Which one in particular are you referring to?

Gen. Cosgrove—I refer to the part of the statement where the report was characterised as general conditions. I think it is around paragraph 7. That part was an area where we started to have doubts whether you would characterise what was in there as general conditions.

Senator FAULKNER—Mr Smith indicated in his statement of 1 June:

We were subsequently advised of the existence of two working papers prepared by the ICRC in October and November ...

This relates, of course, to the information contained in your original statement of 28 May, as you appreciate. Are you able to say, General Cosgrove, when you were advised of the existence of those two working papers?

Gen. Cosgrove—About 5.30 on Saturday afternoon preceding the estimates hearings.

Senator FAULKNER—Five-thirty on Saturday afternoon?

Gen. Cosgrove—Correct.

Senator FAULKNER—Could you explain to the committee how you were advised and who advised you.

Gen. Cosgrove—I received my briefing pack for estimates at that time from a group that had been working at Russell, and amongst the papers were the documents we now know to be the October visit reports, or visit working papers, produced by the ICRC.

Senator FAULKNER—So it really came about as a result of receiving briefing papers for the estimates?

Gen. Cosgrove—Yes. The staff officer who brought the papers to me drew the working papers to my attention.

Senator FAULKNER—In the statement by Mr Smith he says, ‘We became clearer about this during Sunday.’ I will quote what he said in full:

We remained unclear through the weekend whether these papers were what has been called the October ICRC report referred to earlier. We became clearer about this during Sunday.

Are you able to say now precisely when you saw the working papers?

Gen. Cosgrove—Yes, at 5.30 on Saturday afternoon but, at that point, it is important to note that they were working papers and amongst those who were working on the issue there was significant doubt that these constituted what we had understood to be an October report. There has been evidence given on that issue at the previous estimates hearing.

Senator Hill—I am reluctant to interrupt Senator Faulkner but it is a usual courtesy given to the press to come in and take a few photographs. I know politicians like being photographed incessantly but witnesses do not need to be subjected to the continuous—

CHAIR—The point is taken, Minister. It is in hand. The press are taking these shots and then they will leave and they will be able to utilise the feed. They are doing that now.

Senator FAULKNER—I was about to ask General Cosgrove when he was able to establish the connection, if you like, between the October and November working papers. Was that also on the Saturday?

Gen. Cosgrove—No, not at all. On Monday I started to perceive that, in fact, these working papers had been loosely or colloquially referred to as the October report.

Senator FAULKNER—So that was on Monday?

Gen. Cosgrove—During Monday.

Senator FAULKNER—Was Major O’Kane asked about that issue of the connection between the working papers? Are you aware of that?

Gen. Cosgrove—Could you—

Senator FAULKNER—Let me ask you this: how did you establish the connection between the two working papers?

Gen. Cosgrove—It became obvious during the discussions and hearings on the Monday that the likelihood of their being another document, an October report, was very reduced and therefore the working papers were likely to be what had been colloquially referred to as the October report.

Senator FAULKNER—But surely you must have known that the working papers dealt with the issue in the broad of prisoner abuse? I did hear Mr Smith's definitional issue which I am not 100 per cent certain of the significance of, but I accept the terminology 'ill-treatment'. You must have known that the working papers dealt with prisoner abuse.

Gen. Cosgrove—This goes to the heart of what has been defined in the public's mind as abuse. We believe that the sorts of things that were revealed in late April were very definitely abuse.

Senator Hill—The working papers refer to alleged ill-treatment.

Senator FAULKNER—Given the circumstances of these events on the weekend—I do not know whether this is best directed to you, General Cosgrove, or to Mr Smith; I am sure the appropriate witness will answer the question—when concerns about some of the contents of your joint statement of 28 May became known over the weekend, can I ask when Minister Hill was informed of those concerns?

Gen. Cosgrove—I do not have any knowledge of that.

Senator FAULKNER—Can you help me with that, Mr Smith?

Mr Smith—I was in Perth through to Sunday evening, so I cannot say specifically when he was informed, but I understand that he was given the papers on Sunday evening.

Senator FAULKNER—Yes, but what about the actual concerns about the content of your statement of 28 May? Can you say when the Minister for Defence and the Prime Minister or the Prime Minister's office were informed, in an official sense, of the sorts of concerns reflected in your statement, Mr Smith, on behalf of yourself and General Cosgrove at lunchtime on Tuesday, 1 June? As we know, you made a statement about those concerns, those issues, on 1 June just before the luncheon break of this committee. When had you informed the minister and the Prime Minister or the Prime Minister's office about those issues?

Mr Smith—I believe Senator Hill received the working papers under a submission on the Sunday evening. When the Prime Minister was advised, I cannot say; I do not know.

Senator FAULKNER—The Minister for Defence was informed about those concerns on the Sunday evening. Did that go to the issue of possible shortcomings, inaccuracies or inadequacies in the joint statement made by you and General Cosgrove?

Mr Smith—I do not recall the submission precisely. That would have been implicit in it, certainly, but I do not recall the submission.

Senator FAULKNER—I understand it being implicit. I accept that, and I appreciate your saying that. But, General Cosgrove, it seems to me to beg the question of why, when the minister was informed at that time, this estimates committee sat and dealt with these issues—quite exhaustively, I think it is fair to say; I do not think you would argue with that—for a day and a half before any form of corrective statement was made. That statement was made at lunchtime on Tuesday, but Minister Hill had been informed about these concerns on the Sunday evening.

Gen. Cosgrove—Was there a question there, Senator Faulkner?

Senator FAULKNER—There is: how could that happen?

Gen. Cosgrove—I think the answer is the one I gave before—that we were looking for a coherent and accurate correction in a situation where, at the start of the hearing on the Monday, we were still keenly interested to find out if there was an October report.

Senator Hill—I think we talked about the working papers in the committee on Monday.

Gen. Cosgrove—Yes, we did.

Senator Hill—And I think the Prime Minister made reference to the working papers on the Monday.

Senator FAULKNER—But the issue here is why those matters were drawn to your attention on Sunday evening and not to the committee's attention until Tuesday lunchtime. That is the question I have been asking. I have been trying to get an explanation of this for a long time.

Senator Hill—There are two issues. One is whether the discovered working papers were what people had been referring to as this mysterious October report. As we have said in this committee previously, they are of a different form and structure to the February report, and I think people were looking for a formal report of that nature. So one issue is the clarification of whether these working papers were in fact what was being referred to as the October report.

The other issue is really the characterisation of what it disclosed, which was not a straightforward matter either. As the secretary has said today, when we last met he thought the most appropriate phrase was 'allegations of mistreatment'. Taking further advice from people who seem to have greater knowledge of how you rate these things, the ICRC's own language of 'allegations of ill-treatment' might have been more appropriate. But either description seemed to raise greater concerns than what had been said previously was believed to be the content of the reports, which was more a matter of form.

Clearly, there were lots of issues in relation to the prisons in Iraq. As we all now know—and maybe, from what was on the public record, we should have had notice of this—there were problems of overcrowding. There was the issue of access by relatives to prisoners. There was a whole range of processing type issues that came about through having large numbers of detainees within a system that was not established and therefore not really capable of dealing with the issue according to the standards that we would all like to see. Those issues continued during last year. Much of the ICRC's working paper relates to those issues. When you get the chance to see it, as I have, you will see that it also alleges what it calls 'instances of ill-

treatment'. That is why I think that the terminology that was subsequently used by the secretary or the terminology that he has used today is probably more appropriate.

Senator FAULKNER—Mr Smith told this estimates committee on 1 June, on page 39 of the record:

Having since seen the working papers, we do acknowledge that the allegations they describe were allegations of mistreatment, serious by any standard ...

They were Mr Smith's words. Just for the record, the Prime Minister, Mr Howard, said in answer to a question without notice:

However, I have now been told that the documents—

and I interpolate here that they are the October and November working papers—

also canvassed allegations of unacceptable treatment of prisoners.

That was all said—one comment by Mr Smith and one comment by the Prime Minister—on 1 June. So I do not think we ought to rewrite history on this too much. That was the evidence that was provided to this committee. It was also information provided by the Prime Minister to the House of Representatives on the same day.

Given that all this occurred over the weekend, given that a brief went to you, Minister Hill, on Sunday evening and, in the words of the secretary, at least implicit in it was the fact that the statement made by Mr Smith and General Cosgrove contained inaccuracies, I still fail to understand why this committee did not have the benefit of that advice when it commenced its hearings on Monday, 31 May. I still do not know why. I do not understand why it took a day and a half of exhaustive questioning for you, Mr Smith, to make that statement on your and General Cosgrove's behalf when the information was clearly available, at the latest, on the Sunday evening.

Senator Hill—The information was provided on the Monday as well.

Senator FAULKNER—No, it was not.

Senator Hill—Yes, it was.

Senator FAULKNER—Mr Smith made a formal statement to this committee—

Senator Hill—He made a statement on the Tuesday that in effect encompassed this area of confusion about the October report and its qualitative description. The existence of these two working papers was known on the Monday.

Senator FAULKNER—I want to know why it took a day and a half. I would still like an explanation, if General Cosgrove or Mr Smith could provide it.

Mr Smith—As General Cosgrove has said and as Senator Hill said, there were still some uncertainty and some lack of clarity in our minds around what those working papers really meant in regard to, firstly, the publicly commented upon or reported ICRC report of October—was this the report or was it not? Secondly, there were questions like what was the relationship of these working papers now discovered to the February ICRC report? They seemed not to be the same. Were they a part of it or were they just subchapters of it? What was the situation in relation to the working papers and the February report? The working papers did not go as far nearly as the February report. Thirdly, as Senator Hill said, we were

going through a lot of consideration over these terms. What did constitute general concern, ill-treatment and mistreatment and so on? What we were clear about was that those working papers did not reflect anything like the abuses of anything like the kind that were disclosed at the end of April.

Senator FAULKNER—Did you discuss with anybody the possibility of making a corrective statement on the Monday of the estimates hearings?

Mr Smith—Not that I recall on the Monday.

Senator FAULKNER—Or the Sunday?

Mr Smith—No.

Senator FAULKNER—Did you, General Cosgrove, discuss with anyone the possibility of making such a corrective statement on the Monday of the estimates hearings?

Gen. Cosgrove—No.

Senator FAULKNER—Are you now able to say to the committee what the legal basis is for the arrangement with the United States about the detention of prisoners?

Gen. Cosgrove—There are two arrangements. One is the arrangement initiated with Central Command by my predecessor, Admiral Barrie, in 2002 when it was necessary to have an arrangement to cater for the possibility that our special forces operating in Afghanistan might need to detain people in a formal sense. By that I mean to detain them for a period of time. The arrangement entered into was an exchange of letters between Admiral Barrie and General Franks of the Central Command. That stated the position that if the United States personnel were present with Australian personnel, the United States military person could effect the capture, assisted by the Australians, and that would mean that the person thus captured was in the custody of the United States.

Senator FAULKNER—That was for the war against terror in Afghanistan?

Gen. Cosgrove—It was under the banner of Operation Slipper and it mentioned Afghanistan.

Senator FAULKNER—And a CDF directive was put out to that effect?

Gen. Cosgrove—Yes. I have some papers somewhere here that I can refer to. But, yes, that is the way it was.

Senator FAULKNER—But have we been able to locate now the CDF directive? We have had a couple of weeks. I had hoped we would be able to.

Gen. Cosgrove—I will find it for you. Would you like to go on or would you like to wait?

Senator FAULKNER—I would like to ask about the date of it and whether a copy could be provided for the benefit of the committee.

Mr Smith—Could we ask Mr Pezzullo and Commodore Smith to come forward?

Senator FAULKNER—Yes.

Mr Smith—I think Commodore Smith will be able to assist.

Cdre Smith—I am the chief of staff of the fact finding team.

Senator FAULKNER—What is the fact finding team?

Cdre Smith—That is the group that has been involved in assisting the minister to determine the facts of the CDF and the secretary's directive to find out the facts of the situation involving detainees in Iraq. It has been operating in the last two weeks.

Senator FAULKNER—Do you head that team?

Cdre Smith—No, I do not. I am the assistant, if you will.

Mr Pezzullo—I will clarify and then throw back to the Commodore. I was appointed on the evening of 2 June to head up the Iraq detainee fact finding team. Commodore Smith acted as my chief of staff as well as the principal legal adviser. One of our tasks related to ascertaining the position as at 1 May 2003, in relation to the matters that you are discussing. Unless you have a question for me in relation to the general activities—

Senator FAULKNER—How many are on your team?

Mr Pezzullo—The core team consists of approximately 12, and then there are myriad advisers and liaison officers. Given an organisation as large as Defence, we have obviously networked into all services and groups within Defence. We also maintain contact with other agencies. Commodore Smith headed up the legal subteam within the overall team.

Senator FAULKNER—Can you help us now with the CDF directive for Operation Slipper, the relevance of which I am not entirely sure but, no doubt, you will explain that to us as well?

Mr Pezzullo—At this stage, I will take my cue and hand over to Commodore Smith, if you do not mind.

Senator FAULKNER—That was directed to the Commodore.

Cdre Smith—I do not have the specific orders to hand here. I have the letters which constituted the arrangement. There is, no doubt, a directive that went out from CDF to Commander Australian Theatre. We can obtain that. I just do not have it to hand immediately. I can describe the process of how this arrangement came into being.

Senator FAULKNER—We spent a great deal of time—I think it could be described in hours—trying to get to the bottom of the legal basis for prisoner handling in Iraq. It is very disappointing that the CDF directive that basically ensures this instruction is transmitted to those serving in Afghanistan, in relation to this, is not available. I just find that incredible in the circumstances. Can that be provided later?

Cdre Smith—Indeed.

Senator Hill—I want to look at it. You have asked that it be provided to the committee.

Senator FAULKNER—I would have hoped that you would have seen this, because this was the subject of a lot of questioning, all of which you were unable to answer at the last estimates round. So I would have thought that you might have followed some of this through.

Senator Hill—No, I did follow it through.

Senator FAULKNER—It is pretty disappointing that the CDF directive has a huge fact finding team—it is a pity they could not find this.

Senator Hill—No, I did follow through the arrangements that were reached with the US. I provided some evidence of that at the last meeting. I said that I would pursue the matters relating to that arrangement that I did not have, and it has been pursued.

Senator FAULKNER—Have you sighted the CDF directive?

Senator Hill—What you are now asking about is the implementation of that in terms of the internal—

Senator FAULKNER—I am asking about it now and I asked about it two weeks ago.

Senator Hill—I do not think I have sighted the directive.

Mr Pezzullo—We have provided the minister with some advice about the narrative. There are a series of internal documents, none of which are unclassified. If I heard the minister correctly earlier, he indicated that he would want to review the document before he considered its suitability for tabling.

Senator FAULKNER—Can the fact finding team tell me what the date of the CDF directive was?

Gen. Cosgrove—It was in June 2002. Following consideration of Attorney-General's Department advice, the CDF of the day issued an ADF policy regarding the handling of captives taken in Afghanistan, with a view to ensuring that the ADF's conduct was consistent with Australia's legal obligations. The policy was that the United States was to assume responsibility for captives taken during combined Australia-United States operations and that the ADF would retain custody of those captives taken during separate ADF operations, thereby allowing the government to make decisions as to the future handling of those captives.

Senator FAULKNER—So in June 2002 there was a directive relating to ADF captives taken in Afghanistan. What was the date of the CDF directive in relation to ADF captives taken in Iraq?

Gen. Cosgrove—The directive remained extant. In addition a policy was drafted which is the trilateral agreement.

Senator Hill—The story was, as we said at the last—

Senator FAULKNER—There is no directive.

Senator Hill—There was no separate directive. There was no new directive. Operation Slipper continued and many of the forces were dually assigned, if that is the right term, and that covers the ships. In relation to the special forces, under the next operation they continued to operate on the same basis. As far as I have been able to ascertain there was no new directive given. There was a continuation of the implementation of the arrangement that had been reached the previous year with the United States.

Senator FAULKNER—We were just told that was for ADF captives taken in Afghanistan. Iraq is, believe it or not, a different war in a different country with a different UN mandate.

Senator Hill—But the circumstances were the same in that we did not go to Iraq with the machinery to detain prisoners. We could have done that but there were practical advantages in utilising coalition colleagues who had that machinery in place. As that relates to the United

States and as we had established that arrangement in relation to Afghanistan, and we have confidence in the United States in relation to the handling of such prisoners, in practice it continued in Iraq. That was qualified by the trilateral agreement that was entered into some time in March. So the difference was that in Afghanistan, if Australians did take prisoners and there were not Americans present, we could detain them. Then they would have to seek further advice on how to 'handle' those captives. In relation to Iraq, after the trilateral agreement had been entered into, that specifically set out how those prisoners would be managed. That is the picture.

Senator FAULKNER—Are we seriously being told that a CDF directive in relation to the war against terror in Afghanistan—as I say, a different war in a different country, in that case under a UN mandate—is in place in perpetuity and is relevant to another war, in another country, of a very different nature? I do not believe that for one minute.

Senator Hill—It happened in practice. It is what happened.

Senator FAULKNER—It is what did not happen in practice that is important. What did not happen is this. There was no directive. The point of a directive is to get instructions to troops, isn't it? You know that as well as I do.

Senator Hill—In relation to the previous year, after negotiating this arrangement with the United States, which was a practical and sensible arrangement—we were working in coalition with the United States on that occasion; they had the facilities to handle prisoners—I am advised to implement it. They are really the internal chain of command management issues—that is why I am not so involved in that—but, as I understand it, the CDF issued an ADF policy. I am told that in practice that continued during our coalition operations in Iraq. Again, it was the special forces working with the United States. They knew the arrangements that we had had with the United States. They worked well. As I have said before—and I say it again—I am told that, in the four instances where we were involved in the capture of prisoners, they were detained by the United States and thus the trilateral agreement was not implemented, although I think a couple of those occasions might have been before the trilateral agreement had actually been signed.

Senator FAULKNER—General Cosgrove, isn't it true that the purpose of the CDF instruction—do we call it a directive or an instruction?

Senator Hill—A policy.

Senator FAULKNER—What was it in Afghanistan? A CDF directive?

Gen. Cosgrove—It is listed as a CDF directive.

Senator FAULKNER—The purpose of any CDF directive of such a nature is to get instructions to troops, isn't it?

Gen. Cosgrove—That is correct.

Senator FAULKNER—In a nutshell. Is that a fair description?

Gen. Cosgrove—That is correct.

Senator FAULKNER—Are the troops in Iraq different from the troops in Afghanistan?

Gen. Cosgrove—Same troops.

Senator FAULKNER—How were the instructions communicated to the troops in Iraq—or weren't they?

Gen. Cosgrove—They were communicated in detail by the commander of the Australian national headquarters in Iraq, both in orders and in briefings before hostilities commenced—both the intent of the trilateral arrangement and the advice that the arrangement for Operation Slipper might be employed.

Senator FAULKNER—We have heard many, many times that Iraq is not part of the war against terror. That is right, isn't it? I just want to confirm that.

Gen. Cosgrove—I am not going to define that.

Senator FAULKNER—Senator Hill can tell us that. You have said that on many occasions, haven't you, Senator Hill?

Senator Hill—I have described it as a separate operation in the sense that it was an operation directed against weapons of mass destruction.

Senator FAULKNER—You have said that the war in Iraq was theoretically based on Iraq's non-compliance with Security Council resolutions, haven't you?

Senator Hill—Did I say it was theoretically based?

Senator FAULKNER—Based.

Senator Hill—It was based. They were the UN Security Council resolutions under which we participated in that coalition.

Senator FAULKNER—So it is a different war, in a different country, with a different UN mandate, and we are expected to believe that by osmosis some directive that was issued to troops in Iraq in 2002 has relevance.

Senator Hill—It was the same troops. It was the same coalition parties. They knew the basis under which they were operating in the fact they operated that way. The Americans knew it. The Australians knew it. What the CDF is saying, as I understand it, is a new directive was not explicitly issued.

Gen. Cosgrove—If I can just add: a directive was issued about the evolved arrangement for the capture of prisoners by Australians when it was not possible for a US or UK—but US—serviceman to effect the capture.

Senator BROWN—I want to go back to the definition of working paper as against the definition of report. What is the difference?

Senator Hill—When people were talking about a report it depended what they were talking about. The start of the debate was related to the February report. The February report has a distinctive structure. The February report actually refers to working papers having been prepared during the preceding year. The difference is that one is work in progress and one is the outcome of that work in progress. One was—

Senator BROWN—Part and parcel of the same thing.

Senator Hill—I am sorry, I will just finish. One was delivered to the military command—which was work in progress; and one was delivered to the occupying powers and the de facto government—which was the final report.

Senator BROWN—The problem here is that the Senate committee on the Monday was very clearly looking for the government's receipt or anybody in the defence forces receipt of a report from the Red Cross in October of 2003, and it ought not to have been beyond the wit and wisdom of anybody with commonsense to recognise that, whether that was seen as a complete report or a working paper, that was what the Senate committee was after. And it ought to have been volunteered. That paper—whether you called it a working paper or a report—ought to have been made known to the Senate on the Monday.

Gen. Cosgrove—It was, Senator.

Mr Smith—It was.

Senator BROWN—But not in terms of saying, 'We have the Red Cross report of October, and that is the report the Senate is working on.'

Senator Hill—We still do not say it is the Red Cross report of October. What we have said is we believe these working papers were—and this is with the benefit of the knowledge that has been built up—what people had been referring to as an October report.

Senator BROWN—Can you explain why it is that the Amnesty International report of serious abuse amounting to torture or inhumane treatment, which was released in Baghdad in July last year, did not become known to you until May this year?

Senator Hill—They sent it to me in May this year.

Senator BROWN—Why did it take 10 months for that to get from Baghdad to you?

Senator Hill—No, Amnesty sent it to me in May this year. Amnesty did not send it to me last year.

Senator BROWN—I might ask Mr Smith or General Cosgrove this: is it not true that in July last year that report was known to the ADF?

Mr Smith—Yes, it was.

Senator BROWN—Who knew about it?

Mr Smith—The legal officer in CJTF7 in Baghdad—is that correct?

Mr Pezzullo—Yes.

Senator Hill—As I understand it—and someone could correct me if I am wrong—I gather it was made public in July last year.

Mr Smith—Yes, on 23 July.

Senator Hill—It was a public document.

Senator BROWN—It was a public document of which you had no knowledge, Minister.

Senator Hill—I had not seen it.

Senator BROWN—Did you have knowledge of it?

Senator Hill—I was told in passing in two sit reps. They referred to what I think were public statements made by Amnesty to the effect that it was unhappy with aspects of the detention processes in Iraq.

Senator BROWN—Not unhappy. Amnesty said:

... the organization has received a number of reports of torture or ill-treatment by Coalition Forces not confined to criminal suspects. Reported methods include prolonged sleep deprivation; prolonged restraint in painful positions, sometimes with exposure to loud music; prolonged hooding; and exposure to bright lights. Such treatment would amount to 'torture or inhuman treatment' prohibited by the Fourth Geneva Convention and by international human rights law.

In previous hearings, Minister, you have agreed that those things amount to inhuman treatment.

Senator Hill—In some of the examples, as I think I said at the previous meeting, I think it depends on duration and you would really need to look at the full circumstances on a case by case basis. But certainly—

Senator BROWN—If one is going to look at the full circumstances then one has to know about them and investigate them. Can you tell the committee when you got to know about those two sit reps reporting the existence of this Amnesty International report of concerns about torture and inhuman treatment?

Senator Hill—As I said, that information was mentioned in passing in much larger documents that I received bringing me up to date on a regular basis on all of the operational aspects of our forces.

Senator BROWN—When?

Senator Hill—Early in the piece I got those updates on a daily basis and then I think it went out to a three-day basis and they became less frequent as the year wore on. Having had the opportunity to refresh my memory, I can tell you that two situation updates in the June-July period of last year informed me that Amnesty International was unhappy with certain aspects. That seemed to be referring to public statements made by Amnesty International representatives.

Senator FAULKNER—Can you quote those elements? Can we have the words of those elements of what are described as min reps—ministerial situation updates of 20 June and 1 July 2003? Are they classified? First of all, let us establish that.

Senator Hill—They are classified, but I think one was what the President was saying.

Mr Pezzullo—I can amplify. In two submissions from the CDF regarding the operation to update the minister as he has described, one on 20 June and one on 1 July, in the relevant sections that dealt with commentary by NGOs about concerns over such matters there were some quotations. We have checked those and they appear to be, as the minister has just indicated, public commentary by a particular leader of Amnesty International on 20 June and similar remarks on 1 July. We have also done a back check of the relevant CDF submission immediately after 23 July and we can find no reference to back reporting that followed behind the publication globally of the Amnesty International report of 23 July.

Senator BROWN—Are those quotes available to the committee?

Mr Pezzullo—As the minister has just indicated, Defence would have to extract them from sensitive submissions which deal with a whole range of matters.

Senator Hill—I think I will probably be able to get them for you. Perhaps I could bring them after tea.

Senator BROWN—Thank you.

Mr Smith—I should just clarify that the officer concerned was not in CJTF633: he was the Australian colonel who was in the office of the CPA general counsel. He talked to Amnesty International and facilitated a meeting between them and Ambassador Bremer, at which Ambassador Bremer addressed the deficiencies that the report had identified.

Senator BROWN—Who was that officer?

Senator Hill—There were a whole range of humanitarian issues at that time and, generally in situation updates, I would get a report on whatever humanitarian issues CDF or my department believed should be brought to my attention.

Mr Smith—The officer was Colonel Kelly.

Senator BROWN—From this side of the committee table, it appears to me now that you did have knowledge of the Amnesty International report, although you indicated earlier that you did not, but now you do.

Senator Hill—I said I had not received the report. They sent me the report in May of this year. We all know that Amnesty released a report in July of last year.

Senator BROWN—We now know that you got a sit rep relating to that report, or Amnesty's concerns or the concerns of other NGOs, in June and July last year. The Amnesty report, as I have said, refers to 'torture or inhuman treatment'. What I put you, Minister, is that it is a fair and logical conclusion for the committee to assume that you therefore knew of claims of torture or inhuman treatment in Iraq as far back as June and July of last year.

Senator Hill—I suppose you could argue that we all knew that. You are arguing on the basis of a public document. I actually have not read that public document. I suspect that you have not read it. Nobody asked me about it. It was there for the world to see. It obviously expressed Amnesty's view on a whole range of different matters.

Senator BROWN—Actually, I was concerned about it. You are the minister here, the Minister for Defence of this country, and it is now established that your attention was drawn to this document, which had claims of torture and inhuman treatment. I think you ought to explain why it was that you did not act on that document, which was drawn to your attention?

Senator Hill—I do not want to just repeat myself. Let me put it this way, Amnesty's criticisms in war-like environments or in conflict environments is difficult to respond to in detail. Often the claims are very broadly based; they are asserted; there is not an easy mechanism for follow through. I think it is fair to say that Amnesty is a body that calls on the whole of the international community to act when it believes that there are human rights issues at stake. So it is different from, say, the ICRC process, which in a way is an iterative process. They produce working papers; they visit; they put things to parties that can implement change; they get responses; they respond to the responses; and they do follow-up

visits. I have accepted all along that in a conflict environment, such as there was in Iraq last year, there will always be issues that we would see, with the benefit of hindsight, as unsatisfactory. If you are talking about the prisons, for example, Australia did not run the prisons. If you are talking about interrogation, I am not sure whether that was what they were talking about but, if they were, we were not interrogating the prisoners.

Senator BROWN—The situation here is one in which the government made Australia part of the coalition of the willing and therefore a coalition of responsibility. You are the Minister for Defence. A legally trained colonel in the Australian defence forces reports to you that there were claims of torture and inhuman treatment—with some detail. Was it not your responsibility—

Senator Hill—I do not think it was with some detail.

Senator BROWN—The report does have that.

Senator Hill—I did not get the report until May of this year.

Senator BROWN—The question is: why didn't you ask for it?

Senator Hill—That is a fair question. I could have done that. If there had been something that I thought could flow from asking for it, I might have sought it.

Senator BROWN—I find this remarkable. You had a report—

Senator Hill—No, I did not have a report.

Senator BROWN—drawn to your attention which had claims of torture and inhuman treatment but you did not ask for it, you did not read it in detail and you claim that you could not have acted upon it if you had known about it.

Senator Hill—I know Amnesty reports. We all know Amnesty reports. This was a public document; it was not a document that was provided to me. Amnesty is protesting about what it sees as unsatisfactory human rights issues in Iraq.

Senator BROWN—I think there is a failure of responsibility here. Let me ask you this: did you meet Mr Bremer when you went to Baghdad in November?

Senator Hill—Yes.

Senator BROWN—And now Colonel Kelly reports to Mr Bremer and to you on the allegations by Amnesty International of torture and inhuman treatment. Did you ask Mr Bremer about these claims of torture and inhuman treatment?

Senator Hill—No.

Senator BROWN—Why not?

Senator Hill—Because I guess I was concentrating on issues where Australia might be able to make a difference—what our forces were doing. It was the time when we were looking at what sort of future governance structure there would be. I met with the Iraqi governing council and talked about the potential structure for a new state. I talked to Bremer about that issue. I talked to him about how we could accelerate the process. I am sure it did not relate to anything I said, but you might remember that very shortly thereafter the United States announced the new accelerated process of transition to sovereign government. I can go back

and get the notes that were taken of my meeting and tell you each of the subjects we discussed.

Senator BROWN—But you did not discuss allegations—

Senator Hill—I was not focusing on the state of the prisons, no. We were not running the prisons.

Senator BROWN—You were in a coalition—

Senator Hill—The other thing is that—

Senator BROWN—which was running prisons. You were aware—

Senator Hill—You raised the issue of Kelly. Kelly was well aware of the problems of overcrowding and other unsatisfactory issues—certainly unsatisfactory by our standards—and was assisting to improve that environment for prisoners. It seems to me that the CPA was doing its job. Kelly was helping it do its job. That was directed towards better outcomes for all the Iraqi people.

Senator BROWN—In what way, with your knowledge, did Colonel Kelly achieve an outcome which tried to put an end to torture and inhuman treatment occurring in these prisons?

Senator Hill—The only cases of gross abuse that I know of are the cases that have come to light through the American investigation commenced in January this year. Sorry, there has been reference to some others; there are some British prosecutions. It has been through processes of investigation by those who have responsibility in relation to their forces. But they are few and far between and they seem to have been responded to appropriately.

Senator BROWN—By July last year you had at hand a report, and had been informed about it by Colonel Kelly, of torture and inhuman treatment: methods including prolonged sleep deprivation, prolonged restraint in painful positions, sometimes combined with exposure to loud music, prolonged hooding and exposure to bright lights. You yourself have agreed this is inhumane treatment that breaches the Geneva convention. Minister, you say you could do nothing about that?

Senator Hill—Of course torture is a breach, but you have to investigate the allegation. It is very difficult with Amnesty reports because they make such broad brush statements.

Senator BROWN—Are you saying that Amnesty is not to be believed in this situation?

Senator Hill—No, I am saying that I have confidence, given the very difficult circumstances in which the CPA was operating, that they would do their utmost to improve the conditions of prisoners. I also had confidence in our coalition allies in the military headquarters. That is why, not surprisingly, when matters were brought to their attention they seemed to respond positively. When specific matters were brought to the attention of the CPA in February, their's seems to have been a very positive response. We have been told it was a response that was appreciated by the ICRC.

Senator BROWN—I am asking about your response, though, Minister. There are two things here. Firstly, the claims which were later revealed were in wide substance, claims of torture, had been brought to your attention, effectively. The report with these claims had been

brought to your attention by July last year, and you turned a blind eye to them. Then you tell the committee that, even if you had known about those claims, you would not have been able to effect a change with the US authorities. Are you saying to the committee that the government went into the coalition of the willing to supply the support of the Australian defence forces but, even though it is the Australian rule that the Geneva conventions be upheld, did not take the responsibility for ensuring that those conventions were upheld by the coalition?

Senator Hill—We certainly take that responsibility in relation to our forces, but there were no allegations of torture against Australian forces.

Senator BROWN—Against the coalition, and you know it, Minister. The best you can do is imply that—

Senator Hill—There were no allegations of torture against Australian forces.

Senator BROWN—Against the coalition forces, reported by an Australian legal officer through channels to you. It was available to you and you turned a blind eye to it.

Senator Hill—If an Australian military person breaches the obligations that he or she has—and obviously the sort of abuses you are talking about would breach those obligations—they would be dealt with.

Senator BROWN—I would finally suggest to you, Minister, that turning a blind eye, *inter alia*, breaches those obligations which were primarily upon your shoulders.

Senator Hill—You have said that, you have made that statement, and so be it. But the evidence that I have before me is that those Australians who were in a position to provide a positive influence on these issues—

Senator BROWN—Primarily you.

Senator Hill—did so whether they were working within the military joint headquarters or whether they were working within the CPA as the *de facto* government.

Senator BROWN—Primarily you.

Senator Hill—Well, I am pleased that ADF officers facilitated visits of the ICRC. I would have thought you would be pleased with that because that could lead to better conditions.

Senator BROWN—I can tell you I am appalled by your reaction to this.

Senator FERGUSON—Mr Chairman, we do not care whether Senator Brown is appalled by things or not. He is here to ask questions, not to make statements, and I think we ought to get to questioning. If he wants to debate the issue, he can debate it anytime in the Senate chamber. But estimates is for questioning, not for Senator Brown to make statements and to disagree with what the answers are. He can do that some other time in some other place.

Senator BROWN—I note your contribution.

Senator FERGUSON—I am glad you do. I have noted yours; that is why I am commenting.

Senator Hill—We said at five o'clock that we would tell the officials whether they were wanted or not.

CHAIR—In view of the fact that other senators may turn up, I think we might leave that decision until we break for dinner at 6.30—unless I can have some guidance from my colleagues.

Senator FAULKNER—I am happy to ask some questions now. You might have a private discussion with Senator Evans. Obviously, we do not want people staying here if they are not required.

Gen. Cosgrove—Mr Chairman and Senator Faulkner, you were interested to know the directive for the detention policy in Afghanistan—the date et cetera. We had that here. You can see the papers we have. It took a while to find. Just after you left the hearing room, we found it.

Senator FAULKNER—I was just answering the telephone.

Gen. Cosgrove—Dated 1 June, there is an amplification order to the CDF execution order for the overall operation.

Senator FAULKNER—That is 1 June 2002?

Gen. Cosgrove—Yes, 2002. I note that virtually all paragraphs of it—you can understand the nature of it—are classified paragraph by paragraph. But I think I could safely quote one part:

Where Australian personnel are operating with US personnel at the time of the capture/surrender of suspected Taliban or al-Qaeda members, those US personnel should take custody of those persons.

Later, it says—

Senator FAULKNER—There are no Taliban or al-Qaeda captured in Iraq, are there?

General Cosgrove—I think I could safely now quote from General Franks's letter, also classified:

I concur with your proposal that whenever practicable US forces operating with Australian forces should effect formal capture of detainees and take responsibility for their subsequent treatment. This has been and will continue to be our practice with coalition partners.

Senator FAULKNER—That letter preceded the directive that you just quoted from.

Gen. Cosgrove—Preceded it, yes, that is right.

Senator FAULKNER—As I say, for a different war, in a different country and under a different UN mandate.

Gen. Cosgrove—It is referring to 'has been and will continue to be our practice with coalition partners'.

Senator FAULKNER—For a different war.

Senator FERGUSON—It is not necessarily just for that war.

Senator FAULKNER—In that case, we would assume that what occurred in the First World War or the Boer War would still be in place. Even you, Senator Ferguson, would not assume that.

Senator FERGUSON—Not at all.

Senator FAULKNER—Thank you, General, for that information. I appreciate it. Let me ask how thorough the check was—

Senator Hill—Operation Slipper was continuing. You may want to make a political point, but you should concede that.

Senator FAULKNER—Operation Slipper? This was for Operation Slipper.

Senator Hill—The war against terror was continuing, and still is.

Senator FAULKNER—What are the names of the operations in Iraq? It is not Operation Slipper, is it? I think one of them may even be Falconer. Even I can remember that.

Senator Hill—No. I said a number of these forces were jointly assigned.

Senator FAULKNER—What are the operation names in Iraq? Falconer, isn't it?

Senator Hill—The first one was Bastille, the second one was Falconer and the third one was Catalyst. And a number of the forces were jointly force assigned with Slipper, the ongoing war against terror.

Senator FAULKNER—Falconer and Catalyst are current operation names, are they?

Gen. Cosgrove—Falconer concluded and was replaced by Catalyst. Slipper also continues, and the headquarters that we have assigned working with the Americans has been, from the outset, dual assigned to Slipper and whatever other operation is on foot at that time.

Senator FAULKNER—In relation to question 6 of the questions on notice, which concerned the checks on the Defence web site, intranet sites and email, can I be assured that the checks undertaken here for that question on notice were thorough ones?

Mr Smith—I will ask Mr Kenny, who made the checks, to come to the table, and Mr Henderson.

Mr Kenny—Your question was: were the checks thorough?

Senator FAULKNER—Yes.

Mr Kenny—In answer, I will say that the checks continue; they are ongoing. They are not as thorough as a detailed investigation might be, although we could take that step if it was indicated that we might need to. By way of background, it might be helpful to give some indication of the amount of data that we have to search through—the sheer volume of the search. There are literally over 1,000 servers involved on the restricted network alone that might need to be searched. And the total number of bytes or characters of data storage is millions of millions of millions.

Senator FAULKNER—Anyway, following my question, I gather that you have now established that there have been a number of images showing mistreatment or abuse of prisoners on the Defence web sites, intranet sites or email sites? Is that correct?

Mr Kenny—We have found a number in our network, yes.

Mr Henderson—We need to emphasise that the images of abuse have all been drawn from the public domain—generally downloaded from the Internet onto the Defence network.

Senator FAULKNER—The answer to the question that I have is that they were taken from the public domain and generally downloaded from the Internet.

Mr Henderson—Yes.

Senator FAULKNER—So that means some were not downloaded from the Internet, does it?

Mr Henderson—For example, we distribute press clippings via our network, and that includes the daily newspapers.

Mr Kenny—We cannot—without a more rigorous search, and possibly even then—determine whether anything came in via the network or via email, via the Internet or via email, or possibly via CD or another form of disk.

Senator FAULKNER—Mr Henderson, I think I indicated to you at our previous hearing that I understood about the Defence clippings service and so forth and did not intend my question to deal with newspaper clippings that would be broadly available, as any reasonable person would expect them to be. You are aware of that qualification, I think.

Mr Henderson—Yes, I recall that discussion. But you asked me why we used the phrase ‘generally downloaded’.

Senator FAULKNER—Yes.

Mr Henderson—That is why. I was referring to the press clippings.

Senator FAULKNER—Are you able to say a little more about what you have been able to establish? I appreciate that you have made the point about the enormity of the task here. Fair enough. That is a point well made. Are you able to say what the date of any of this material is? What is the earliest date of any of this material?

Mr Pezzullo—As a preamble to the answer that will be forthcoming from my colleagues to my right, from the point of view of a fact finding team responsibility, I have asked my colleague David Kenny to advise me immediately of any positive evidence of the existence of the abuse images that were publicly, globally broadcast in America on 28 April on the CBS 2 program and during the course of 29 April Australian time. At this stage—currently, as at the time we walked into this room, unless Mr Kenny has any alternative advice—we in the fact finding team are not aware—this is the advice that we have given to the minister—of the existence on our network of any abuse related imagery that pre-dates that global publication date. I might ask David to close that paragraph off.

Mr Kenny—I am of the same view, noting the comment about the images that we have found that concern abuse being images that are from the public domain.

Senator FAULKNER—Have your inquiries and searches turned up material in advance of that key date that does not go to the issue of images; in other words pictures, photographs, pictorial images? Have you also looked for that in your fact-finding mission?

Mr Pezzullo—I can answer that by saying that in the guidance I have given to the information systems staff who work for Mr Kenny I have asked for any positive evidence of the existence on our network that would lead us to think in terms of images, knowledge of video streams, broadcast type data that would suggest that the Australian defence organisation

was in possession of that kind of imagery, the visual material that became available during the course of 29 April. My advice as at the moment we walked into this room was that nothing has been found of that date, nor has anything been found that, if you like, is anything other than drawn from the public domain, as Mr Henderson has said.

CHAIR—Can I interrupt. We do have some guidance as to what questions might be asked later in the evening. We are proceeding, of course, with the portfolio overview and we have questions on the budget summary, the capability development and the capital budget generally, but the outputs we will not be covering tonight, nor will we be covering business processes nor will we be covering people. I think it might be an idea with respect to the service chiefs that if they are not going to be here they might not be too far away. They may be needed on questions related to the portfolio overview. But everybody else can take their leave. Thank you very much indeed. I hope that is helpful to you.

Senator FAULKNER—So, Mr Pezzullo, did this search include the recreation folder of the Defence computer network under the subfolder of military history?

Mr Pezzullo—Mr Kenny has some detailed information on that matter. I am generally briefed on that matter but I might ask David Kenny to respond.

Mr Kenny—That subfolder was subject to a different independent investigation. An article that appeared in, I think, the *Melbourne Age* prompted that investigation. It was the weekend of 6 June, from memory.

Senator FAULKNER—What did your investigations turn up?

Mr Kenny—Again relying on my memory, the article referred to a particular subfolder and to the month of October 2003, saying that there had been some discussion, if that is the right word, and that that discussion had been suppressed—again my words. What that investigation did was recreate the contents of that subfolder from backup tapes for the month of October, and we were able to find no reference to Iraqi POWs or mistreatment or to suggestions of people feeling that discussion was being suppressed.

Senator FAULKNER—So did you interview the moderator of the site?

Mr Kenny—I didn't.

Senator FAULKNER—Did somebody?

Mr Kenny—We are still wishing to have a discussion with the moderator because of a different event which took place in April.

Senator FAULKNER—All right. So what is the different event that took place in April?

Mr Kenny—The different event that took place in April was that there were a couple of items posted or published about which an internal complaint was made which was passed to the moderator.

Senator FAULKNER—I appreciate that. Are we talking about April 2004?

Mr Kenny—Yes.

Senator FAULKNER—Could you demystify that answer a little for us so that we actually understand what you are saying to us. What is the complaint? What are we talking about? What is the problem?

Mr Kenny—Something that was published on the site was complained about by an individual who felt that it was offensive. It was not a publication relating to the treatment or otherwise of POWs.

Senator FAULKNER—So it is not relevant to the issues that have been canvassed at this and previous estimates committees?

Mr Kenny—Correct.

Senator FAULKNER—What you are saying is that something else has turned up and you are following through that with other—

Mr Kenny—The reason that we are following through it is just to get to the bottom of whether there was something that we do not know about yet. However, we did look at all the postings and there was no reference to Iraqi POWs or mistreatment. The reason we followed up on the April one was because of the concern that there may have been a sense of suppression of discussion having taken place. The reason that there was suppression of discussion was that there was a complaint and the posting was inappropriate.

Senator CHRIS EVANS—Are you saying that, in terms of the news report or the suggestion, there was in fact no suppression of the debate on that site?

Mr Kenny—We have been able to find none and we have been able to find no, as I said, evidence, no postings referring to POWs or mistreatment or poor treatment, no complaints about being suppressed or censored or whatever the phrase used in the newspaper article was, and no reference to the defence force act in any of publishings on that site in that month.

Senator CHRIS EVANS—Why have you been unable to interview the moderator?

Mr Kenny—I have not been advised yet, as of today, as to what the discussion with the moderator revealed.

Senator CHRIS EVANS—So the moderator has been interviewed?

Mr Kenny—I do not know whether or not he has been interviewed.

Senator CHRIS EVANS—Why wouldn't he have been interviewed?

Mr Kenny—My sense would be that the team of people that are doing this work, amongst their other duties, are also the people that are doing the searching of the rest of the network, which is quite labour intensive.

Mr Pezzullo—I should add to Mr Kenny's answer that when the, as I recall it, *Sunday Age* carried the story by Phillip Hudson which went to the issue of gagging, I asked information systems division in corporate services group to reconstruct as best they could or engage in the chat activities—to try to reconstruct these moderated activities. I saw the email traffic emanating from the relevant information security authorities and, as I recall it, to Air Force. It was a link to some kind of Air Force military history page. I was copied into information that gave me a high level of confidence that a sound methodology was being employed. They were pulling tapes—Mr Kenny can go into slightly more technical detail than I can on that.

They were reconstructing the chat and physically looking at it almost as though you could historically create the real-time flow of that so-called chat. If I have misstated the technicalities of that Mr Kenny will no doubt correct me.

Senator CHRIS EVANS—If you have, neither Senator Faulkner nor I will be able to correct you, so you can be confident of that.

Mr Pezzullo—I dare say that there might be people outside of this room who are paying attention to my words.

Senator FAULKNER—When did the downloading from the Internet of images incorporated into presentations prepared for use in training programs to illustrate breaches of the Geneva conventions occur?

Mr Pezzullo—I can start to answer the question by indicating that the information I have is no earlier than 29 April Australian time. As to the specific instances that Mr Kenny's division has found, I will ask him to speak to that in detail.

Mr Kenny—I have not seen the presentations and I have not been informed as to the date of their creation. However, the advice is that the content used the images that had been published into the public domain, and so my assumption was that they were not prepared until after the publication in the public domain on the dates that Mr Pezzullo has noted.

Senator FAULKNER—You are using a qualifier that Mr Pezzullo is not using. He is not assuming that. He is very clear in his evidence that it postdates this material being publicly available. So I do not think you need to have that qualifier, do you?

Mr Pezzullo—Sorry, Senator, what is the qualifier that somehow relates to my understanding? I would not mind being clear about that. I realise that you are directing that to Mr Kenny.

Senator FAULKNER—It is that Mr Kenny's assumption is based on your evidence.

Mr Pezzullo—The tasking by my team, yes.

Senator FAULKNER—No, it is that Mr Kenny's assumption is based on your evidence that this must have occurred post these pictures appearing in the public domain.

Mr Pezzullo—No. To render clear what I said—and I think the evidence as stated in the *Hansard* will demonstrate this—I have asked the people undertaking the task in Mr Kenny's division to immediately alert me, if you like, as a subcontracted effort to my team, of any positive evidence of the existence on our network of the 'abuse images'—to use shorthand—which somehow found their way onto our information systems prior to Australian time 29 April. In other words, I have not said, 'Limit your search to 29 April as being your start date.' That would be counterproductive, frankly. Other than breaches of lawful directions about proper use of the Internet, from my point of view, in terms of knowledge of matters that are not in the public domain, what has occurred subsequent to 29 April is of interest. If people have misused those images, there are a whole regime of directives, regulations, lawful instructions et cetera. But from the point of view of the fact-finding team that I was appointed to head by Sec-CDF, what would be of concern to me is knowledge by the ADO of the 'abuse images' prior to their broadcast on the American CBS network.

Senator FAULKNER—Have you tracked down what has happened to these images once they had been posted on the web sites or intranet sites?

Mr Pezzullo—I understand that work is ongoing, but I would ask Mr Kenny to amplify that.

Mr Kenny—By ‘track down’—

Senator FAULKNER—Have they been removed? Are they still there?

Mr Kenny—We are continuing to search. The search is ongoing. We are not yet—

Senator FAULKNER—When you discover it, if it is not, for example, for a training program about the Geneva convention, what is being said?

Mr Kenny—At this stage we are continuing to search. We are keeping a note of all the ones that we find and the search team continues to examine those that they have not looked at yet. The way the search works is that we look through files that we are able to see and identify those that, by their name, might be worth further attention. Once we get that big list, the team goes through that list, item by item, and when they identify something as being either relevant or not relevant they flag that and move on to next one.

Senator FAULKNER—Mr Pezzullo, has anyone from inside the defence organisation come up and volunteered information to you or your fact-finding team, as opposed to you having to go out and find all the information? Has anyone pointed you in the right direction?

Mr Pezzullo—Yes.

Senator FAULKNER—Who has done that?

Mr Pezzullo—With regard to information that we have gathered, whether it has been volunteered or swept up through requests through group heads and service chiefs—in other words whether it has been volunteered or otherwise—is the subject of a detailed report that my team provided to the secretary and the CDF, who have now provided it to the minister. That, to me, makes it the subject of the advisory process that I have through the secretary and CDF to the minister.

Senator FAULKNER—So you have internal whistleblowers, so to speak.

Mr Pezzullo—I do not know that I would characterise any of the instances in those terms.

Senator FAULKNER—That is my characterisation. What would be a fair characterisation, if you do not think that is fair?

Mr Pezzullo—In terms of the methodology employed by my team, the secretary and CDF made it clear after, as I understand it, discussions with the minister—and I had seen the press reporting of the Prime Minister’s views about these matters—that a thorough effort was to be undertaken, such as would arm the minister with all the appropriate facts prior to the resumption of the parliament on 15 June. The methodology we employed was very high profile. The secretary and CDF pushed it very hard with their immediate subordinates—the group heads of Defence and the service chiefs of the individual services.

From memory, each of the service chiefs rang me on the very first day saying, ‘We have done this sweep through the May process—it has been the subject of discussion at the

previous estimates—but if there is more that we can do let us know.’ I said, ‘Stand by.’ It took me 18 to 24 hours to shake out the team. Once we were on the ground, various sweeper requests went through the entire organisation. I found that corporate responses were pretty rapid—mainly from divisions, and we have just been talking about one of the divisions in CSIG—but individuals also came forward and said, ‘I did provide a return to the May process,’ which was previously described, ‘but I would like to build on my earlier comments.’ All of that has been taken into account in the report that I have already referred to.

Senator FAULKNER—That is very interesting. But what I am asking is: did individuals from within Defence come forward with information that you have followed through, as opposed to what would ordinarily occur in terms of the chain of command?

Mr Pezzullo—I think when you asked me that question—

Senator FAULKNER—I used the terminology ‘internal whistleblowers’.

Mr Pezzullo—Prior to that, if I recall correctly—and the *Hansard* will demonstrate this—you asked me—or words to the effect—‘Did anyone voluntarily come forward, as distinct from being swept up as part of a corporate process?’ As I recall, my answer was yes.

Senator FAULKNER—I then went on to use the terminology ‘internal whistleblowers’. That may not be a good terminology, but I think you understand what I mean by that.

Mr Pezzullo—There is a formal framework, which the inspector-general no doubt would be delighted to come forward and describe to you, in terms of the formality of whistleblowers—with a capital ‘w’. For a public servant, that has a particular meaning, and it is rendered to us through various lawful instructions as to how we handle such cases. No-one who has cooperated with the fact-finding team has, to my knowledge—unless the inspector-general wishes to tell me something that I do not know—gained that status. I am using bureaucratise here, but all the persons who have come forward do not meet the technical meaning of a whistleblower.

Mr Smith—Let me make clear also that the message we were sending out about Mr Pezzullo’s team was that it stood quite separately outside of the chain of the command. It had our full authority, and we hoped that by letting that be fully known people would come forward. If you wish to ask whether the inspector-general has had anyone come forward under the whistleblower scheme, we could bring him forward for you to ask him. Otherwise, as Mr Pezzullo has said, it seems some people did come forward voluntarily, and I welcome that.

Senator FAULKNER—Thanks for that information. How seriously do you treat, Mr Smith, what has been exposed through all this in relation to Iraqi POWs and the issue of prisoner abuse or mistreatment and departmental knowledge of it—those issues that we have been canvassing at this and a previous Senate estimates hearing? I think it is fair to say the matter has received some notoriety in the public arena. It has been a matter of quite considerable public interest and public debate. As Secretary of the Department of Defence, are you now able to say to this Senate committee that you are able to make an assessment of what the impact of those shortcomings that have been exposed has been—what it means in terms of necessary changes to administration within Defence and what action you are taking as a result of these matters?

Senator Hill—The secretary will obviously answer, but the shortcoming, as it is referred to, was one failure of information, and that related to what was thought to be an October report but turned out to be an October working document of the ICRC. Defence believed that they did not have a copy of it. This is not a document that was referred to Australia. What Defence did not realise was that an officer had brought a copy of this document back, in effect unofficially, and that when that document was provided on 11 May to another division of the department—and that is when I think we have got to say it became, if not a document of the department, certainly a document before the department—its significance was not recognised for the significance that it was.

So that was a mistake and we prefer there to be no mistakes. But, when you talk about the administration—and there have been a lot of sort of broad brush statements made about the administration of the Department of Defence—you have got to balance a mistake against the department's enormous administrative successes in recent years. You simply would not have been able to run the sorts of operations that the ADF has been involved in—in the Solomon Islands, which was a huge management issue, in Afghanistan, the Gulf and Iraq—without a lot of good administrative work. It disturbs me that, because one mistake has been discovered, there are some who want to go out and in effect slam the total administration of the department. I think that is very unfair. The secretary, now that a mistake has been discovered, can answer the question.

Senator FAULKNER—My question is to the secretary, and I do not think any reasonable person would accept that it is as simple as you say—that a mistake has been discovered. That might be your political spin; I suspect no-one was going to believe that. But you are entitled to your political spin and so am I. Mine is just a straightforward and simple question to the secretary: how seriously does the secretary treat these matters and these issues that have been exposed over the last fortnight or so?

Mr Smith—The straightforward answer to that is: very, very seriously. You asked what the impact of it was on CDF and on me: very considerable. For my own part I do divide the analysis of this into three parts: pre 11 May; 11 May to 27 May; and from then onwards. I think there are different issues and different lessons from each.

I hope the last task that Mr Pezzullo and his team will perform for me in the excellent work they are doing is to give me their account of the lessons I should learn—and that CDF would want to learn from this. I have some thoughts about what we need to do, because, needless to say, I do not want to be in this situation again. I made a statement with CDF on 28 May, and we were wrong, and we do not want to ever be in that situation again. We will draw on the lessons learned that Mr Pezzullo produces. CDF and I have also talked about this, believe me, for a lot of hours. From there we will go forward to Senator Hill with some proposals about what we need to do.

Right now—I will be very frank—I am focused, and I have been focused for the last 10 days, apart from the normal work I try to do, on supporting Mr Pezzullo in getting all of the facts that he possibly can before us. I look to going to a subsequent stage when we say, 'What does all this mean? How can we ensure that we are not in this situation again—the one that we have been in from 28 May?' I cannot say to you right now what we will do differently, but

I can say that we will have some proposals and will discuss them with Senator Hill and elsewhere in the government as we need.

Senator FAULKNER—Can I ask you, General Cosgrove, whether you share those sentiments that Mr Smith has expressed or whether you might have some different perspectives in the light of these experiences over the past couple of weeks?

Gen. Cosgrove—I share entirely the secretary's thoughts in this regard. I have some additional perspectives and I will reflect on one of those now. I would like to preface what I am about to say by reminding the committee of the tremendous work that our people are doing on operations. They continue to perform a fantastic job. I notice that people have been at pains to say that this is not directed at individuals or the ADF in the broad. Nonetheless, subordinate officers have had their names mentioned very frequently in ways which draw their performance into doubt. I would just like to remind the committee that one of our embedded officers, Colonel Jeff Davie, performing as the military assistant to Mr Sergio Vieira de Melho, was very much caught up in that disaster, strove mightily to rescue Mr de Melho and was awarded a bravery medal. Colonel Kelly, whose name has been mentioned frequently in this committee, was noted for his attempts to improve the position of all detainees in Iraq through his work, even to the extent of agitating for infrastructure development of the detention facilities. Major O'Kane, whose name is now a household word, in a reference unsolicited by the ADF was noted by an American officer in the media recently for his attempts to push the cause of the ICRC activities in CTF7.

In this regard, though, there is no doubt that we need to look at the quality of our reports from our embedded officers and we need to look at the monitoring of those. In this regard I have sent some initial thoughts to the minister and, like the secretary, in the aftermath of this issue will seek to make necessary improvements.

Senator CHRIS EVANS—Mr Pezzullo, could you take us through the attachments to the report and explain them to us. I want to come back to the secretary's earlier remarks about the three stages and the different experiences of those. At the last estimates hearing, the department gave us a list of the situation reports that they were able to locate and information about visits to Abu Ghraib et cetera. I think it is fair to say that this is now a more extensive list on both counts. I would like to understand how we now have better and fuller information and to discuss some of the detail of that information.

Mr Pezzullo—I will not tempt fate by indicating that our knowledge is now complete. But, as at the time of tabling by the minister in the attachment to the remarks that he made in the Senate, it is as complete as 14-odd—13 at that stage—days and some pretty long nights could make it. You were advised in the estimates in the week commencing 31 May, in a somewhat fragmentary way in response to questions that you were putting, that officers were pulling information together. You were advised both in terms of details of visits, as you have indicated, and situation reports. Taking the two separately, there is an attachment headed 'Unclassified: situation reports from ADF legal officers embedded in Coalition Provisional Authority Office of General Counsel'—one of whom is the colonel that the CDF just made reference to, Colonel Kelly—'with references to detainee concerns and/or meetings with international organisations'.

That table is derived from the data in the report that I have mentioned already that was provided through the secretary and the CDF to the minister. In terms of the situation reports from officers that fall within that definition, they commence with Kelly, over the page is Lieutenant Colonel Muggleton and then over the page we have listed the group captain without name. His name was not put forward in the last estimates. That is the guidance I have as to the naming of that officer. Whereas Colonel Kelly and Colonel Muggleton are mentioned in various parts of the *Hansard*, which hopefully we have helpfully cross-referenced for you.

The serial sequence commences at report 7 and goes through four pages, ending with a report from Australian Group Captain/Kelly. I will come back to why two officers are rendered there at No. 13. Simply counting them numerically, we now have all of the sit reps which have been recovered, not necessarily through the searching of server tapes along the lines that we talked about earlier in terms of a network search, but we have gone into, as part of those sweeping activities that we discussed earlier, a thorough re-examination of files. I think it is fair to say that on the first morning of my team coming together both the secretary and the CDF jointly and then separately to their immediate subordinates made it pretty clear that this was a pretty important exercise. Frankly, I had a welter of information. Within several days we were able to get the full set of cards—if I can use that term—and then we assessed those situation reports, having read them in detail, and compared them with the May survey returns that you were previously briefed about. That represents in the reference column, in my judgment and in my advice to the minister and his staff, a fair summary of those reports which go to, or have references to, ‘detainee concerns and/or meetings with international organisations’ that in turn are about detainee concerns.

So, starting at serial 1, which is Kelly report 7, there is ICRC criticism of overcrowding at Camp Cropper facilities and so on. Some of these, of course, have been touched on in relation to Senator Brown’s earlier questioning. He picked the references to Amnesty International that appear in those reports. If you go through the first page it is pretty straightforward. There are five relevant sit reps.

Senator CHRIS EVANS—I notice, for instance, that No. 10 is missing. Is that because it is missing or is it because it made no reference to these issues?

Mr Pezzullo—No. As I have indicated—and I have a wonderful team assisting me ‘remote’; I do not quite have an ear-piece but, if I get this wrong, they will come and correct me so when the jaffa comes forward it will have a note on it—we have 10, but 10 does not fit the parameter described in the heading of the document tabled by the minister.

Senator CHRIS EVANS—I just want to be clear on that, because in the last discussion we had, Mr Carmody gave evidence that he was not able to find them all. I do not want to put words in his mouth, but I think the general impression was that he had found some but not all. So I just want to be clear now about whether you are saying to me that you have found them all and these are the only ones that refer to prisoner abuse or whether you are saying to me, ‘These are the ones we’ve found that refer to prisoner abuse’?

Mr Pezzullo—No, what I am saying—and I will couch it in my own words and hopefully it will meet one of your alternatives—is that, principally with the assistance, it has to be said,

of Mr Carmody's group, but, it has to be said, with all other groups in support examining their files and the personal inboxes of their emails, within about 48 to 72 hours of my search I achieved a high level of confidence that I did not have to do a remote search of the network involving Mr Kenny's people and that by the time I got to my reporting deadline I would get an increasing influx of these reports. I wish I had taken the gamble on the horse, because in fact it came in and we had it. Through manual search means, we have every report. Because the officers—all of them—describe their reports, in good standard operating procedure style, by a numeral. So sit rep 1 is the first in the series, very helpfully, and the numbering goes right through all the sit reps. From that, we have done the analysis that I have described and we have judged—I have given the minister and his staff the full volume, if I can say that, Minister. We have provided some advice where we believe, fitting within the definition of the heading, there are references to detainee concerns and/or meetings with international organisations on the same. I think that answers the question that you put to me.

Senator CHRIS EVANS—I hate to be argumentative, but I am not sure that it does. I just want to be clear: have you found all the situation reports filed by legal officers in the relevant period?

Mr Pezzullo—I think I have said in many words: yes.

Senator CHRIS EVANS—I always prefer the short word though; it is much clearer on the *Hansard* record. So that is fine. I notice though—I am not trying to be picky but I just want to be clear as well in terms of definition—that we are referring to reports from ADF legal officers. This does not include sit reps from other ADF officers and/or the TLO—the temporary liaison officer. Is that correct?

Mr Pezzullo—Yes.

Senator CHRIS EVANS—Is there a reason why the temporary liaison officer sit reps are not included?

Mr Pezzullo—Is there a reason why they are not included in this table or is there a reason why the data from all of those reporting streams is not included in my report?

Senator FAULKNER—It does not include the legal officers at CJTF7, does it?

Mr Pezzullo—No. But the table does not.

Senator FAULKNER—The table does not. The table includes legal officers only—embedded in the CPA?

Mr Pezzullo—In the Office of General Counsel.

Senator CHRIS EVANS—So there are at least two other people that we know of, who have been mentioned in these discussions et cetera, who are not included in the table?

Mr Pezzullo—Yes.

Senator CHRIS EVANS—I am just trying to seek the explanation for that. Because you say, 'within the definition at the top of the report.' That is fine. I am asking you why that is the definition and why people like the TLO and the officers at other headquarters are not included?

Mr Pezzullo—I will seek the minister's guidance as to the intent he or his staff had in terms of commissioning from the report a series of documents that were able to be put into a public form. A lot of this material is at the classified level, as is my report, simply because a lot of these sit reps—

Senator FAULKNER—This is an unclassified document.

Mr Pezzullo—Indeed. I was just about to say: in other words, in the same way as the minister has undertaken to extract some information from two classified sit reps by dinnertime—and I am told that is in hand—some judgment needed to be made by people more senior than me: 'Of all this material, what is it that we want to lay before the parliament?'

Senator FAULKNER—For example, let us take the aforementioned Major O'Kane. His name of course does not appear here because he was not embedded in the Coalition Provisional Authority.

Mr Pezzullo—That is correct.

Senator FAULKNER—Were all the legal officers embedded in the Coalition Provisional Authority in the Office of General Counsel?

Mr Pezzullo—Were all the ADF legal officers in theatre embedded?

Senator FAULKNER—Were all the ADF legal officers in theatre, embedded in the Coalition Provisional Authority, in the Office of General Counsel?

Mr Pezzullo—No.

Senator FAULKNER—What were the other categories?

Mr Pezzullo—One of the questions on notice refers to a legal officer—and there have been several who have gone through the position so, if you do not mind, we will talk about positions. There is a legal officer embedded in CJTF7, which is the coalition corps level headquarters. Also there is a legal officer—not embedded, because he is actually part of an Australian entity—at Joint Task Force 633.

Senator Hill—Senator Faulkner's question was: within the CPA, were legal officers only in the Office of General Counsel?

Mr Pezzullo—Our records are that the only ADF legal officers in the CPA—and I am sorry, I misheard you—were in the Office of General Counsel.

Senator FAULKNER—I just want to be clear that the legal officers embedded in the CPA are all on this list; the fact that they are embedded in the Office of General Counsel as well does not make them a subset of a broader group of legal officers.

Mr Pezzullo—There are other officers in the CPA who might have legal qualifications—I have not checked their qualifications—but they are not posted as legal officers.

Senator FAULKNER—That is the point; thank you.

Senator CHRIS EVANS—My key question is: why didn't we include, for instance, the sit reps of Major O'Kane? I am sorry to use his name. My point is: why aren't the sit reps of the other legal officers—the one at the CJTF7 and the one in the Australian task force—included

in this? I would have thought Major O’Kane would be a classic example of being caught by the search.

Mr Pezzullo—If you are asking me why aren’t they included in the table that was put on the table in the Senate by the minister, as I have indicated, I have provided through the secretary and CDF a classified report, and judgments were made in the lead-up to the minister’s remarks—

Senator CHRIS EVANS—Maybe I should ask the minister the question. It seems to me that, whether deservedly or not, Major O’Kane has had a bit of a star billing in all this. It seems to be a glaring omission that his sit reps from Iraq are not included in the table provided to the Senate. That seems to be a glaring omission, as is the omission of the sit reps of both the temporary liaison officer—effectively, our defence attache in Iraq—and the other Australian legal officer at the Australian headquarters. Why weren’t their situation reports included in the table?

Senator Hill—I think because—correct me if I am wrong—in O’Kane’s case, these were sit reps that were directed back to Australia.

Mr Pezzullo—Australia and the theatre. The sit reps of the CPA general counsel lawyers, the ARO and the TLO, are going to Australia and within theatre.

Senator CHRIS EVANS—The untrained observer would think that this was supposed to be a comprehensive report of the situation reports coming back to Australia.

Senator Hill—A mountain of material has been provided. If there are more specific questions you want to ask, we will provide—

Senator CHRIS EVANS—We are talking about Major O’Kane, for God’s sake.

Senator Hill—We went through all those sit reps of Major O’Kane in the last meeting of this—

Senator CHRIS EVANS—We also went through Kelly’s and Muggleton’s, but we found a lot more between the two meetings.

Senator Hill—You can always ask another question, you can always demand more information. That is part of the game, if you want to ask more questions or ask for more information.

Senator FAULKNER—Do you acknowledge that there are basically four categories of legal officers in Iraq. There are the ones embedded in the Coalition Provisional Authority: that is the first category. That is correct, isn’t it?

Senator Hill—Correct.

Senator FAULKNER—There are those embedded in CJTF7. That is correct also, isn’t it?

Senator Hill—Correct.

Senator FAULKNER—There are those in our own headquarters. I think that is joint task force 36—

Gen. Cosgrove—633.

Senator FAULKNER—Joint Task Force 633. That is correct, isn’t it?

Gen. Cosgrove—That is correct.

Senator FAULKNER—And there are the TLOs—

Gen. Cosgrove—He is not a legal officer.

Senator CHRIS EVANS—That is right. He is the equivalent of our defence attache.

Gen. Cosgrove—So he is not legal officer.

Senator CHRIS EVANS—I accept he is not legal officer.

Gen. Cosgrove—So three categories, perhaps.

Senator FAULKNER—It is temporary liaison officer. He is not a legal officer. So there are three categories, one of which, the ADF legal officers in the Coalition Provisional Authority, information has been tabled about. For the other two categories—those in the JTF 633 Australian headquarters, and CJTF7, the joint task force headquarters—we do not have them. That means, for example, we do not have the full listing of Major O’Kane’s situation reports. Of course, of the ones we do have, the three, Kelly, Muggleton and the group captain, are three out of 118 personnel embedded in the CPA. They are the only ones, we assume, that have been employed in the Office of General Counsel. Whether there is anyone else I do not know. That is the weakness in the documentation.

Senator Hill—That is your political spin.

Senator FAULKNER—No, it is not political spin.

Senator Hill—When you make a political point it is not political spin.

Senator FAULKNER—Where is the table—

Senator Hill—Stop shouting.

Senator FAULKNER—of the CJTF7 or the JTF 633?

Senator CHRIS EVANS—It is a comprehensive report that does not include Major O’Kane.

Senator Hill—We went through Major O’Kane’s sit reps in detail in this committee. We did not go through, as I recall, Kelly’s on his first deployment in detail. We have now provided that information. You seem to be intent on chasing O’Kane, but if there is more information you want on O’Kane we will seek to get that for you. There will always be another question.

Senator CHRIS EVANS—I do not think anyone coming to this discussion would think it reasonable that in a summary of reports back from Iraq of our legal officers you would not include those of Major O’Kane. That is what you are saying to us, that you have provided us a report that does not include Major O’Kane. The question is: why?

Senator FAULKNER—Mr Pezzullo, you can confirm to us that you actually provided that information to the minister, didn’t you?

Mr Pezzullo—When you say ‘that information’, could you be precise?

Senator FAULKNER—You did all the legwork on the sit reps that came from the legal officers with CJTF7 and JTF 633. You have done all that work, haven’t you?

Senator Hill—The key issue is we were trying to work out what came back to Australia. O’Kane’s sit reps did not come back to Australia. We established that in the last committee hearing.

Senator CHRIS EVANS—So you are saying no sit reps from Major O’Kane or anyone from CJTF7 ever came back to Australia?

Senator Hill—I am saying that, as I understand it, O’Kane’s sit reps were in theatre, not to Australia. Is that right or wrong?

Mr Pezzullo—Yes. Can I—

Senator Hill—Of course.

Mr Pezzullo—If I can just amplify several points. I apologise, I do not know if the questions on notice responses that were tabled yesterday with the committee secretariat are available to you yet. I am going off the set that was provided to Ms Patience on 16 June. Have they been circulated?

Senator CHRIS EVANS—Yes.

Mr Pezzullo—At question No.1, responding to Senators Evans and Faulkner in relation to the question on notice of 31 May, we might clearly establish the numbers of officers that we are talking about. The question on notice that we took from Senators Evans and Faulkner was: ‘Can Defence provide a list of the positions and responsibilities of the ADF legal officers serving in Iraq from March 2003?’ The answer we have given you is: ‘In functional terms’—because a number of bodies have gone through those functional slots—‘there is a lieutenant-colonel equivalent legal officer serving as a legal officer on the staff of our Australian headquarters JTF633. The function of that officer is to provide advice to the commander on all legal issues affecting the Australian national headquarters.’ There is obviously an officer there at all times.

Senator FAULKNER—Just stop there. Did you work through sit reps and other reports coming back to Defence in Australia from those legal officers?

Mr Pezzullo—One of the sweeps, as I referred to earlier, that we did was through the Joint Operations Command, the Deputy Chief of Joint Operations Command, formerly titled HQAST, and they have yielded the references such as they are to the commander’s sit reps that have come back to Australia. The legal officer, as best as I can establish within that headquarters—and someone on the military side might correct me if I am wrong—does not independently report unless he provides very technical, professional reporting to the Director General of TIDLS—the Defence Legal Service. In terms of independent reporting up the chain, he reports to his one-star national commander. We have interrogated the reporting that has come back from the theatre, not just on legal matters—it incorporates medical and what we did in terms of intelligence and whatnot. Those reports have come back to the Deputy Chief of Joint Operations Command in Sydney, who on-refers matters up the line, eventually getting to the CDF.

Senator FAULKNER—So you have done that?

Mr Pezzullo—I am not aware of an independent stream of legal office reporting from that functional position.

Senator FAULKNER—No, but the reporting that comes through obviously includes these issues. It may not come directly—

Mr Pezzullo—I said ‘independent legal reporting from that position’. There is command reporting ultimately to the CDF in the chain of command.

Senator CHRIS EVANS—But you have not included that in this table.

Mr Pezzullo—Self-evidently, no, Senator.

Senator CHRIS EVANS—So it does not purport to represent all of the reporting back on these issues to Australia from Australian officers?

Mr Pezzullo—It purports to represent what is in the title of the table.

Senator CHRIS EVANS—A subset of the Australian officers serving in Iraq.

Mr Pezzullo—Can I complete the three bullet points? We have dealt with the half-colonel position equivalent in the national headquarters. There is a major-equivalent legal officer filling the position of legal officer in CJTF7 and, as was established at the last estimates, that was previously the job of Major O’Kane, who is now obviously in Australia and who has been replaced by another equivalent rank officer. The third bullet point goes to the third slot. That is slightly more complex because in fact—and I promised I would come back to this—there are currently two colonel-equivalent officers: a group captain and Colonel Kelly, who has returned.

Senator CHRIS EVANS—You are saying to us that you reported in that table on one of the three sets of legal officers serving in Iraq.

Mr Pezzullo—The third bullet point.

Senator CHRIS EVANS—Yes.

Senator Hill—Because we were interested in communications back to Australia that had some reference to the Red Cross.

Senator CHRIS EVANS—But we established, didn’t we, at the last hearing that one of Major O’Kane’s references was included in his commanding officer’s reports back to Australia—or am I misrepresenting the evidence given by the department last time?

General Cosgrove—My memory of it is that it was a reference by the commander 633 to the need to provide transport and security for Major O’Kane’s travel to and from Abu Ghraib.

Senator Hill—It is an operational issue.

Senator CHRIS EVANS—My point is that, in terms of representing this search, this represents outcomes of one of those three legal positions. I suppose the question is: what did you learn about the other two reporting?

Senator Hill—We just said: the search has been extensive—thorough, I would say. I take the opportunity to commend the officers that have carried it out because they have worked very long and hard on this task. The schedule to the statement that I provided was in accordance with the request made by the Prime Minister publicly that we would look for communications back to Australia that related to the Red Cross. That is what we have done because it was the CPA officers that had that contact, apart from O’Kane’s, which we have

done exhaustively in the previous meetings of this committee. We have answered all the questions that you have put on notice and we have provided publicly all of this extra information in accordance with the request of the Prime Minister.

Senator CHRIS EVANS—But, Minister, you would concede that since we last met at the estimates there is a lot more information that has come to light in terms of this document. Is that not right?

Senator Hill—What do you mean ‘there’s a lot more’?

Senator CHRIS EVANS—You were able to provide much fuller information than you were last time.

Senator Hill—Fuller information, yes.

Senator CHRIS EVANS—All right. So how do I know that you are not able to provide fuller information of reporting back by Major O’Kane? Where do I find that in your report?

Senator Hill—My understanding was that Major O’Kane’s sit reps were internal, in theatre; they were not to Australia. Unless I am mistaken.

Mr Pezzullo—The minister’s recollection is correct in that regard. Major O’Kane, along with all other so-called embedded officers—and the CDF touched on this earlier—were required to report to the senior ranking officer within the coalition military headquarters, JTF7, who was a full colonel of the Army in this case. That colonel would then select items of interest to on report to JTF633.

Senator CHRIS EVANS—I understand that. As General Cosgrove so helpfully reminded us—I did not remember the detail; I knew we had discussed it—there were clearly references to the work of other legal officers contained in reports coming back to Australia. I am asking you, now that you have done a full search, why that information was not provided as well. Why is only this subset included? We have excluded Major O’Kane, we have excluded the legal officer at Australian headquarters and we have excluded the TLO.

Mr Pezzullo—It might assist the committee if I indicate that we have searched the internal-to-CJTF7 sit reps that are coming up the Australian chain. The colonel-level officer I indicated earlier required—and I am going from memory here now—sit reps by Friday afternoon every week and by, I think, 1700 local time. I have assessed all the ones that we have recovered, and I will not go into the classified communications network issues here, but they are on a non-Australian internal wide area network, which I will not go to—it is not particularly germane to the answer I am about to give. That colonel would then cull from all of those reports—and they could be from a legal officer of the major-equivalent rank; they could be from intelligence, logistics and the rest of it—and he would then provide advice to the one-star commander at Australian national headquarters.

The question I think I heard you traverse, Senator Evans, was: what then came back to Australia? I touched on that earlier. The Commander, Joint Task Force 633, has got a national command responsibility—and maybe I did not get these words quite right earlier, CDF—but he then reports back to his immediate superior, the deputy chief up in Sydney of Joint Ops, and then there is a chain of command up to the CDF. We have looked at those reports—the Middle East area of operations theatre reports, sit reps, in that sense, back to Australia—and

there is that singular reference that, from memory, emerged at the last estimates either on 31 May or 1 June. There is a reference—it is simple enough to do a key word search—to O’Kane, and it is Major O’Kane, requiring and receiving SECDDET assistance to travel to the jail.

Senator FAULKNER—Have you checked all the non-legal reporting back to Australia for references to the ICRC, to ICRC reports or to abuses and prisoner treatment? Have you done that check?

Senator Hill—From anyone in the military chain in Iraq over the last year?

Senator FAULKNER—I am just asking about non-legal reporting. I am asking whether Mr Pezzullo’s fact-finding team have checked the non-legal reports from the sit reps, apart from those from the embedded legal officers. That is my question.

Senator Hill—You do not know what you have not checked. I think you should—and I think you have already have—set out what you have checked. What was the methodology for the check? There would be reports from the ships, for example, probably coming in on a daily basis. Anyway, what have you checked?

Mr Pezzullo—I did not limit the sweeper request to peace terminology that I employed and used. In addition to going to the service chiefs, who have a single service responsibility but not an operational responsibility, one sweeper request went to the Vice Chief of the Defence Force, the head of the joint operations command. It was not limited to a particular form of reporting because I was trying to be as comprehensive as possible. In the course of doing that, I know from my own personal knowledge and from watching the emails go across my screen in the last two weeks that the Strategic Operations Division, and I think in liaison with joint operations down in Sydney—but they can validate that if I am misspeaking—that they went to the sit reps being provided by the commander. But, as the minister has implied, a whole lot of other things turned up. Indeed, pieces of correspondence from COs of Her Majesty’s Australian ships to other entities turned up. So in other words it was a deliberate catch-all.

Senator FAULKNER—Can you give us an assurance that there was no reporting from sources other than ADF legal officers embedded in the Coalition Provisional Authority or their Office of General Counsel where reference was made to detention or prisoner concerns? Can you give us that assurance?

Mr Pezzullo—Yes, in a sense. I have to be slightly equivocal. I have asked every service, I have asked all the relevant—

Senator Hill—You will have to be because you will be tied down to every last word. That is the way this is working. You are entitled to be a touch equivocal.

Senator FAULKNER—Do not worry about Senator Hill interjecting. He is lucky still to be in office, frankly.

Mr Pezzullo—I am trying to listen to every word, Senator.

Senator Hill—I am pleased you are not.

Mr Pezzullo—What I am trying to say is that, on the evidence available to me at the time that we closed this report—and we have done some supplementary advice to the minister just to be completely comprehensive—the reporting from the legal officers in the Office of General Counsel, which we are talking about here, is the reporting that deals with detainee concerns and/or meetings with international organisations pertinent to the work of the CPA. I have found no other line of reporting out of the CPA stream. What I was also just going to say is that out of the 633 stream—or, if you like, the Australian national chain of command reporting—I have found no reporting that shows a consistent pattern of reference to detention issues as is set out in this table. But we did find—or we re-found, in a sense, because it had been touched on in earlier estimates, as I recall it—the 633 sit rep reference to Major O’Kane going to the jail. In other words, that was re-found with a blank sheet sweeper request.

Senator CHRIS EVANS—We know there are two other bits of reporting, don’t we? We know there is the sit rep from the commanding officer, which we just talked about, where he refers to organising transport et cetera for Major O’Kane to Abu Ghraib, and we know there is the end of duty report by Major O’Kane. So there are two pieces, aren’t there, that technically are not covered by the title of this documentation?

Mr Pezzullo—It is true to say that at least two things are not covered by the title of the document. It does not capture the sit rep from—and you will have to excuse me—either Commodore Darby or Air Commodore Bentley. It was Bentley, from memory. No, it does not cover that. The other reference that you have just mentioned—

Senator Hill—I think that was covered in the committee.

Gen. Cosgrove—That is on page 37 of the previous *Hansard*.

Senator CHRIS EVANS—But I think it is fair to say that there is a lot of information in here that was not available to Defence when they gave evidence at the last hearing.

Senator Hill—I think it has been filled out. I do not think—

Senator CHRIS EVANS—Whichever word; I am not trying to catch you on the words, Minister. It has been filled out. It is reasonable, I think, for us to ask whether other information in the other categories has been filled out.

Senator Hill—As the officer has said, there has been a thorough search. There was a search before he came into this task, which actually revealed, I think, a lot of information. Most of that was put down over four days of previous estimates hearings. Then Mr Pezzullo’s team uncovered a little more but certainly more detail in relation to what had been previously discovered. I think it is illustrative that Mr Pezzullo’s methodology picked up the O’Kane request for an ASLAV. It gives some confidence that it is unlikely—although we can never be absolutely sure—that there is anything else of significance out there that we have not found.

Proceedings suspended from 6.31 p.m. to 7.32 p.m.

CHAIR—For the benefit of senators, questions on notice should be with the secretary by close of business of tomorrow, Friday, 18 June.

Senator Hill—Do you want the stuff I had on the Amnesty International report?

CHAIR—It might be best if you make a statement, Minister.

Senator Hill—Senator Brown, who was here a moment ago but seems to have disappeared, asked me if I could get the detail of what appeared in the situation updates in relation to—

Senator FAULKNER—I respectfully suggest to the minister that Senator Brown is coming back at a later stage to ask some questions. It might be appropriate to deal with it when he is in the room—it will just save some time—if you are happy with that, Minister.

Senator Hill—I am happy with that.

Senator FAULKNER—Returning to where we finished before the break, could I be clear whether the reports of Major O’Kane, for example, are included in the classified report? It is probably best to ask you, I suspect, Mr Smith, whether that material is in the classified report that has gone to you—or has it gone to the minister? I am not sure whom the classified report has gone to.

Mr Smith—All of those that we have are in that report.

Senator FAULKNER—Whom does the classified report go to? Is it a report to the minister?

Mr Smith—It was submitted by Mr Pezzullo to CDF and me, and we have provided it to the minister.

Senator FAULKNER—So it is signed off, effectively, by you and General Cosgrove?

Mr Smith—That is correct.

Senator FAULKNER—Is the classified report one single report or is it a series of reports? How has that been handled?

Mr Smith—It is a short submission with a whole lot of attachments and annexes—some of them grouping material together, others commenting on legal issues and so on.

Senator FAULKNER—Was it vetted in some way? What is the classification—we say it is classified; are you able to say? You may not be able to.

Mr Smith—It would be the classification of whatever the highest classified attachment was, which is—yes.

Senator FAULKNER—Is whatever it is.

Mr Smith—Yes.

Senator FAULKNER—You may not be able to say, but that is how you would determine it?

Mr Smith—It is quite high.

Senator FAULKNER—Yes, but that is how you would determine the classification of the report?

Mr Smith—Yes.

Senator FAULKNER—Was a single report prepared and then vetted to have classified material removed at any point in this process?

Mr Smith—No, I would not say that was done. Some parts of it, of course, the minister has drawn on in his statement, and necessarily they are classified.

Senator FAULKNER—So, Minister, are you able to say whether your statement is based on the classified report?

Senator Hill—Based on it? It certainly is written to the background of the classified report, but obviously nothing that I included in the statement was classified.

Senator FAULKNER—Yes, I know; I appreciate that. Who received copies of the classified report?

Mr Smith—I believe that there are three copies—one that the minister has, one that General Cosgrove has and one that I have. Does your team retain a fourth copy, Mr Pezzullo?

Mr Pezzullo—Yes, Secretary. There are two reference copies—

Mr Smith—Right, two.

Mr Pezzullo—that are integral to my team, and a personal one for me, so it is a total of six.

Mr Smith—Six, right—my mistake; six copies exist.

Senator FAULKNER—I am not sure of the three that you are talking about, Mr Pezzullo: one for you, one for your team—where does the other one fit in?

Mr Pezzullo—I will just quickly take it from the top. The minister has a copy; the secretary and CDF have individual copies; I have a copy marked out to me in my name; then there are two reference copies—if the people in the next room come in and correct me, I will correct it; and then there are two reference copies for a team of 12 people.

Senator FAULKNER—That is all right. I just did not realise there were two reference copies. I understand what you are saying. I thought you were suggesting there was one reference copy. So are you able to give the committee an assurance then, Minister Hill, that your statement to the Senate accurately reflects the findings and conclusions of the classified report?

Senator Hill—There is certainly nothing inconsistent with the classified report.

Senator FAULKNER—Yes.

Senator Hill—In relation to the word ‘findings’—as you said, the material that has been discovered which I described as filling out some of the previous information—it is all consistent with the document.

Senator FAULKNER—So the classified report, Mr Pezzullo, has been produced by your fact-finding team, basically, and then submitted to CDF and the secretary?

Mr Pezzullo—The report of the fact-finding team is the product of my team. In cases—and you heard of a case before dinner—where in a sense we have subcontracted some of the analytical work for speed purposes, I have had reach and supervision over work being done by Information Systems Division. But the document that went to the minister was signed off by me personally, by my lodgment with the secretary and CDF, who then covered it with a ministerial submission, forwarding it to the minister.

Senator FAULKNER—Could we get some sort of understanding of the size and shape of this classified report? We know it is classified, so I am not going to ask you for detail of content. Can you give us a broad picture?

Mr Pezzullo—I touched on the methodology before the break, so I will re-summarise that very quickly. The fact-finding team was taken off line—I spoke of 12 officers before. We were assisted by literally the entire department and some of the tasks were done in a federated way. Information Systems Division did some work—I have referred to that—and Strategic Operations Division helped with searching through the situation reports that we were talking about before the break. So it is not the work of 12 people in a cave, in a compartmented or sealed-off sense, but the full visibility and reach over the document itself is limited to those persons plus the three principals here who received it and, by extension, the minister's office, I guess.

In terms of methodology, I stated that we reviewed the core material we had at the start of play. We were commissioned on the evening of 2 June, so my baseline was everything that was known as at 1700 hours on 2 June, which, from memory, was when these terms of reference were signed off. Some of the team had been involved in the matters—they had chopped across from International Policy Division and other areas. Some, like me, had literally no background other than a lay understanding—I had sat through estimates, and I am the senior officer who reads the press clippings. But, until that evening, it was not my core business. So our first working day was 3 June, which was a Thursday. We reviewed *Hansard* material. We asked for the sources of the briefing behind the SLC packs that were received by the principals to be re-examined, so we re-examined all the survey data.

I made mention earlier that, in the course of that, some people had come forward and amplified some of their statements. The ministerial services people sitting behind me did a sweep through with Strategic Operations Division of what are known as min subs. In other words, we rebased the data coming off almost zero assumed knowledge, and then after about 24 hours—or probably closer to 36 hours—I decided on a series of new search requests. I had the authority of the secretary and CDF. I sent out what I call the sweeper email basically saying, 'This is what we think we have, without limiting your mental image of this issue around the photos'—because, to an extent, you can get tripped up by providing paradigmatic responses saying, 'I didn't know anything about that.' It was a much more neutral, fact-finding task that the secretary and CDF sent me on, starting from 1 May 2003 and all ADO knowledge of detainee PW matters in post conflict Iraq, and people responded on that basis. In other words, they said, 'Look, this may not be relevant but here's something about detainees.' It was not about the abuse that the world knew about effective 29 April—although obviously that is the centre of the story, to an extent, because that is where global knowledge is taken to a completely new level.

I will not go through the daily rhythm of that, but it was long hours. There were sub-teams. We had legal people and international policy and strategic policy experts. We had links into strategic operations and, through them, right throughout the command chain of the ADF. We had a couple of blow-ins from Infrastructure Division, namely me and my very trusted aide. Other personnel were chopped in. We set up as a team—some examining legal issues, some examining min subs et cetera. We drove through a process of immersing ourselves and asking:

‘What haven’t we looked at? What haven’t we turned over?’ Tasked as were to provide as full a report as possible to the secretary and CDF to enable them to brief the minister by 11 June, we assembled that material.

The minister has indicated that he is happy for the structure to be discussed. The report itself—Secretary Smith has talked about the classification issue, so I will not go to that—basically is a fact-finding report. I was not commissioned to make findings or recommendations with respect to those facts in the sense of the conduct or actions of people from whom I was seeking facts or information. It was a neutral fact-finding exercise to get all the facts together for us to be able to brief the minister in a comprehensive fashion. So the report itself provides an overview of some of the key issues that require some kind of narrative or analysis. That includes issues that go to the government’s policy—to pull into one narrative—on detainees and POWs as at 1 May, which was the start of the fact-finding sweep.

There is a master chronology that we laid out in something called the ‘matrix’, which is just a time and space plot. There is some specific analysis of some of the paperwork associated with Major O’Kane’s return to Australia. Regarding his involvement in coalition detention operations in Iraq, there has been a lot of discussion, which I have heard at the start of these proceedings and also through the two days of the previous estimates, around working papers et cetera. So we swept through all pertinent documents in the possession of the major and, through the secretary and the CDF, we have provided some analysis, not in the sense of making conclusions about those facts but rather pulling together those papers. We provided a chapter that simply gave the minister a summary of all the advice that had been provided to the government of particular interest to most ministers. Normally—I made the judgement—there will be ministerial submissions, which are obviously the high point of advising a minister, and sundry other documents like QTBs et cetera. This is just to give you my historical pattern of all the advice over the period. Then there is a series of annexes, which I think I heard the minister talk about before in terms of ‘a mountain of information’. It certainly feels a bit like that. They are just in ring-bound folders. I can go to the detail of that if you like.

Senator FAULKNER—So what you are saying, as I understand it, is that the report does not contain recommendations. Is that right?

Mr Pezzullo—I was not required to—

Senator FAULKNER—No, but I just want to be clear on this: the report consists of an overview, a master chronology, an analysis of the paperwork in relation to Major O’Kane’s return to Australia, a summary of advice and annexures. How many annexures are there?

Mr Pezzullo—There are four annexures and then an index of the hard-copy folders that are attached to those. Some chapters require embellishment, so rather than giving the minister something the size of three or four Sydney telephone books, the report itself is reasonably slim in that—

Senator FAULKNER—How many pages in all are there in this report? It sounds like it is thousands of pages if it is Sydney telephone books.

Mr Pezzullo—What is termed ‘the report’ is not fully page numbered but it feels like 60-odd pages, but then it breaks out into annexes, and then the folders themselves are the primary

documents. For instance, we had a lot of discussion before the break about sit reps and I indicated that we had reconstructed a tail. Senator Evans asked me, 'Have you got them all in order,' and I said, 'Yes.' So, for the convenience of the minister, the secretary and the CDF, I was able to say, 'Here's a folder of sit reps,' and that is a brick—

Senator FAULKNER—It is a 60-odd page report plus annexures. Is that correct?

Mr Pezzullo—Yes, plus folders. I am just trying to be precise.

Senator FAULKNER—I thought the folders were the annexures. So there are two different categories?

Mr Pezzullo—Without showing it to you it is hard to explain. The report plus the—

Senator FAULKNER—You can show it to us if you like. That might solve the problem.

Mr Pezzullo—I think that is the minister's call. The report plus the annexures—I will ask a colleague to bring me the full page count—is the report, but, for instance, the analysis I described of the Major's papers then links to a folder of the primary documents. So we have not, in a sense, held those back.

Senator FAULKNER—The report is 60-odd pages plus annexures—and you will give us the number of pages of that—plus folders. How many folders?

Mr Pezzullo—About nine.

Senator FAULKNER—Nine folders of what size?

Mr Pezzullo—I think the CDF might have one in front of him. They are A4-type—

Gen. Cosgrove—No, I have not brought any of them.

Mr Pezzullo—Sorry, CDF.

Senator Hill—The vast majority of the content of the annexures has no relevance to the issues to hand. There might be a line within a document, but the whole document is put within the annexures. That is what creates the volume.

Senator FAULKNER—Yes, but what we now know is that there is a 60-odd page report. In addition to that, there are annexures to the report that form part of the report and, in addition to that, there are nine folders of material, and the parliament got a pathetic 5½ pages, with three small tables that you provided to the parliament and the Australian public. But now we know that your 5½ pathetic pages, plus three very small tabled documents, have actually been distilled down from a 60-odd page report, not including annexures, and nine folders. I assume you will now allow the full report to be tabled. I take on board the classification point that Mr Smith raised. I accept the classification is at the highest level for the most highly classified annexed document. The usual practice is to ensure that that material is blacked out or not provided.

Mr Pezzullo—Sorry, I might have created the wrong impression. As the minister has indicated, for the sake of completeness, you would add all of the sit reps together—there might be a paragraph per sit rep or, indeed, one line per sit rep—so that creates what I described earlier as the brick-size sit rep folder. To give you another example of that, we

copied for the minister all the QTBs, which he had received sequentially, from memory, from 1 May 2003, but there are often replacement QTBs—question time briefs.

Senator FAULKNER—So how many pages is your report, including the annexures? You said someone out there was adding it up.

Senator Hill—The trouble is that Senator Faulkner's political spin is, in effect, misrepresenting the substance—

Senator FAULKNER—I beg your pardon. I am asking a question: how many pages are there?

Senator Hill—He is misrepresenting the substance of the document.

Senator FAULKNER—You are already embarrassed by this—I can tell. You are talking about political spin. I am asking a question about how many pages.

Senator Hill—You were very uncharitable in characterising my statement to the parliament.

Senator FAULKNER—There is a measly 5½ pages, when we have heard that nine Sydney telephone directories were involved in the report.

Senator Hill—What I am saying is that the vast amount—

Mr Pezzullo—Sorry, I did not describe each folder like that.

Senator Hill—of the annexures is not relevant to the issue, because they could be substantial documents in which there is a line or two relevant to the issue, but the substantial document appears in the annexures. That is important because you would want to look at that line or two in context. You want to see its significance in relation to the document as a whole. But the way it is being represented by Senator Faulkner is quite invalid. Can we send any more public servants home?

Senator CHRIS EVANS—I think that anyone who is not involved in the explanation of involvement with Iraqi prisoners can go home. The chance of us getting to anything else is slim, and even if we do—

Senator FAULKNER—A lot slimmer than the report you got.

Senator CHRIS EVANS—I am providing advice to the chairman—sorry, Mr Chairman—but I think that at five to eight it is a reasonable assumption. Unless we were going until three or four in the morning—

CHAIR—That is good advice. We are not going until 3.30 in the morning; we are going until 10.30 tonight.

Senator Hill—They could have been sent at 4 p.m.

Senator CHRIS EVANS—That is not right, Minister.

Senator FAULKNER—We have only just established that the report you received is 60 pages long, not including annexures, with an additional nine folders the size of the Sydney telephone directory. That was not known at four o'clock this afternoon; it is known now.

CHAIR—On the advice of my colleagues, I think that those Defence organisation people who are not directly involved in the Iraq investigation can take their leave. Thank you for coming, and I am sorry to have kept you for so long.

Senator FAULKNER—Can you now tell us, Mr Pezzullo? It is a simple question. Please just answer the question I am asking. I do appreciate all that information you have given—it is helpful—but I want to know the number of pages of your report and annexures not counting the nine Sydney telephone book sized folders?

Mr Pezzullo—Because it is my responsibility—I did not get the page numbering function—I believe it to be 61. If that is wrong, someone will come and tell me.

Senator FAULKNER—61 plus what? And the annexures?

Mr Pezzullo—That is inclusive of the annexures. The folders are a separate category.

Senator FAULKNER—So it is a 61-page report and annexures and nine ring-binder folders?

Mr Pezzullo—Yes. At the risk of answering a question you have not quite asked me, I have characterised the sit reps folder explaining why that is bulky and I have characterised the QTBs folder and why that is bulky, because there is a repetition of QTBs every time the department changes one over. I would like to inform you of another driver of bulk—

Senator FAULKNER—I do not mind the additional information, Mr Pezzullo, as long as you answer the question asked. We are on song now. We have got the 61 pages, so you go ahead. That is fine.

Mr Pezzullo—I just do not want the imagery of telephone books to be mischievous.

Senator FAULKNER—I am sorry, they were your words, Mr Pezzullo; they were not mine. It is not mischievous.

Mr Pezzullo—I apologise. I am just clarifying it. The open source reporting—things that we have pulled off the web—is another folder, for instance. Having open source documentation creates bulk as well, because there is a fair amount on the web now. An example is the web version of the ICRC report. There is nothing security classified about that.

Senator Hill—The overwhelming proportion of the documents that are being referred to do not relate to Red Cross or detention issues. There may be a reference to them within a large and bulky document. That is the point that Senator Faulkner is refusing to recognise.

Senator FAULKNER—I am sorry, the point I am making is that there is a 61-page report developed by Mr Pezzullo's Iraq detainees fact-finding team—the IDFFT—and that 61 page-report has additionally nine ring-binder folders of supportive documentation, each folder the size of a Sydney telephone directory. That is what we know. There may well be classified documents, which I accept, in the folders and in the supportive documentation. There may even be some elements in the substantive 61-page report that warrants classification. Will you now commit to tabling that report? If there is any classified material that requires being deleted, I think we will understand that. That is the way we approached the material that was tabled during the children overboard inquiry. Will you now commit, Minister, to tabling the 61-page report from Mr Pezzullo's fact-finding team, given that you only made a 5½-page

statement to the parliament with three very slim supporting tabled documents? That is my question to you, Minister. Will you now table the full report, so we can learn what happened, without your political spin provided in the parliament?

Senator Hill—I am not going to table the report that has been provided to me. I am looking at it now. I do not actually think there is much in it that is relevant to the issues that has not been covered by the statement in the parliament. The statement in the parliament was intended to cover the issues, although it is written in my language rather than the officials' language.

Senator CHRIS EVANS—I hope the unwarranted attack on Labor and me was not written by Mr Pezzullo. I presume that was all your own work, Minister.

Senator Hill—I have not found that in here yet. You would say that was political spin, of course.

Senator CHRIS EVANS—No; I would call it desperation.

Senator FAULKNER—So that is a yes—you will table the report?

Senator Hill—No; it is a no, but I will go through the document and see if there is anything further that I can provide.

Senator FAULKNER—What is missing in the 55½ pages you have not tabled?

Senator Hill—For example, a precis of legal advice here goes for almost two pages. You would not normally table that.

Senator FAULKNER—The whole administration of your department—

Senator Hill—Do you want answers to the questions or not?

Senator FAULKNER—The whole administration of your department is under question here.

Senator Hill—Fair go. Mr Chairman, if I am asked a question I ought to be entitled to answer it and Senator Faulkner asked me what type of information was not in the statement. I gave him the example which I just happened to have in front of me, which was a page and a half on a summary of a particular legal advice, quite a few pages on the to-and-fro with the United States in the development of various policies. It is not normal practice to table that sort of information. That goes for a number of pages, actually.

Senator FAULKNER—How many pages does the analysis of the paperwork of Major O'Kane's return to Australia run to? That is absolutely crucial to this. That is in Mr Pezzullo's fact-finding team's report. How many pages is that? That is chapter 3, 'Analysis of paperwork on Major O'Kane's return to Australia'? I think we would like to see it.

Senator Hill—Well, maybe.

Senator FAULKNER—Because you will not let us ask Major O'Kane.

Senator Hill—No, I do not think that is appropriate.

Senator FAULKNER—Let us have a look at the report done within your department. Let us have a look at that analysis.

Senator Hill—A lot of it is introduction, sources of information, background deployment information.

Senator FAULKNER—So I ask again: how many pages are there in Mr Pezzullo's fact-finding team's report on the analysis of the paperwork of Major O'Kane's return to Australia? It is a simple question. How many of the 61 pages are involved in that analysis—half a page, two pages, 5, 10, 15, 20?

Senator Hill—Analysis of the paperwork—I do not understand the question.

Senator FAULKNER—I am sorry—are you not listening? Mr Pezzullo told us that there were four key elements to the report, or five if you include annexures: an overview, a master chronology, an analysis of paperwork relating to Major O'Kane's return to Australia—in other words, the paperwork provided by Major O'Kane. I assume that is right; is it, Mr Pezzullo? You told us this, Mr Pezzullo. The fourth element was a summary of advice, and the fifth element was the annexures.

Senator Hill—This is what I mean: with Senator Faulkner you will be held to every last word.

Senator FAULKNER—Yes; and it is a pity you do not have the same attention to detail, because you may not be in the situation you find yourself in tonight: on the verge of resignation.

Senator Hill—Oh, stop it.

Senator PAYNE—Oh, Senator Faulkner!

Senator FAULKNER—So how many pages are there in that element that Mr Pezzullo told us about in terms of the analysis of paperwork on Major O'Kane's return to Australia? It is a simple question and it warrants a precise answer.

Senator Hill—It does not seem to me to have been written in those terms, but perhaps Mr Pezzullo could explain what he meant.

Mr Pezzullo—There is a little bit of loose language. When I said 'relating to his return to Australia' that could be interpreted to mean an analysis of how he got here and what he did upon his return. I apologise if I left you with that impression. It does relate to papers, to which I think you were starting to infer, that have been secured from Major O'Kane by the fact-finding process.

Senator FAULKNER—No, I did not misunderstand you at all. I think we all got on board precisely what you meant. Now I am asking how much of the report is involved in that analysis. That is the next question. It is a follow-up question.

Mr Pezzullo—I would like to say that, as far as I am concerned, it is still classified advice to the minister through the secretary and CDF. I take my guide. I have page numbers sorted out now.

Senator FAULKNER—I do not believe that anyone could seriously argue at a committee like this that the number of pages involved in the analysis of information or documents provided by anybody—Major O'Kane, Uncle Tom Cobbley or anybody else—could be classified. That is nonsense.

Senator Hill—It is not, in relation to the content of all of the documents. You have to remember that some of these documents were documents that O’Kane brought back to Australia. They were his personal documents and they were documents that were developed in his role in working with the joint headquarters. As we know from previous estimates committees, some related to giving advice to the United States. Documents such as that are classified and I cannot put those on the public record. There are some pages of analysis of the documents that have been obtained from Major O’Kane.

Senator FAULKNER—That is right. How many? That is the question. It is a very simple question.

Senator Hill—It is a simple question but it has not been structured quite like that. Major O’Kane was also interviewed several times, so that is interweaved into this assessment as well.

Senator FAULKNER—Was Major O’Kane interviewed in the preparation of this report?

Mr Pezzullo—Yes.

Senator FAULKNER—How many times?

Mr Pezzullo—Twice, with formal records of interview.

Senator FAULKNER—By whom, please?

Mr Pezzullo—On both occasions I led the interviews. From memory—and the formal record will show this—I did not stay for all of them. I left Commodore Smith on at least one occasion to go through some finer legal type issues. But I led the interviews on both occasions.

Senator FAULKNER—And you can assure the committee on this occasion that proper records were kept of these, which is appropriate. I think you are giving that assurance, aren’t you?

Mr Pezzullo—I am not saying relative to any other occasion. I do not quite know what you are going to, sorry.

Senator FAULKNER—You would know from reading the *Hansard* record of the previous hearing that there were inadequate records or, in some cases, no records at all of interviews.

Mr Pezzullo—I do not wish to concede the characterisation, but, in terms of what my team has done, there are two records of interview which have been agreed with Major O’Kane.

Senator FAULKNER—And they are the only two interviews of Major O’Kane?

Mr Pezzullo—No. Because this is not, if you like, an investigative or disciplinary type process, we have also recorded comments in our notebooks where we have sought clarification from Major O’Kane and where he has had oral discussions with us as we have worked through the data. That is recorded in our notebooks and our files, which will become part of the formal departmental archive.

Senator FAULKNER—So there are at least some discussions or questions asked of Major O’Kane where there is not a formal record of interview?

Mr Pezzullo—Not a formal record of interview in the sense that I described the other two documents.

Senator FAULKNER—Were any other individuals interviewed with a formal record of interview?

Mr Pezzullo—Yes.

Senator FAULKNER—Can you outline for the benefit of the committee who they were, please?

Mr Pezzullo—I just want to think about the naming of officers—

Senator FAULKNER—If the name is in the public arena in this, Mr Pezzullo, I think it is reasonable for you to say so. Otherwise, please identify them by rank or in some other way that does not mean that their name is in the public arena. I think we have accepted that protocol. I certainly accept it and I know that my fellow committee members do.

Mr Pezzullo—I will refer to a relevant note that I have here just to ensure precision. There are formal reinterviews which have resulted in notes for file or records of interview—I distinguish between those in the sense that a note for file is a note subsequently written by the interviewing officer as opposed to a record of an interview, which is more like a *Hansard* type transcript. In that formal sense, there have been nine reinterviews, but we have been rebasing—and I will answer your question in a moment, Senator. I do want to make this precise point: I did say to you that we started from almost a zero base just to make sure that we were not missing anything, so in many cases where we have rung or ascertained further amplifying information from those who had responded to the May survey there are not individual records of interview but we have updated the survey database that was referred to in the previous estimates. That documentation has been shared with the Strategic Operations Division of Defence and they will become the custodians, because my team will obviously go back to our day jobs, as it were. I do not want to mislead you into thinking that we only spoke to nine people, but in terms of formal interviews of some description you asked me whether, where a name has been previously available, I can repeat it—

Senator FAULKNER—In relation to the matters that we have been canvassing—

Mr Pezzullo—I will just check with the minister about whether he is comfortable with that, if the name has been—

Senator Hill—Yes.

Mr Pezzullo—Okay. They are Colonel Kelly, a full colonel in the Australian Army, Major O’Kane, a naval commander, Lieutenant Colonel Paul Muggleton—I will take this on notice in the sense that if my staff think that the name is on the public record they will come and brief me—a lieutenant colonel in the Australian Army, a squadron leader in the Royal Australian Air Force, a group captain in the Royal Australian Air Force—

Senator CHRIS EVANS—Is that the group captain who has been posted in Iraq?

Mr Pezzullo—Yes. There is also a commander in the Royal Australian Navy. I am pretty sure—but my staff may come and correct me—that where I have stated the rank that name is not in the public domain and where I have stated the name that name is in the public domain.

Senator FAULKNER—You headed the interview team with all these people?

Mr Pezzullo—No, just because of the pressure of work. I personally led several of those interviews. I have discussed the Major O’Kane one. There were one or two others that I personally led due to wanting to have some fairly deep ownership of the records et cetera, but otherwise all of the interviews were conducted by staff members internal to my team who were reporting the commentary to me as required and certainly clearing with me—not clearing in the sense that I had attended—and showing me their final notes or records as the case may be.

Senator CHRIS EVANS—Did Major O’Kane have representation at those interviews?

Mr Pezzullo—As I have indicated, the task that I was appointed to do does not have any sort of disciplinary or investigative type—

Senator CHRIS EVANS—I was not asking you that.

Mr Pezzullo—The answer is no.

Senator FAULKNER—Did any of those who had records of interview have legal or other representation?

Mr Pezzullo—I will just make sure that Commodore Smith’s memory is the same as mine but, no, there has been no question in the end of a representative attending at all.

Mr Smith—On this point, if I may, I want to emphasise that we did not give this fact-finding team formal investigative powers. We wanted to find all the facts. We wanted people to help. If you give it investigative or inquisitorial powers then people will tighten up and they will get lawyers. What we wanted to do was get all the facts we could possibly get hold of in the time we had.

Senator FAULKNER—You are saying this might have changed its nature if it were a different type of—

Mr Smith—If it were an investigation that might lead to discipline, yes, it would, and it would not necessarily help us to get the information we wanted.

Senator FAULKNER—Are the press reports I have read that are suggesting Major O’Kane is likely to be posted to Washington—with the Pentagon, actually—true?

Mr Smith—Yes, there was a proposal that he might go on secondment to the Pentagon for a few months, beginning very soon—perhaps about now; I am not exactly sure when—but the CDF and I discussed this and decided it was better that he not go because we needed him to help us with this work. On this occasion, at least, he will not go.

Senator FAULKNER—I see. So the possibility of him being asked to appear before a US congressional inquiry is unlikely to arise, obviously.

Senator Hill—That is a different issue.

Senator FAULKNER—I know it is a different issue but it is something that has also been canvassed in the media. Has that been canvassed with you at all, Mr Smith, or with you, General Cosgrove?

Mr Smith—I have heard that argument—obviously I saw it in the press—but I can assure you that it was not part of the consideration that General Cosgrove and I gave to this matter last week when we addressed it.

Gen. Cosgrove—Similarly, I am aware of the speculation. My discussion with the secretary centred on our need for Major O’Kane to be available here to assist in any or all of these matters.

Senator CHRIS EVANS—Let us go back to where we were before. Mr Pezzullo, I was getting you to take me through that document headed ‘Unclassified situation reports from ADF legal officers’. We discussed the limits of that in the sense of the officers it applied to. I notice that it refers only to situation reports. I want to be clear about this. We had evidence that Major O’Kane had not provided an end of Iraq tour of duty report, which subsequently proved to be not correct. I want to ask the same question of you in terms of the other officers—that is, Muggleton, Kelly and others. I notice that in the definition of this document they would not have been caught by it so I want to ask you directly: were there any other documents provided by any of those other legal officers in addition to situation reports?

Mr Pezzullo—I need to start answering that by saying that one of the officers—the group captain—is still on posting and Colonel Kelly is there for a second time. That is a matter on the public record now. I will be corrected if I am wrong but I do not recall seeing either a Colonel Kelly end of first tour post deployment report or indeed one from Lieutenant Colonel Muggleton. However, as I have just indicated, they were part of our reinterviewing process. It is not too hard to work out that they have knowledge of the CPA interest in establishing and developing the rule of law. They are quite deeply involved in legal policy developments at the CPA level. They were part of that reinterviewing process.

I have a pretty clear memory—my staff will correct me if I am wrong—that they provided other documents that were attached to emails or that went to their time in Iraq. I have a very clear memory of Colonel Kelly. He did a summary for me—I suspect it was done for my purposes but it may have been pre-existing; I will be corrected in a moment—in which he wrote quite eloquently about the CPA focus on developing new institutions—I think the minister and possibly the CDF touched on this prior to the dinner break—and improving the criminal justice system in international legal terms. This is the sovereign power so they are starting to build those institutions. I certainly have seen some summarised reporting from Colonel Kelly to that effect. I will have to check on Colonel Muggleton.

Senator CHRIS EVANS—But you see my point. In terms of the definition of the document provided with the minister’s report, those sorts of documents would not be captured. I am required to ask you separately about those documents because they are not covered in the definition.

Mr Pezzullo—When you say they are not captured, the document tabled in the parliament does have a particular typology to it; it is labelled clearly. But I can give you this assurance and give the Senate this assurance: all the documents that were available to us at the time of the printing of the report and then some supplementary material where it is relevant have been put up in the form of ministerial submissions. So all that material was available to us. The reason why some of these folders are as bulky as I indicated—I will be corrected if I am

wrong on this but, for instance, some of the supplementary material on the CPA's interest in the rule of law is embedded in some of these folders.

Senator CHRIS EVANS—I accept all of that. I am trying to get to what else there is. I know what is on this list; what I want to know is what else there is. The minister will not give us the report so I have got to ask you specific questions about what else may or may not have been provided. All I am pointing out to you is that this report does not cover other categories of documents. It only covers one subset of the lawyers and only covers situation reports. So I have got to ask you independently about those other documents. They may not exist, but that is what I am trying to take you through. I am not clear from what you said whether there were other documents provided by Kelly, Muggleton and any of the others that are not defined as sit rep reports but which are not, if you like, their record of interview with you. Were there other documents forwarded from those officers to Defence or internally that dealt with Iraq prisoner or ICRC issues?

Mr Pezzullo—The answer to that question is yes. I have just been advised that there are no post deployment reports available from Colonels Kelly and Muggleton and the unnamed lieutenant colonel. However, again I stress that our methodology was not to say to people, which might have been an implication that people had in their minds in the May survey but I do not think that is warranted in terms of the typology that is set out in May, but we said, 'The minister is very keen to assemble all the facts connected with detainee issues. Don't think in terms that these are abusive photos—

Senator CHRIS EVANS—I accept all that.

ACTING CHAIR (Senator Ferguson)—Let him answer the question.

Senator CHRIS EVANS—I am happy for him to answer the question.

ACTING CHAIR—He has some more things to say.

Senator CHRIS EVANS—I would rather answers to the questions I asked than going over explanations we have received. I understand what Mr Pezzullo has said. I am conscious of the time.

ACTING CHAIR—I understand, but when you ask him a question you have got to give him a chance.

Senator CHRIS EVANS—What I ask is that people respond to the question.

Senator Hill—You should not cut him off in the middle of his answer.

ACTING CHAIR—Conclude your answer, Mr Pezzullo, if you still have anything to say.

Senator CHRIS EVANS—It just means we are all here longer. I understand what Mr Pezzullo said; it is very clear to me. What I want is the answer to my question.

Mr Pezzullo—Okay. As a consequence of that earlier material that the senator says he appreciates—I am sorry to go over that old ground—because we had said, 'Don't limit yourself to the April abuse,' in the re-interview process not only did we both from the officers concerned but indeed their headquarters and in some cases their services or themselves when we were talking to them they said, 'Oh, look, there is a particular report that I would like to show you.' I have got a very distinct memory of reading a lot of Kelly material, not

necessarily in the sit rep format, which is really about the development of those new Iraqi legal institutions. In other words, it goes back to that metaphor I used earlier of sweeping up things with which people may think is relevant.

Senator CHRIS EVANS—I accept that. Let us tone that down, though. What are we talking about? Kelly provided other reports: what, to Defence? Summaries of the work he was doing? How would you describe what Kelly provided, and was any of that related to prisoners, ICRC, treatment?

Mr Pezzullo—You are asking about the contemporaneous material that goes back to May 2003 or material that in some cases is retrieved off their emails or whatever or indeed created for the purposes of assisting my fact-finding team. In some cases, as I say, I have a memory of Colonel Kelly doing a lot of work—

Senator CHRIS EVANS—I am not asking you what was created in response to your request, because that, if you like, is your record of their interview. We may deal with that separately. I am interested in what material they had generated in the period of your survey that had been circulated that may have dealt with these issues, other than sit rep reports.

Mr Pezzullo—In the context of the period that we are looking at and the number of papers I have had to examine, I would prefer to take that on notice because I do not want to misspeak. I do have a recollection, and my staff will enumerate it as best they can in the time it takes to type it up. I do recall certainly with Kelly and Muggleton contemporaneous material—that is to say, going back to 2003—plus material where they have summarised and synthesised their activities to add to their notes for file and their records of interview. I will try to get that listed as precisely as I can.

Senator CHRIS EVANS—It seems to me that what we need is a table similar to the one you have produced but dealing with all the legal officers and all the information they provided. That seems to be the great hole in this whole presentation. If Kelly, Muggleton and others provided documents that were not sit reps they are not caught in this table. If they wrote a letter to the secretary, for instance—the secretary has looked up suddenly as if to say, ‘What letter?’; I did not mean to scare you, Mr Smith—saying, ‘I am concerned about abuse of prisoners at Abu Ghraib,’ it would not be caught in this table, because it would not meet the definition. What I am saying is that there are other types of materials that, because of the way this report is provided, would not be caught. I want to know what those other materials were. It seems to me a great hole in the presentation that not only are there a group of officers whose reports are not included but also for the officers who are included the table does not include anything but their sit reps.

Senator FAULKNER—And the point to be made here is that it is all in the task force report, the fact-finding task force report of Mr Pezzullo, apparently. But of course once this 61-page report is diluted to the 5½ pages of the ministerial statement and nine telephone books become three very flimsy documents, we miss out. So it comes back to this issue, Minister: will you table, please, with any deletions if they are required because of security classification concerns, the 61-page report of Mr Pezzullo’s fact-finding task force?

Senator Hill—As I said, I will give consideration to that but that is as far as I am prepared to go tonight. As I said before dinner, out of every piece of information you can extract

another series of questions and this could go on forever; we could have another week of the estimates committee—we have not got to estimates, but another week on this particular issue. What we have tried to address is the issue of knowledge of ADF personnel of detention issues, in particular as they relate to the Red Cross, and information that was provided back to Australia.

Senator CHRIS EVANS—Demonstrably you have not, though.

Senator Hill—I believe we have done that.

Senator CHRIS EVANS—O’Kane’s stuff is not in it.

ACTING CHAIR—Senator Evans, let the minister finish his response and then you can ask a question.

Senator Hill—You have got to take the statement, you have got to take the annexes to the statement, you have got to take the answers to the questions that were on notice and you have got to take all of the evidence that has been provided to this committee by both Defence and the Department of Foreign Affairs and Trade.

Senator CHRIS EVANS—It is hardly consistent, though, is it?

Senator Hill—It is consistent.

Senator CHRIS EVANS—No, the story is—

ACTING CHAIR—Senator Evans!

Senator Hill—And you have a mass of information. One thing we did in the statement yesterday was to try to simplify that mass of information. What Senator Evans seems to be arguing for now is to head in the other direction, for some reason that I do not understand.

Senator FAULKNER—You understand.

Senator Hill—There is no attempt to hide anything here. As I have said in the—

Senator FAULKNER—Yes, you are hiding the report to start off with.

ACTING CHAIR—Let the minister finish his answer.

Senator Hill—The advices I receive are my business. What we are talking about is the information that came back to Australia in relation to the Red Cross and, in particular, what was known in relation to the October—

Senator FAULKNER—This is not an answer to the question.

Senator Hill—working party and the February report.

Senator FAULKNER—Except the O’Kane stuff.

Senator Hill—The O’Kane stuff has been—I was going to say ‘done to death’—dealt with exhaustively within this committee.

Senator FAULKNER—And it is in Mr Pezzullo’s report.

Senator Hill—Yes, he has gone back and interviewed Mr O’Kane again—

Senator FAULKNER—We want to know what he said.

ACTING CHAIR—Order! If we are going to have this run properly you cannot have one person speaking and someone interjecting all the time. It simply does not work. Questions are asked and responses are given. When the response has finished—

Senator FAULKNER—Yes, that is right: questions are asked and answers are given. But we are not getting answers to the questions.

Senator PAYNE—Now you are interrupting the chair as well.

ACTING CHAIR—When the minister has finished his response you can ask a further question, but let him finish.

Senator FAULKNER—Good. I am seeking the call as soon as he has finished.

ACTING CHAIR—I will let you have the call.

Mr Pezzullo—Would it assist the committee on a factual basis—I have just have a conversation with the minister—if I indicated that it is certainly my judgment, and the judgment that I gave to the secretary and the CDF in terms of giving them a report that they could provide to the minister according to the deadline, that the situation reports from the legal officers embedded in the CPA were the most important or the richest vein, if you want to use that sort of term, of reporting on detention concerns and the reporting on international NGO type issues. I did make reference earlier to seeing other material. I do recall—and my staff will come and correct me if I am wrong—that attached to these sit reps or material that the colonels have since generated to me they have also sent me material on helping develop new financial governance arrangements, on interfacing with the economic and other policy advisers within the CPA, which is the de facto government there, on the rule of law and on improvement to detention systems in the civil stream, not the military stream necessarily.

But in terms of the judgment that I have made about the material—and you do not just press a button and dump a load of documents up to government, you put them in some kind of package or structure, which I endeavoured to describe to the best of my ability before—the situation reports are central. You see that from the references that are included in the tabled statement. They do make very good reading. I said earlier that it is a large folder simply because, for completeness sake, we have put everything else in. I will get the staff to check but I think we have included all those annexes or attachments to emails where they talk about new Iraqi currency and issues like that. That is to provide the minister with the full picture. But where there are references in there to Amnesty International, to the concerns of the International Committee of the Red Cross, to the late Sergio de Mello's concerns, we have picked those up and provided those through this tabular form.

Senator CHRIS EVANS—But what can—

ACTING CHAIR—I thought Senator Faulkner wanted the next question.

Senator CHRIS EVANS—Can I just finish this. That is as far as it goes, though, Mr Pezzullo: I know what you have given me in that table, and we have described that, but you have admitted now that there is other material which has not been included which would not be described as a sit rep.

Mr Pezzullo—I am not sure how to respond to the characterisation of 'admitted'. I am not sure that I was denying anything—

Senator CHRIS EVANS—I am not suggesting you have.

Senator PAYNE—You used the word ‘admitted’.

Senator CHRIS EVANS—Sorry, we have established there is other material.

Senator Hill—If there is a record of an interview that is other material, but the relevance is: does it add anything to what has been put on the public record? I do not believe it does. I think there is a fair and accurate picture on the public record of what this small handful of ADF personnel were doing, and basically the picture that is painted is that they were being helpful and constructive in relation to detainee issues and particularly helpful to the ICRC in facilitating visits and ensuring that the ICRC got to Mr Bremer and to the occupying powers. You can flesh it out as much as you like, and certainly in a detailed interview with the officer matters get fleshed out, but I do not think it adds in substance to what has already been said.

Senator FAULKNER—Mr Pezzullo, was your task force asked to provide a draft ministerial statement for Senator Hill to deliver to the parliament?

Mr Pezzullo—We were not so asked.

Senator FAULKNER—Did you provide such a draft statement?

Mr Pezzullo—We were not asked.

Senator FAULKNER—So you didn’t?

Mr Pezzullo—No, because we were not asked, so therefore we did not do it.

Senator FAULKNER—Have you seen the three documents that Minister Hill tabled in the parliament?

Mr Pezzullo—Have I seen them? I have them in front of me.

Senator FAULKNER—Okay—the three documents that Minister Hill tabled in the parliament?

Mr Pezzullo—Yes, I have three documents, each of which has got the relevant tabled date stamp on them.

Senator FAULKNER—Were they created by your task force?

Mr Pezzullo—Drafts were created by the task force and worked on in an interactive process between me as the single point of contact and the relevant adviser working with Minister Hill.

Senator FAULKNER—Who tasked the—

Senator Hill—Can I just explain that—

Senator FAULKNER—You’d better.

Senator Hill—What do you mean I’d better?

ACTING CHAIR—Senator Faulkner, there is no point in threatening the minister; just let him answer.

Senator Hill—I was asked by the Prime Minister to provide various information—a chronology, what was passed back to Australia and the like—and either side of the structure

for those, including the structure for the annexes, because I believed that painted the picture that was being asked of me. I also think it paints an accurate picture of Australian knowledge of these events and the activities of the relevant personnel.

ACTING CHAIR—Senator Brown has a bill that he has to speak to, so I would like to give him the call now. But I understand, Minister, that you have some additional responses that you wanted to provide in relation to the Amnesty paper; is that right? Or somebody had—

Senator Hill—Yes, I—

Senator FAULKNER—Before you do that, we try to be reasonable in here, as you know, about the call. I know Senator Brown does have an obligation in the chamber, and we will try to fit in with that. But I do want to return to these very important issues about tasking, terms of reference, how these tables were created and a range of other issues in relation to these processes. I do not intend—

ACTING CHAIR—No, that is fair enough.

Senator FAULKNER—to not follow those important issues through. But, because Senator Brown has a bill in the committee stage, he needs to attend in the chamber—that is reasonable, and I am happy to cede the call to him.

ACTING CHAIR—Minister Hill, you said you had additional information you wanted to provide.

Senator Hill—Senator Brown asked me if I could put on the record the messages, in effect, that were sent back in relation to Amnesty International. The first one was the one of 20 June 2003, and it was: ‘On the humanitarian side, on 19 June the head of Amnesty International, Ms Irene Khan, was highly critical of the coalition’s efforts on human rights in Iraq. Ms Kahn stated: “The occupying powers walk in with a swagger, very keen, ready to protect oil wells, but they seem unprepared to protect people.” The most important issues highlighted by Ms Khan were law and order, security across the country, reprisal killings, political tensions, the lack of progress on rebuilding the justice system. Ambassador Bremer announced’—and the way I read it, this was in response—‘the creation of the Judicial Review Committee and Central Criminal Court’—this was on 18 June, so it was actually one day before—‘and says and the coalition’s detention and ill-treatment of prisoners.’ I think there are some words missing there. It must have been a response to—

Gen. Cosgrove—That was interpolated into the quote from Ms Khan.

Senator Hill—I do not understand that, but anyway. The second one was on 1 July. The way I read it, that was something Ms Khan must have said publicly. On 1 July it said: ‘On the humanitarian side, on 30 June Amnesty International stated that the conditions of detained Iraqis held by the coalition in Iraq “may amount to cruel, inhuman or degrading treatment or punishment banned by international law”. Amnesty called on the coalition to provide hundreds of Iraqis detained since the beginning of the occupation the right to meet families and lawyers and have a judicial review of their detention. The media release stated that CPA lawyers had stated that conditions would rapidly improve and every detainee would now receive access to lawyers within 72 hours.’ So both instances are referring to something that

Amnesty have said and the responses that were made by the coalition authority. In both instances it seems to have been a positive response.

Senator BROWN—The point is that cruel and inhuman treatment was being cited by Amnesty International in those reports back to you in June and July of last year. Yet you told this committee on 31 May this year:

My recollection is that the first time that I knew about it—

that is, that Amnesty report—

was when it was referred to on about 11 May—

that is, 11 May this year.

It might have even been you, Senator—

and you are referring to me—

who raised the Amnesty report.

We now know that you, in fact, had it drawn to your attention back in June and July of last year. We also now know that that report cited cruel and inhuman treatment. Is it not the case, had you taken action through the coalition at that time, based on those concerns about cruel and inhuman treatment for prisoners in custody, that that may well have stopped the events in October, November and December in Abu Ghraib? Had you taken seriously Ms Khan's report and the Amnesty International report released in full in July last year, that may well have stopped the egregious, criminal and sadistic abuse of prisoners which took place in Abu Ghraib a few months later.

Senator Hill—Senator Brown is failing to recognise what I said, and that is that Amnesty was making these public statements and the Coalition Provisional Authority was announcing changes in an attempt to address Amnesty's concerns. As I said, if you look at what Amnesty was complaining about—problems of law and order—that was very much the state of the country last year. Regrettably, it is still—

Senator BROWN—Can I just say that it is the treatment—

ACTING CHAIR—Senator Brown!

Senator Hill—I listened to you.

ACTING CHAIR—I am sorry, Senator Brown, when you ask a question, the minister is entitled to—

Senator BROWN—I did not ask a question about this matter.

ACTING CHAIR—I do not care. He is entitled to answer in any way that he sees fit and then you can ask another question when he is finished.

Senator BROWN—It will take longer.

ACTING CHAIR—It will take longer, but let him finish.

Senator Hill—Law and order issues, security across the country, reprisal killings and political tensions were part and parcel of the environment, post the major combat phase, although the Amnesty report may well have been looking as well at the major combat phase.

In relation to lack of progress and rebuilding the justice system, it is a big job to build a new justice system. Considerable progress has been made now. As I said, the responses were positive. Mr Bremer announced the creation of the judicial review committee and the central criminal court. The CPA said that its lawyers had stated that conditions would rapidly improve—this was in relation to Amnesty’s concern that access was not being given. It said that every detainee from now will receive access to lawyers within 72 hours. The point is that Amnesty went public with expressions of concern, and the relevant authorities in Iraq responded positively to those concerns.

Senator BROWN—General Cosgrove, when did you first become aware of the Amnesty International report?

Gen. Cosgrove—I was not aware of the report as such— simply of the report from Iraq, of the statement by Ms Khan which the minister has just read into the record.

Senator BROWN—Which included the citing of cruel and inhuman treatment of detainees?

Gen. Cosgrove—Yes, the report as the minister has read in.

Senator BROWN—Did you take any action on that?

Gen. Cosgrove—I reported it. In one case, it is a statement by Ms Khan and, in the other report, Amnesty International stated it.

Senator BROWN—Did you report this to the minister?

Gen. Cosgrove—Amongst a comprehensive review of the security position for the Australians in Iraq.

Senator BROWN—Was that reported to the Prime Minister’s office as well?

Gen. Cosgrove—You would have to ask somebody else.

Senator BROWN—Your department did not report it to the Prime Minister’s office?

Gen. Cosgrove—We have a minister.

Senator BROWN—I am asking you that question though.

Gen. Cosgrove—You are asking me if we reported directly to the Prime Minister?

Senator BROWN—Yes.

Gen. Cosgrove—We do not report directly to the Prime Minister.

Senator BROWN—Or to his office?

Gen. Cosgrove—We do not report directly to the Prime Minister and, unless it has been arranged for other reasons, we do not report to his private office or the Department of the Prime Minister and Cabinet.

Senator BROWN—Mr Smith, do you know if a report went to the Prime Minister’ office?

Mr Smith—I do not know.

Senator Hill—We know the Prime Minister got sent the Amnesty report in May of this year.

Senator BROWN—Was the Prime Minister's office alerted to the Amnesty report citing cruel and inhuman treatment in June-July last year?

Senator Hill—I do not know that, except that it was a public document.

Senator BROWN—Can you establish whether the Prime Minister's office or department was acquainted with that report in June-July last year, as you were?

Senator Hill—I will take it on notice, if that is what you want me to do?

Senator BROWN—Yes, I do. I want to come to the question W2 regarding Major General Miller, who you will recollect went from Guantanamo Bay, where he instituted the rules which allowed for abuse of prisoners there, to Iraq where he was asked to draw up a so-called code of responsibility. In answer to my question as to whether there were any meetings between Australian staff and Major General Miller, the response is that 'a group captain legal officer working in the Coalition Provisional Authority had occasional email contact with Major General Miller'. What was the nature and content of that email contact?

Mr Pezzullo—I would want to refresh my memory about the exact nature of those emails. As you can appreciate, I have read a fair amount of documents sifting through matters that are relevant. In terms of the group captain's contact, my recollection—and I have staff who can quickly turn around a response especially to the extent that I might be inaccurate—is that Major General Miller, at that stage, has overall responsibility for detention in Iraq. There therefore is a natural linkage that needs to be created between Major General Miller, who works, if you like, under the military domain, and the CPA which is, in effect, the government of Iraq. Notwithstanding the fact that he wears a military uniform, the group captain is there as a legal adviser/military to the civil administration of Iraq.

Senator BROWN—The Coalition Provisional Authority?

Mr Pezzullo—That is right.

Senator BROWN—I would be interested to know what that email contact was and why the Coalition Provisional Authority was making contact with Major General Miller when his task it seems was to establish the interrogation rules to be employed in Iraq.

Mr Pezzullo—I will get the timeline checked by the staff who are deeply familiar with the minutiae of the chronology. It might be helpful if I elaborate on a couple of issues in terms of the relationship between CJTF7 and the CPA. In this environment, leaving aside the arguments around the world about the justification of the conflict as such, the internationally recognised position—I am not going into the merits of the nature of the entity that exists post 1 May—is that there is no government in Iraq post the cessation of hostilities, so the CPA fulfils that civil role. I am sure you understand that.

Senator BROWN—I do.

Mr Pezzullo—In a sense, the CJTF7, which is a core level headquarters in the US Army and, for coalition purposes, is then augmented by multinational participants, is, if you like, the military arm or force which is in occupation of the country. Like any other state, there is a natural relationship between, if you like, the government of the state—in this case, headed up by a civil administrator—and its military forces—in this case, headed up by Lieutenant General Sanchez. I am sorry about the long detour. As to Major General Miller's role—and I

will get this checked if it is wrong—within the military forces, in the same way as a major general would be subordinate to the CDF here and would be executing tasks relevant to the CDF's directions, Major General Miller operates the military control detention system. So your reference to the establishment of an interrogation is a narrow one as I understand his role. His role—and I will have to clarify the timeline—some time late in 2003 was, in effect, to run the military detention system.

Senator BROWN—Yes, but I think you will find—and you may establish this for me, Mr Pezzullo—that Major General Miller was specifically asked by the highest levels of the Pentagon to go from Guantanamo Bay to Iraq to look at the overseeing of prisoners there with a particular view to the interrogation of prisoners and, amongst other things, to establish there a code of conduct or responsibility for prisoners which included such things as, with permission, the interrogation of prisoners using guard dogs. I wonder if you would take on notice this next question which comes out of earlier questioning. At what time in any of these communications was the set of guidelines established by Major General Miller conveyed to or through Australian personnel in Iraq—when was that conveyed and was that conveyed to the CPA and/or Australian authorities in Iraq or back home here in Australia?

Mr Pezzullo—I need to ask for clarification. I am familiar with open source reporting about the purported role or otherwise of Major General Miller and I have fairly deeply read into that as part of situational awareness since my appointment on 2 June. So I think I understand the public domain information that you are referring to and the public domain information about his movement from the US facility on the island of Cuba to Iraq. You make mention—and maybe I have missed a thread here—to guidelines that he was responsible for promulgating.

Senator BROWN—Yes, I had them before the committee on Monday, 31 May and Tuesday, 1 June. I can provide you with those.

Mr Pezzullo—I have seen those. I was just trying to get clarity around what it was that you were asking me about. On those two days at estimates I must admit that I was in attendance and briefed to speak to other matters. But I do recall you with that material. I have since read the *Hansard* and, as I recall it, we had an open source version of the document. I think it was called interrogation ROEs. Is that the document you mean?

Senator BROWN—Yes.

Mr Pezzullo—So, having narrowed it down—and I am sorry to be laborious about it—can I ask you to tell me, if you do not mind, what your question was about that document, the ROEs?

Senator BROWN—There are two questions. What role did Australian officers have in promulgating or making up that document or in informing the CPA or Australian authorities about it?

Senator Hill—I thought that the evidence we had had on previous occasions was that Australian officers had no involvement in that particular matter.

Mr Pezzullo—I think I can answer that now. Having conducted the fact finding process and—as I think I said to you, Senator Evans—we went very particularly through the *Hansard*

to make sure that there was no evidence of incorrect advice to government or incorrect statements by government. It remains the case that no Australian officer, no ADF officer, was involved in the development of the documents that are in the public domain. I have no access to those documents other than what I think is on the Internet. They might have come out through US congressional proceedings. No ADF officer to my knowledge—on the basis of all the methodology and all the work that has been described this evening by the minister, the secretary, the CDF and I—was involved in the development of those so-called ROEs.

Senator BROWN—Thank you. I want to move on. I have an answer here that cites that, besides a group captain legal officer, a commander working in the US headquarters, a colonel and a brigadier in the Iraq Survey Group had contact with Major General Miller in one way or another. I wonder if you could supply information on the purpose and the nature of the contact made with Major General Miller on those occasions. I will not ask you to do that right now, but you might take that on notice and come back on that.

Mr Pezzullo—If the minister is happy to allow me to take on notice—

Senator Hill—They should know the answers.

Mr Pezzullo—I can give you a generic answer in connection with each of those matters, and it is referable back to the minister's statement in the parliament. No ADF officers, no Australian officers, in those connections or discussions with Major General Miller, were involved in the development of US interrogation procedures which culminated in the public domain reporting that I have seen as ROEs. So all of those discussions are about things other than the ROEs.

Senator BROWN—And other than prisoner care and control and/or interrogation?

Mr Pezzullo—No, all of those contacts are not relevant to the development of the specific procedures and so-called techniques that are in the ROE.

Senator BROWN—Or to do with prisoner maintenance, control and conditions?

Senator Hill—That is a different question.

Senator BROWN—Yes. I am asking that question.

Senator CHRIS EVANS—Senator Brown is asking a second question.

Mr Pezzullo—I will take it on notice, then.

Gen. Cosgrove—Can I offer a clarification?

Senator BROWN—Please do.

Gen. Cosgrove—I said that we would not normally send these Operation Falconer situation updates to anyone other than the minister. We did during the war phase send the updates to a number of government departments. I have just had a look at the documents here. We sent them to a number of government departments, but not to the Prime Minister or his private office.

Senator BROWN—Thank you.

Senator CHRIS EVANS—Which departments were they sent to?

Gen. Cosgrove—I just had a quick glance. They were sent to the Department of the Prime Minister and Cabinet, foreign affairs, ONA—

Senator CHRIS EVANS—So it went to PM&C—not to the Prime Minister’s office?

Gen. Cosgrove—That is correct.

Senator BROWN—Yes, I did ask about the Prime Minister’s department.

Gen. Cosgrove—And I said that we would not normally. But we did have an issue during the intensive phase of our operations in Iraq of sharing the information, with the agreement of the Minister for Defence.

Senator BROWN—When did that phase end?

Gen. Cosgrove—Around that time. That question has not cropped up before. Around that time we lapsed back to less frequent reporting and got back to ordinary distribution.

Senator BROWN—Did the notification about the Amnesty report go to the Prime Minister’s office?

Gen. Cosgrove—I have answered that one.

Senator Hill—I said I would take the situation update on notice.

Senator BROWN—And the ministerial—

Senator CHRIS EVANS—I thought General Cosgrove was just being helpful and said they had in fact gone to PM&C.

Gen. Cosgrove—I did not want to mislead Senator Brown by saying that we would normally send these to the minister. That part is correct. I said unless there were special arrangements, which on some of these updates was the case, where we shared them with other departments in the interests of getting the information around.

Senator CHRIS EVANS—But are you now saying the updates that Senator Brown referred to did go to PM&C?

Gen. Cosgrove—Yes, I am.

Senator BROWN—In question W6, the response is that, in their capacity as intelligence officers in the coalition military headquarters, ADF officers were not involved in prisoner interrogations or detention. Were they involved in those things in any other capacity?

Senator Hill—Sorry, what was the question?

Senator BROWN—It is part (c). The answer is that in their capacity as intelligence officers ADF officers were not involved in prisoner interrogations or detention. I was asking: was there any other capacity in which they were involved in prisoner interrogations or detention?

Senator Hill—No, they were not. I do not understand the question.

Senator BROWN—I wonder why the qualification of ‘in their capacity as’.

Senator Hill—Where is that?

Senator BROWN—Part (c)—the last sentence on page 4.

Senator Hill—I think the answer to that is no. That is just talking about the fact that they were working with the CPA, isn't it?

Mr Pezzullo—These officers, Minister, as for the previous part of the question, part (b), are Australian intelligence officers embedded in CJTF7. That relates to the question that you have asked, Senator Brown, at part (b). To my knowledge—and I have checked this pretty thoroughly—there are no intelligence officers in the CPA in the sense that we have intelligence officers embedded or individually attributed to the CJTF7.

Senator BROWN—Question 12 on page 6 says that questions about US documents and US targeting policy of civilians are a matter for the United States government. Isn't that really important for the Australian government to establish so that we do not get a rerun of this situation where the Australian government denies responsibility or knowledge for abuse of prisoners? Ought it not be the Australian government's very determined role to ensure it does know what the US targeting policy on civilian targets in Iraq is?

Senator Hill—We were operating in a coalition. As we have discussed before, the coalition partners are subject to different legal obligations. Because of that, you would expect some differences in rules of engagement and some differences in targeting directives. But obviously you would not be in a coalition if you believed that the targeting directive of another party was inhumane, for example.

Senator BROWN—But we know, don't we, that Australian pilots very early in the piece refused to target some civilian targets that the US was targeting? In other words, their policy allows for broader targeting of civilian targets than ours does. Surely, as part of the coalition, we need to know what their policy is.

Senator Hill—Nobody targets civilian property as civilian property. The issue becomes: when it is used for military purposes. But, yes, obviously we would have to be confident that the targeting directives of our coalition ally accords to our values, but if we were not confident of that we would not be in the coalition.

Senator BROWN—So do you know that?

Senator Hill—I am confident of that. I guess this is my different approach to—

Senator BROWN—Are you informed on what the US civilian targeting policy is?

Senator Hill—To say otherwise is hugely offensive to the United States. The United States accords to a set of values that are very similar to our own.

Senator BROWN—And which have just been grievously breached in the prisons under United States control.

Senator Hill—There was criminal abuse and the criminals have been brought to justice, and promptly too, it seems. What you said about our pilots behaving differently was a bit misleading as well, because the instances I can recall were in reference to the cautionary approach that our pilots take when there is any uncertainty about targets, but General Cosgrove would be better equipped to explain that than me.

Gen. Cosgrove—Just to amplify the minister's point, which I agree with, the issue was overwhelmingly about when an Australian pilot was unable to or declined to engage a target.

It was either through uncertainty in identifying the target or through conditions which made hitting the target less than guaranteed. In that sense, it should not be seen that these were targets which others would, under the same circumstances, have engaged willy-nilly but we would not. There were, in the cases I know of, conditions at the time which made it prudent for the pilot not to engage the target—an outcome I obviously thoroughly endorse.

Senator BROWN—I ask about the letter of 27 August 2003, which Major O’Kane drafted, relating to the policy for the interrogation of prisoners. This is just before Major General Miller arrived. The response here is:

No. Defence is not in a position to release, without consultation, on its own authority documents which are the property of another State.

Will you ask the United States if it will agree to the release of that document to this committee? This is question 17, on page 8.

Senator Hill—This was, in effect, the property of the US Army, wasn’t it? We can ask. We will communicate the request that this committee has made and see what the response is.

Senator BROWN—Thank you. Question 18 refers to the *Australian* article about an ADF member on exchange in Fallujah. What was the ADF’s role in that story appearing in the *Australian*? Was there some need for permission for that story to appear or for the officer involved to give that story to the news outlet involved?

Gen. Cosgrove—No. I could say that there was no ADF involvement in the writing or release of the story that I know about. If you would like, we could check to see whether we had any foreknowledge that there was to be a story.

Senator BROWN—Thank you very much. Thank you, General, I would like that. Again—and just finally—over here on the last page, in response to questions about Iraqi prisoners who were captured west of Baghdad, the answer is:

On 11 April 2004, Australian special forces manning a checkpoint on a main supply route provided security so that a member of the US forces could effect the capture of 66 Iraqis, as a representative of the detaining power. The prisoners of war were transported to a US detention centre by UK helicopters.

The logic here is that the Australian special forces actually effected the capture of the 66 Iraqis, with a member of the US forces being present. Isn’t that logical?

Gen. Cosgrove—Yes, but not especially remarkable, in that you should understand that these were people in a bus—unarmed—and all the special forces, including the US representative, were armed. So it is unremarkable that the 66 Iraqis were able to be captured by a US soldier—actually a member of the US Air Force—with the assistance of some of our chaps.

Senator BROWN—Let me put it this way, General: the single US personnel member would not have been there without the Australian contingent.

Gen. Cosgrove—It was a combined operation.

Senator BROWN—Again, whereas the Australians may well have been there as a unit, the single US person would not have been there without the Australians being present.

Gen. Cosgrove—It was a combined operation, under the overall command in that desert area of a US special forces senior commander, who was, in total, commanding the troops from the US, the UK and Australia—and the Australian force was a combined force, incorporating US servicemen as part of that force.

Senator CHRIS EVANS—How many US servicemen were part of that force?

Gen. Cosgrove—Four.

Senator CHRIS EVANS—How many were there on that occasion?

Gen. Cosgrove—There was one on that occasion, and we have never specified the number of ADF people, but it was not a huge number.

Senator BROWN—Who was the senior officer at the site?

Gen. Cosgrove—I do not have that detail. We had that discussion at the last estimates—on the issue of rank—and my answer in the *Hansard* I leave to stand.

Senator BROWN—It wasn't the American?

Gen. Cosgrove—No.

Senator CHRIS EVANS—What was the American's role with that unit?

Gen. Cosgrove—He was a radio operator there to assist in the calling in of combat aircraft.

Senator BROWN—Just finally, the next question—my same request, General, if you would. This is about the letter from General Franks to Admiral Barrie, former Chief of the Australian Defence Force, being provided to the committee. The answer is, 'No, Defence is not in a position to release, without consultation, on its own authority, documents which are the property of another state—the United States.' I ask: will you ask the United States for permission to release that document to the committee?

Senator Hill—The letter really has to be in the context of a series of exchanges. It would not be normal practice to put that type of material on the public record, so I would prefer to take that one on notice. If I consider it is proper to ask the United States, then I am prepared to do so, but I want to take some legal advice on that.

Senator BROWN—And would you come back to the committee with reasons, if it is not appropriate?

Senator Hill—I will give a response, with reasons.

Senator BROWN—Thank you.

Proceedings suspended from 9.14 p.m. to 9.23 p.m.

Senator FAULKNER—I asked you, Mr Pezzullo, whether you had terms of reference for your task force.

Mr Pezzullo—Yes.

Senator FAULKNER—Could the terms of reference for the task force—and I am sure the minister will not mind this—be tabled? Surely there is no reason why the terms of reference—

Senator Hill—No, it is the use of the expression ‘terms of reference’, because when the secretary asked Mr Pezzullo to do the job he did not refer to terms of reference but asked him to do a series of things and then Mr Pezzullo has reduced that to another one-page document which he calls terms of reference. But it is the secretary’s letter and it is up to the secretary, that if he is happy that his letter be tabled—

Senator FAULKNER—Would you be happy, Mr Smith, for that letter to be tabled?

Mr Smith—I am happy with that.

Senator FAULKNER—Thank you very much. I appreciate that. They provided, if you like, the written instructions for Mr Pezzullo’s task force.

Mr Smith—This one has got some scribbling on it.

Senator FAULKNER—It is not urgent. If it could be provided either with scribbles or without scribbles that is fine.

Senator CHRIS EVANS—Or cartoon likenesses of Senator Faulkner.

Mr Smith—None of that, but I would not like to white anything out.

Senator CHRIS EVANS—Not anything additional.

Senator Hill—It would not help the conspiracy theorists.

Senator FAULKNER—If there are cartoon likenesses of me, feel free to white them out. You have indicated to us, Mr Pezzullo, that you were the single point of contact with the minister’s office for your task force. That is correct, isn’t it?

Mr Pezzullo—Yes. On occasions I would delegate to key members of staff. Once I had agreed with the relevant adviser in the minister’s office, I would say, ‘This officer on my team will send you an email,’ or whatever. But the governance, if you like, of the relationship, given the time pressures, the amount of material, I decided and the minister’s relevant adviser indicated to me by way of an email who their conduit would be, and I am pretty firm on this, I think on all occasions, telephonic and email contact, we stuck to it.

Senator FAULKNER—What was the extent of the minister’s office involvement in the fact-finding process?

Mr Pezzullo—In the period up to 11 June, which was the deadline set by the secretary and CDF in their, if you like, letter of appointment which, as the minister has indicated, I took all the action tasks and state as my TORs for ease of reference, there was to my pretty clear recollection—I can get this checked—no substantive involvement with the minister’s staff at all. In fact, I remember having an email exchange, which can all be recovered, whereby we set the ground rules. In fact, from memory, the relevant staff member, whose name is not in the public domain so there is no need to make reference to that, indicated, ‘If there is anything you need from us as a ministerial office you are to come through me and one other adviser.’ I acknowledged that by way of return email. Then in advance of the 11th my memory is that, other than some updates directly with the minister as to the state of the work, there was no interaction at all. That is to the best of my recollection.

Senator FAULKNER—Sure. Thank you for that. You have indicated to the committee that you have got a 61-page report including annexures and nine ringbinder folders each the

size of the Sydney telephone book of supporting documentation to your report. What I wanted to be clear on is this. You told the committee earlier that you were aware of the three unclassified documents that the minister tabled when he made his statement in the Senate on Wednesday of this week. Could you indicate whether those documents formed part of your original report and supporting documentation or whether they were created as a result of a direction from the minister's office?

Mr Pezzullo—If I can, I will answer by way of a preamble. Since the coffee break, I have got a note about the page numbering. Because of the way I have structured the report—and structuring I am solely responsible for—some of the folder material technically counts as the annexes and, if you like, part of the main report. So what I would like to do, with your indulgence, Senator, is take on notice the exact page numbering issue. I will get that cleared up overnight. It sounds a bit trivial, and I accept that.

Senator FAULKNER—I am just using your previous evidence of 61 pages including annexures.

Mr Pezzullo—Indeed, and that is the page count of what I have in front of me.

Senator FAULKNER—It looks pretty solid.

Mr Pezzullo—But I do now indicate—

Senator FAULKNER—If that is the page count, that is the page count.

Mr Pezzullo—Indeed, but I have been well advised to focus on each of the words in our exchange.

Senator FAULKNER—I am sure you can count to 61. I have every confidence in you.

Mr Pezzullo—There are at least 61. What I am now indicating to you is that technically some of the folders form part of the chapter structure. So I will take that away, I will get it cleaned up overnight and we will take that on notice.

Senator FAULKNER—What you are saying now is that it is a minimum of 61 pages?

ACTING CHAIR—Senator Faulkner, how about letting Mr Pezzullo finish his answers? It is a free-for-all.

Mr Pezzullo—I do not want to leave an error on the evidence, Mr Acting Chair. If I may take that on notice, I will come back to you with the page count. Sorry for that detour. I apologise, Senator. In terms of the three attachments that were tabled by the minister in conjunction with the statement that he made yesterday to the Senate, you asked me whether they were created, as I heard you, at the direction—I think that was the phrase you used—of the minister's office. I would not use the term 'direction'. They were created through discussion with the relevant contact officer in the minister's office. I have every confidence that he would discuss it with the minister, and I am presuming—

Senator Hill—I decided what should be included in the statement, because I was meeting the request of the Prime Minister. Certainly the department, through the material that they gathered, assisted in providing the detail.

Senator FAULKNER—But it was the initiative of the minister or the minister's office for these three tables to be created: is that right, Mr Pezzullo? It was not your task force's initiative?

Mr Pezzullo—I think the minister has answered that question.

Senator Hill—It was my decision to do it that way, because I have to interpret the Prime Minister's request.

Senator FAULKNER—So you tasked Mr Pezzullo to do it?

ACTING CHAIR—Senator Faulkner, you are at it again. Just let the minister finish.

Senator Hill—I cannot expect the department to do that. I decided that that best met the Prime Minister's request in that form. Obviously, for example, I do not have the detail on every ADF officer who has been embedded in coalition operations during the Iraq conflict, so all of that data has to be provided by the department.

Senator FAULKNER—When did you task Mr Pezzullo's task force, the fact-finding task force, to create those tables?

Senator Hill—To provide the detail?

Senator FAULKNER—Did they create the tables? They did the work, didn't they?

Senator Hill—They filled in the details—and that is what I said—but at my request. I decided, and already Senator Evans has criticised it—

Senator FAULKNER—I know that.

Senator Hill—but that is to be expected. But I—

Senator FAULKNER—When did you make the request?

Senator Hill—thought that that form best met the Prime Minister's request, and that work was done at the beginning of this week.

Senator FAULKNER—When did you make the request of Mr Pezzullo's task force—to provide that tabulation? I think we are going to learn why we did not have this statement on Tuesday. Could we find this fact?

Senator Hill—Tuesday night.

Senator FAULKNER—Thank you. When did you complete your report, Mr Pezzullo?

Mr Pezzullo—The report was presented to the secretary and CDF by the appropriate deadline of, as I think I have already said in evidence, Friday, 11 June.

Senator FAULKNER—Friday, 11 June?

Mr Pezzullo—Yes and, if I could just finish, then some supplementary material that was not yet assessed by me had been drafted by the team. It had legal complexity attached to it, and I am not legally qualified. I decided to hold that—I think into the Saturday, from memory. That was my decision. Then there was a specific folder which I judged to have particular sensitivity because, as I have already said in evidence, it related to transcripts, records of interview and notes for file. I wanted to get them absolutely pristine. My recollection—and it has been a fair pace in these last few days, but there are email tracks on most of this stuff—is

that that was prepared on the Saturday and, I think, from memory, delivered on the Sunday. They are all under cover of min sub, so there will be a manifest track of all that.

Senator FAULKNER—So, of course, Senator Hill, you had all this material, but after this report was provided by the deadline set on Friday, 11 June you decided, on Tuesday of this week, that you would have created, to support your 5½-page statement to the Senate, three special tables that suited your purpose but were not part of Mr Pezzullo's report?

Senator Hill—The content is within Mr Pezzullo's report—although I am not sure about the list of embedded people. Was that in—

Senator FAULKNER—We have just heard that it was not in Mr Pezzullo's report.

Mr Pezzullo—The list of embedded personnel which forms one of the documents that has been tabled was in existence over the weekend but it was in a classified form, because I was uncomfortable about some of the descriptors, because they might go to intelligence related techniques, methods and procedures. It was my judgment to hold that and, from memory, I worked on the declassification of that with relevant officers, and ultimately the CDF, the secretary and I had a look at it and were comfortable with it. We know there is no classified information in there.

Senator Hill—You see, there were two different tasks. One was a task set for Mr Pezzullo by the secretary, which resulted in a brief to me, which people have been referring to. That was basically an information gathering and collating exercise. The second task, which was one that was given to me by the Prime Minister, was to inform the Senate of a number of different matters, as specified by the Prime Minister. I had to interpret that and satisfy myself that the statement that I was going to make—what I did was add to the questions that I had answered on 11 May—met the Prime Minister's requirements. So there is an element of overlap in that regard.

Senator FAULKNER—But anyway the point is, the tables—

Senator Hill—So I continued to work on the statement on the Tuesday, and on Tuesday night I had further discussions with the department and requested further information to enable completion of the annexes.

Senator CHRIS EVANS—By annexes you mean the tabled—

Senator Hill—Right.

Senator CHRIS EVANS—Sorry, we have used the word 'annexes' in a different context before. I just wanted to be clear.

Senator FAULKNER—You are talking about the three tabled documents.

Senator Hill—The three tabled documents, yes.

Senator FAULKNER—But you can assure us that the three tabled documents were created in totality in Defence?

Senator Hill—No. I said that Defence provides the data but the documents are my documents.

Senator FAULKNER—Were those tables developed in your office?

Senator Hill—I beg your pardon?

Senator FAULKNER—Where was the word processing done for these documents that were tabled in the Senate? Were they created in your office or in the department of Defence?

Senator Hill—I informed the department on Tuesday night that I wanted to table three documents—I was going to use the word ‘annexures’—at the time of making my additional comments to the Senate because I thought it was necessary to meet all the requirements that the Prime Minister had said. Drafts of those documents were prepared by the department.

Senator FAULKNER—Were the drafts that were prepared by the department the ones that were tabled in the Senate or were they changed in your office?

Senator Hill—They were drafts—

Senator FAULKNER—They were drafts, but it was very factual information.

Senator Hill—There was no change in substance. There was no sit rep deleted or anything like that. It is my document. Okay, they put the paper together for me to examine as a draft.

Senator FAULKNER—And you changed it.

Senator Hill—I determined the final product, which I put to the Senate.

Senator FAULKNER—You amended it to suit your purposes.

Senator Hill—You might want to say that. That is unfair.

Senator FAULKNER—You amended the department’s draft of the important—

Senator Hill—It is my document.

Senator FAULKNER—I know. You created it.

Senator Hill—It is my document. I take responsibility for the document.

Senator FAULKNER—We know that Mr Pezzullo’s document was the size of nine telephone books plus 61 pages.

Senator Hill—I asked the department to assist me in the preparation of the document.

Senator FAULKNER—Yes, and they assisted you. When your office had got your sticky fingers all over it, did you have a final check back at the department, with the task force that had been working night and day for a couple of weeks on this?

Senator Hill—Yes, we went back to the department. We took a lot of care, actually, to ensure the accuracy of the documents. We went back and did double-checks and probably triple-checks as well.

Senator FAULKNER—I want to go to page 3 of the document on situation reports from ADF legal officers embedded in the Coalition Provisional Authority Office of General Counsel, with references to detainee concerns and/or meetings with international organisations. I want to go to Muggleton report 13, from 9 to 15 February 2004. The reference is:

ICRC report delivered to Bremer during the week, which is detailed, comprehensive and highly critical.

I want to ask you first, General Cosgrove, whether there was a specific date on that report. I realise it covers the period 9 to 15 February 2004.

Senator Hill—I am sorry; what was the question?

Senator FAULKNER—I have asked General Cosgrove in relation to—

Senator Hill—I would like to know what you asked him when I was looking up the document.

Senator FAULKNER—I have asked him in relation to report No. 13 by officer Muggleton, covering the period 9 to 15 February 2004, what the date of that sit rep was.

Gen. Cosgrove—I would have to look at the sit rep.

Senator FAULKNER—I am sure someone has it in all that material—in the nine folders—so could someone turn it up?

Gen. Cosgrove—Yes.

Senator Hill—This is the one that has been referred to from the beginning of this exercise on 11 May. I think two were referred to, and this was one of those two. It covers the period from 9 to 15 February. Do you want the date that it was sent?

Senator FAULKNER—I know the period it covers is from 9 to 15 February. I have understood that for some time. I was asking whether there was a date on the sit rep when it was—

Senator Hill—I assume it was shortly after the 15th.

Senator FAULKNER—I assume that and that is obviously a fair assumption but I want it to be precise.

Mr Pezzullo—Tuesday the 17th—of this year, obviously—is the date of Lieutenant Colonel Muggleton's sit rep No. 13.

Senator FAULKNER—Tuesday, 17 February 2004. Do you have a copy of that sit rep in front of you, Mr Pezzullo?

Mr Pezzullo—I can make reference to it.

Senator FAULKNER—I am just asking if you have a copy there with you. You seem to be reading from it.

Mr Pezzullo—Yes.

Senator FAULKNER—Thank you for that information. General Cosgrove, you would be aware that in our previous hearing you properly and sensibly quoted from a relevant part of a sit rep from Major O'Kane. Given the reference in relation to this one, could you also share the relevant words in this particular sit rep for the benefit of the committee?

Gen. Cosgrove—I do not have it in front of me.

Senator FAULKNER—Mr Pezzullo has got it. I wondered if he could pass it to you.

Gen. Cosgrove—Would you like him to pass it to me so I can read it to you?

Senator FAULKNER—I would like that, yes. I know that you have not got it. We have just established that he has.

Senator Hill—What was the question?

Senator FAULKNER—I had asked General Cosgrove if he would, as he did with Major O’Kane’s sit rep, read the relevant part into the record.

Senator Hill—The sit rep obviously deals with a mass of material.

Senator FAULKNER—That is why I am only focusing—

Senator Hill—It said that the ICRC delivered a report to Ambassador Bremer during the week, which addressed its concerns regarding the coalition detention operations from the commencement of coalition activities to November 2003. The report is detailed, comprehensive and highly critical. The CPA and CJTF7 are formulating their response. Then it makes reference to a third country, which I do not think would be appropriate to be put on the public record. What I put to you was basically what was advised in this report from Muggleton.

Senator FAULKNER—Are they the only relevant parts in relation to prisoner abuse, or detainee or POW issues?

Senator Hill—He makes a few general comments, because he says that this is his final report. He points out some differences between the US system and the Australian system.

Senator FAULKNER—What do you mean ‘the US system and the Australian system’—system of what?

Senator Hill—He refers to the detention system in Iraq. So he is making some comments on the US approach to these issues.

Senator FAULKNER—What are those comments?

Senator Hill—I am not going to say: it concerns the US. You asked me if there was anything else that I thought might be relevant, so I am telling you he makes some comments.

Senator FAULKNER—Are they critical comments?

Senator Hill—I do not want to—

Senator FAULKNER—It is pretty important, Minister. This is 17 February 2004.

Senator Hill—He points to areas of concern.

Senator FAULKNER—Yes.

Senator Hill—No, he does not specify them. He says the areas of concern have been identified. He says the US is currently reviewing its system. He believes the areas of concern may be corrected.

Senator FAULKNER—What I would ask you to do, Minister, is read into the record, as General Cosgrove read into the record in relation to Major O’Kane’s sit rep, what those areas of concern are. Because this is absolutely crucial. This is happening on 17 February 2004. Instead of having your interpretation of it, could you please read it.

Senator Hill—He does not specify the areas of concern—

Senator FAULKNER—Let us hear it.

Senator Hill—No, I am not going to read into the record what he says about a third party. I have said as much as I am prepared to say. I just think it is inappropriate.

Senator CHRIS EVANS—Are those concerns to do with the observance of the Geneva conventions?

Senator Hill—I think I used the words ‘detention practices’.

Senator FAULKNER—They are critical concerns, aren’t they? They are critical comments—and there is the rub, Minister.

Senator Hill—They are expressions of concern. He says the US is reviewing its practices, and the implication is that there could be improvements out of that review.

Senator FAULKNER—Why won’t you read to this committee what is in that sit rep of 17 February 2004?

Senator Hill—Because it relates to a third country.

Senator CHRIS EVANS—Do you mean the USA or a third country?

Senator Hill—I mean the USA. It is out of Iraq, relating to a third country—the US.

Senator FAULKNER—So we now have an approach to estimates committees that if something relates to another country it will not be placed on the record? You are kidding, aren’t you?

Senator Hill—No, as you would know, it is a longstanding—

Senator FAULKNER—It is critical of the USA, so it will not be put on the record.

Senator Hill—No, it is a longstanding practice that matters that relate to intergovernmental relations are not put on the record.

Senator FAULKNER—You see, what I do not like here, Minister, is General Cosgrove being allowed to read out elements of a sit rep because—I appreciate him doing so, by the way—that was thought to be positive to the government’s case, but, because this is not positive to the government’s case—this does not suit at all—it is not going to be read out into the record.

Senator Hill—I do not understand why you say that it is not positive.

Senator FAULKNER—It does not help.

Senator Hill—It is not positive and it is not negative, I am trying to be—

Senator FAULKNER—It does not help at all, does it?

Senator Hill—I am trying as always to be helpful to the committee, but I have got to accept certain constraints. They are constraints that are longstanding and well based, and it would be wrong of me to breach those longstanding practices.

Senator FAULKNER—If it suited your purposes—the government’s purposes—it would be read out in its entirety, as the previous sit rep from Major O’Kane, which was thought to suit the government’s purposes, was. It is absolutely essential, Minister, that this information is placed on the public record at this estimates hearing tonight. I do not think you have any alternative but to do so. Your interpretation of this is not good enough. This is a crucial element—

Senator Hill—I have answered the question. I have been as helpful to the committee as I can.

Senator FAULKNER—You have not been helpful. You have not been helpful at all.

Senator Hill—Whatever I did or said, you would say was unhelpful. In my opinion, I have put on the record as much as I properly can—and I would not want you to read too much into it either.

Senator FAULKNER—I expect you to read out those comments made by the relevant officer on 17 February 2004 in relation to this issue. That has been described in the reference in your own document, generated in your own office: ‘ICRC report delivered to Bremer during the week, which is detailed, comprehensive and highly critical’. I think you have an obligation to provide that information in the public and parliamentary interest. I ask again for you to do so.

Senator Hill—I read out the bit relating to the ICRC report.

Senator FAULKNER—If it supported the government’s case, you would.

Senator Hill—I also said that he made some comments in relation to the US system. I do not think that it is proper that I take it beyond that and, no matter how many times Senator Faulkner demands that I do so, it is not my intention to do so.

Senator CHRIS EVANS—Minister, you quoted him as talking about the differences between the US system and the Australian system. I presume that is the difference in the way we treat prisoners—is that correct?

Senator Hill—It is not explicit.

Senator CHRIS EVANS—But that is what we are discussing isn’t it, when we talk about systems?

Senator Hill—It is not explicit, and I think you could argue that it is not even clear.

Senator CHRIS EVANS—Are we talking about the war systems or are we talking about the prison systems?

Senator Hill—I said ‘detention systems’ didn’t I?

Senator CHRIS EVANS—So the difference between the Australian and the USA detention systems—the way that they treat prisoners?

Senator Hill—No, I did not say the way they treat prisoners. You are putting words in my mouth.

Senator CHRIS EVANS—He points to the differences between the systems and makes critical comments about the USA system. We have this officer filing a report which criticises the American system, draws distinctions between the way it works and the way the Australian system works and, as you say, makes critical comments.

Senator Hill—No, expresses some concerns is the way that I put it.

Senator CHRIS EVANS—Expresses some concerns—and that sit rep is the one that went back to Defence and to the Iraqi task force: is that right? I think we established that by this date these reports were going to the Iraqi task force: is that correct?

Senator Hill—I cannot remember the answer to that. I thought the Iraqi task force started about March.

Senator CHRIS EVANS—I will ask the question the other way—maybe Mr Pezzullo can tell me. Who received the Muggleton sit rep dated 17 February?

Senator Hill—We have said that. I think Foreign Affairs put in a—

Mr Pezzullo—It is addressed in the table, insofar as Muggleton serial 13. The original addressees—that is, those to whom the report first went, are, as you see, all on the tabled document—633, the TLO, ARO auxiliary. We have cross-referenced the *Hansard* reference. Notwithstanding any comments that DFAT officials might have made on 2 June at those page numbers about their subsequent receipt of this document—I did not observe those estimates, but we have done the cross-reference—if there has been some retransmission to DFAT not through the Australian Representative Office but through some kind of Canberra onforwarding, I do not know that is the case, which is why I say, ‘Notwithstanding whatever DFAT said on 2 June.’ But the original addressees are as listed in the table.

Senator CHRIS EVANS—Have you checked though to see whether it was forwarded on beyond those addressees, as part of your work?

Mr Pezzullo—The decision that I took—and I am accountable for this decision—was not to interrogate infinitely and endlessly the rebroadcast of emails. I started to mentally go down that track in that initial 24 hours when I was thinking about methodology. The nature of modern emails—

Senator CHRIS EVANS—But the answer is no?

Mr Pezzullo—I have not done an infinite—the thing could still be circulating—

Senator CHRIS EVANS—Do you know if that document went beyond that email distribution list?

Mr Pezzullo—No, I do not personally know whether it did or not.

Senator CHRIS EVANS—That is fine.

Senator FAULKNER—Senator Hill, you are willing to read out verbatim part of that sit rep report—the earlier part—which is basically a restatement of what was already in the public arena. But of course the minute we get to the next part of that report—that is, the damning portion—you shut up shop. Isn’t it true that the damning portion of that sit rep—

Senator Hill—It is not damning at all. I said—

Senator FAULKNER—Then read it out.

Senator Hill—No, I am not going to read it. I said that the officer expressed some concerns.

Senator FAULKNER—Does it outline the specific concerns held by the ICRC?

Senator Hill—It does not relate to the ICRC—not that I know of. It does not refer to the ICRC.

Senator CHRIS EVANS—Is this referring then to the American investigation?

Senator Hill—No, it is not. I do not think extracting teeth in this painful way is the right way to go.

Senator CHRIS EVANS—You made the point that it was not the ICRC.

Senator Hill—I have two masters here: I have the Senate, which is my master, and I also have longstanding practices that have been adopted by successive governments in relation to what is put on the record. I am trying to meet the reasonable requirements of both masters.

Senator FAULKNER—You have ministerial responsibilities, Senator Hill, and you are obligated to meet them. In relation to detailing the information contained in this sit rep, you are not meeting them. You have read part of that—

Senator Hill—That is your political spin.

Senator FAULKNER—No, it is not. You have read part of that sit rep verbatim, but when it comes to the crunch the part of that sit rep that probably would lead to your resignation you will not read out on the public record.

Senator FERGUSON—Fair go!

Senator CHRIS EVANS—When did you first learn of this sit rep report, Minister?

Senator Hill—I think it was around the beginning of this parliamentary session.

Senator CHRIS EVANS—You gave that evidence before. I would like to know the answer to when you learnt of it.

Senator FAULKNER—‘Probably’ not being a good enough answer—let us be absolutely clear and certain about it, Minister.

Senator Hill—I think it was either 10 or 11 May, but I would like to check that.

Senator CHRIS EVANS—So you will take that on notice. You are not able to tell us when you learnt of the sit rep report.

Senator Hill—I want to check that, but it is around that period.

Senator CHRIS EVANS—Is that what led you to make the statement you did on 11 May in parliament? Was that the knowledge that had you accept responsibility for the government knowing in February? I have the quote here, if you want me to quote it. You acknowledged that you accepted that the government knew in February and you said that you accepted responsibility that the government knew in February. Was that sit rep report the trigger for that admission that—

Senator Hill—My answer referred to knowledge of the criminal abuses. I said that nobody knew until they became public, except that the world had been advised in January that the Americans were investigating allegations—obviously serious allegations. Then I think I said something along the lines of: other information that might be relevant is a February report of the ICRC. You have got exactly what I said; I have not.

Senator CHRIS EVANS—I do not have the exact quote in front of me. I was just looking for it.

Senator Hill—I think I probably said that that was not provided to Australia, but the government—the government being the whole of the administration—knows it existed. I

think I was relying on two sit reps. I think two sit reps had been brought my attention that made reference to the February report. I think they were the one of Muggleton's and one other one. It was immediately—

Senator CHRIS EVANS—Wasn't it from that point then—

Senator Hill—It was either immediately before or immediately afterwards. It was immediately before, I think.

Senator CHRIS EVANS—Wasn't it at that point that you knew that what you and the government had been saying publicly was not right? You knew that Defence had been alerted to these issues and that Muggleton had raised these serious concerns.

Senator Hill—No, not at all. This has been part of the difficulty in this matter. On the one hand there are issues of serious criminal abuse, which were brought to the Americans' attention in January internally, which they investigated and which have led to prosecutions. Then there are a series of other expressions of concern over the course of the previous year about detention practices in Iraq, some of which are not surprising. They are concerns relating to overcrowding, difficulty of communication with relatives and the like. Senator Brown has been pressing the one that was made public by Amnesty International in July but there was also a report of the ICRC that was delivered to the coalition provisional authority and the occupying powers in February. As I think I said on 11 May, it covered the investigations of the ICRC from March through to November of the previous year. So it was a big job. It was not just looking at the prison system or interrogations; it looked at the methods of apprehension, detention and transport of prisoners. It was a substantial document. Although it is supposed to be confidential to the parties to whom it was delivered, it was ultimately put on the Net. That report, as I have said endlessly, was not provided to Australia because we were not a party to which was directed. It still has not been officially provided to us, but because somebody—

Senator CHRIS EVANS—But you had Muggleton's report.

Senator Hill—Yes, but that was all the government had. I may not have had it personally, but—

Senator CHRIS EVANS—But you did have that on 10 May?

Senator Hill—I think it was 10 or 11 May, but I said I would check it.

Senator CHRIS EVANS—Mr Carmody's evidence was that it was 10 May. But I accept that you are going to check that.

Senator Hill—I said I would check it.

Senator CHRIS EVANS—But you accept that you knew—

Senator Hill—That brought to my attention that there had been a report in February.

Senator CHRIS EVANS—And that it was highly critical, and that Muggleton had also raised concerns about the differences between the US and the Australian systems—the very paraphrasing that you just gave us. You knew all of that on 10 May.

Senator Hill—I do not know about the latter. I have just been reading this. But I knew on 10 or 11 May that there had been a February report. We are talking about two different things again.

Senator CHRIS EVANS—No, we are not.

Senator Hill—Yes, we are. There had been a February report of the ICRC. I knew that it had been delivered to the coalition provisional authority and to the occupying powers. I knew that it had been described as ‘highly critical’.

Senator CHRIS EVANS—Did you see the Muggleton sit rep report on 10 or 11 May?

Senator Hill—I certainly saw the reference to the ICRC aspect. I am being advised that the ICRC on 7 May published extensive excerpts from a confidential document entitled *Report of the International Committee of the Red Cross on the treatment by the coalition forces of prisoners of war and other protected persons by the Geneva conventions in Iraq during arrest, internment and interrogation*. It is described here as ‘of January 2004’, but I think it has been referred to as the February report.

Senator CHRIS EVANS—That was not the question. So you are telling me now that you saw that on 7 May.

Senator Hill—No, I did not see that. But it is the same old problem: I did not get the Amnesty International report until May of this year, when they sent it to me, although it was made public in July—or about July—of last year.

Senator FAULKNER—What have your advisers told you that you saw on 7 May? You have just been advised that you sighted something on 7 May—what did you—

Senator Hill—No, I think my advisers are telling me that this is what the ICRC said to the world on 7 May.

Senator CHRIS EVANS—When did you see the sit rep—

Senator Hill—So what I think is being said is that I would not have needed to know of the report through the sit reps, if I had been observant of this press report of 7 May.

Senator CHRIS EVANS—So you did not need to see the sit rep, because you had already been briefed on the severity of the issues?

Senator Hill—No, I was not briefed on that. I do not think I was briefed on that.

Senator CHRIS EVANS—All right, Minister: when did you see the sit rep from Muggleton, dated 17 February?

Senator Hill—I said I think it was 10 or 11 May, but I—

Senator CHRIS EVANS—And you saw the sit rep? So you had the knowledge of his summary about the meeting with Bremer that concerns the seriousness, but you also had his report where he describes the areas of concern, the differences between the US and the Australian system et cetera. You had access to that knowledge on 10 May 2004?

Senator Hill—I have accepted that the government has access to knowledge of sit reps that are returned to Australia. That is the point I was making in the Senate. I am not—

Senator CHRIS EVANS—No, but you have denied you saw them until then.

Senator Hill—No, I did not deny I saw it.

Senator CHRIS EVANS—You saw them earlier?

Senator Hill—I beg your pardon?

Senator CHRIS EVANS—You have previously said you did not see the sit represents—that you had no knowledge of the Muggleton and O’Kane and other information that was coming into Australia.

Senator Hill—The Muggleton—

Senator CHRIS EVANS—But you did say that you saw the Muggleton sit rep on 10 or 11 May. I think the *Hansard* will show that in Mr Carmody’s evidence last time it was 10 May, but certainly when you got up in the parliament on 11 May you had more knowledge than you had had the week before when you went on the ABC.

Senator Hill—That is true. I have said that the two sit reps that made reference to the February report were drawn to my attention around 10 or 11 May, and I said I would check the date of that.

Senator CHRIS EVANS—We will leave the question of whether it was 10 or 11 May to one side—you are going to get back to us on that. But you had seen Colonel Muggleton’s sit reps, so you had knowledge of the seriousness of the allegations and his concerns about the US system at that date: what did you do once you had this information? Is this why this inquiry process led by Mr Carmody started? What did you initiate after reading that? Because clearly this information meant that your public defence—what you had been saying publicly—was clearly invalidated.

Senator Hill—No, that is not true at all. Again you are confusing the allegations of criminal abuse, which were made in January and became public in detail at the end of April and May, with earlier processes by international organisations to improve the overall standards in Iraq. Now I—

Senator CHRIS EVANS—No, I am not confusing them at all. You are trying to draw a false distinction. Because you admitted that the February report had serious allegations.

Senator Hill—Because you have to blur that distinction to suit your case.

Senator CHRIS EVANS—No, I do not; I have got the February report. That is one of the other interesting issues. Your ministerial statement went back to the early defence—it went back to the fact that somehow the claims made about mistreatment were of a minor nature. But you admitted in estimates they were serious, that it was abusive; that in fact the October–November reports contained serious allegations. Yet in the ministerial report you shift back to this thing that it is some sort of minor affair. The February report details serious abuse in mid–October. It refers to: military intelligence section, Abu Ghraib correctional facility, mid–October visit, serious abuse. You have seen the October–November reports. I have not.

Senator Hill—The ICRC characterised it as alleged ill-treatment, not serious abuse. I have said to you that I think this distinction between ill-treatment and mistreatment and serious mistreatment is a difficult one. I am told that the international lawyers attach a certain technical meaning to these terms. I think I said in the previous Senate estimates committee—

now we are into our fifth day it becomes a little bit blurred—that I thought that the February report, when I got to see it, which was in May, painted a pretty grim picture. I am not trying to avoid that.

Senator CHRIS EVANS—Well, why did you say in your ministerial statement to parliament—

Senator FERGUSON—Mr Chairman, I raise a point of order. When the minister is halfway through answering a question why do you cut in over the top of him? Surely he is allowed to answer the question that is put to him by you in the first place, and when he is finished you can then ask another question. That is normal procedure in the Senate and it should be here in estimates as well.

Senator CHRIS EVANS—Thank you, Senator Ferguson: glad to see you are awake. The chairman is chairing the meeting.

Senator FERGUSON—I took a point of order, okay.

CHAIR—I think it is a fair point, Senator Evans. The minister should be able to answer your questions. You are entitled to ask any question you like. He is entitled to answer in the way that he chooses.

Senator CHRIS EVANS—Certainly, Mr Chairman.

Senator Hill—The point I have been attempting to make is that, in my view, there are qualitative differences. There are qualitative differences between what is alleged in the October working paper of the ICRC and the criminal abuses that became public in May. As I said in the statement to the parliament, you can see it in what the ICRC asked. You go to the bottom line, in effect: what did they ask of the military leadership? They basically asked for them to lift their game. If they had evidence of criminal abuses they would not have been asking for that; they would have been demanding a criminal investigation. And when you read the February report and you canvass the total picture across Iraq, I would say it is qualitatively more serious than the October one, and then the final abuses that we learnt in detail about in May are of a different character again.

Senator CHRIS EVANS—I will ask you a direct question. Have you got a copy of the February report in front of you?

Senator Hill—No.

Senator CHRIS EVANS—Can someone give the minister a copy of the February report. There is a section there—on military intelligence section, Abu Ghraib correctional facility—where they refer to what they found in the mid-October 2003 report. That includes—and I have quoted it to you before:

... persons deprived of their liberty completely naked in totally empty concrete cells and in total darkness, allegedly for several consecutive days.

It goes on to talk about threats, insults, verbal violence, sleep deprivation, tight handcuffing, wounds around the wrists, punishment included being made to walk in the corridors handcuffed and naked or with women's underwear on the head, or being handcuffed either dressed or naked to the bed bars or the cell door. This is the February report which refers to their October inspection. Are you telling me that the October-November reports, which we

have generally referred to as the October report, do not contain allegations of treatment of that nature?

Senator Hill—The October report reports alleged ill-treatment and it makes some observations from its inspection. When I read paragraph 27, I think, of the February report, it seems to join both of those together and almost reach conclusions. I think it is more dramatically expressed in the February report than in the October working document.

Senator CHRIS EVANS—But is the nature of the allegations the same? Is there something distinctly different about the nature of the allegations in the October-November report from that described in the February report, which purports to be a representation of what they reported in October-November? You have seen the October-November reports; I have not. You will not give us a copy. What I am asking you is: isn't it in fact the same visit they are describing and aren't they the same findings, which went to those very serious abuses of prisoners?

Senator Hill—I might say in passing that my preference would be for the working paper to be put on the public record. We have asked the ICRC if they would provide it to us, because it is very difficult when you are told that you are to retain confidentiality but there is a subsequent document that is on the web and it refers back to the working document. I said in the Senate what it did not do, which was the basis of the criminal allegations that were made in January and have subsequently been seen in photographs in May and led to prosecutions.

But, having said that, I still acknowledge it refers to his allegations of ill-treatment. I have said that I think the ICRC reports paint a pretty grim picture of detention practices in Iraq. I am not trying to move away from that at all. But, in relation to abuse, in relation to violence, they say that there are allegations of insults and verbal violence. They say there are allegations of sleep deprivation, loud music et cetera. They say there are allegations that prisoners would have to walk in the corridors handcuffed and naked except for female underwear over their heads. These are the allegations that they are reporting.

Senator CHRIS EVANS—So they are the same allegations as in the February report. They are consistent.

Senator Hill—I think they are consistent, but if you read the one paragraph—

Senator CHRIS EVANS—I put it to you, Minister, that the only difference between the October and February revelations is that there were no photos and they did not rape and sodomise while the ICRC were in the building. That is the difference.

Senator Hill—I gave you a whole list of substantial differences.

Senator CHRIS EVANS—You told me what it did not include.

Senator Hill—At the end of this process, what did the ICRC recommend? It said that it wanted, obviously, full and unimpeded access to all detainees—that is fair enough. It said that it wanted improved security. It said that it wanted to clarify and improve the conditions of detention, distribute hygiene items et cetera, implement regular family visits and things of this nature. It did not seek to make a case of evidence of criminal abuse.

Senator CHRIS EVANS—You have just quoted from the report, though. It talked about verbal and physical abuse; parading in women's underwear—

Senator Hill—I do not think I said physical abuse at all. I said that there was an allegation of verbal abuse.

Senator CHRIS EVANS—As I said, I do not have a copy of the report.

Senator Hill—An allegation of verbal violence—I am not actually sure what verbal violence is. I am not trying to avoid the conclusion that the ICRC process painted a grim picture in relation to detention within Iraq. And much of that is understandable, because there were large numbers of prisoners and it was all within a very compressed time frame. There were inadequate facilities. A lot of the facilities were temporary. They were being mortared regularly, and it was obviously a very difficult environment. But, when you read the whole series of documents produced over the course of the months, what you see—apart from these specific instances of criminal abuse that have been prosecuted—is an overall improvement in the picture. That is as, basically, the facilities were improved, the system of justice was put in place and then improved and they were able to get better, more complete data on the detainees. I think the ICRC in particular helped in the improvement of the processes, and, as I have said before, I am pleased that a few Australian military lawyers helped that process.

Senator CHRIS EVANS—When did you first see the February 2004 ICRC report?

Senator Hill—In May of this year.

Senator CHRIS EVANS—What day in May?

Senator Hill—I think it was 11 May. I will check that, but it was around 11 May.

Senator CHRIS EVANS—So you saw the Muggleton sit reps on the 10th or the 11th, and you saw the Red Cross report, with its details of Abu Ghraib abuse, on 11 May.

Senator Hill—I said I would check whether it was the 11th, but it was around the 11th. I think it was actually the morning that we sat, because I did not have time to read it in detail. If I had picked up the reference to working papers in the commencement of the document, then it might have made more sense of the task we had in searching for the so-called October report.

Senator CHRIS EVANS—Why didn't you see any of this until 10 or 11 May?

Senator Hill—Why didn't I see the ICRC—

Senator CHRIS EVANS—How did you come to see all of this on 10 or 11 May?

Senator Hill—Because the government had been able to obtain a copy of this report. I am not sure how it was obtained. We are not supposed to—

Senator CHRIS EVANS—It just so happened that on 10 May the report came forward—the sit reps came forward—it all just appeared suddenly, despite having been in the department for months?

Senator Hill—I got to see it around 11 May. And, I repeat, it was not delivered to Australia, it was not an Australian document, it had never been officially documented.

Senator CHRIS EVANS—Could I ask one last question of Mr Pezzullo? Could you for the record, Mr Pezzullo, indicate whether, as a result of your inquiries, you found out whether

any Australian Defence Force personnel saw the photos of abuse of prisoners in Abu Ghraib or other prisoners while they were still in-country, prior to their publication in late April?

Mr Pezzullo—For the record, when you say ‘as a result of your inquiries’, it has been referred to as ‘a fact-finding exercise’ all evening. The secretary and others made clear why that is the case. It was not an inquiry as such, with disciplinary type issues. The question you asked me is: as a result of the fact-finding exercise that I have undertaken—

Senator CHRIS EVANS—Or the survey.

Mr Pezzullo—Or the survey, yes. Can I just be very precise about it?

Senator CHRIS EVANS—Did any ADF members see, have access to or become aware of the photos of the abuse of Abu Ghraib prisoners before we all became aware of them, with their publication in late April?

Mr Pezzullo—I understand you asked me about the photos, but I would like the chance to give a preamble to my remarks. I will come to the photographs, but first I will make a preamble. As the minister stated in his statement to the Senate—and this has been checked against the fact-finding outcomes:

I have been asked previously when did the government become aware of the issue of alleged abuses of prisoners at Abu Ghraib and I—

—that is, the minister—

have said that from the time of the January media release by the United States military—

and I interpolate that as being the press release of headquarters US Central Command on 16 January—

and the subsequent CNN report, the government would have been aware of allegations of abuse and that these allegations were being investigated ...

I apologise for that long preamble, but the reason I made it is that CNN reported on Wednesday, 21 January at 7.37 a.m. eastern standard time in America—and this is open source reporting—that:

Sources have revealed new details from the Army’s criminal investigation into reports of abuse of Iraqi detainees, including the location of the suspected crimes and evidence that is being sought.

U.S. soldiers reportedly posed for photographs with partially unclothed Iraqi prisoners, a Pentagon official told CNN on Tuesday—

and, obviously the Tuesday referred to is the Tuesday relevant to that week. To continue—and I am quoting off CNN.com:

A second source confirmed that the Army’s Criminal Investigation Division has focused on these pictures, which may depict male and female soldiers.

Then there is further public source reference to photographs. It remains my understanding, and we have looked at this very thoroughly, that the first broadcast of actual images is as I described in earlier evidence. As best I can establish, it was broken—in the news sense of something being broken—in the United States on 28 April. Allowing for time differences, that is 29 April here. I found no evidence that these photos were in public circulation.

That is a very long preamble. Now I need to state that, as a result of everything I have looked at and all the information available to me that I have reported through the secretary and the CDF to the minister, there was an awareness from that January CNN report of the existence of photographs that accompanied a US military disciplinary/criminal investigation that had been announced by the Americans themselves on 16 January. If you do not have the reference, it is release No. 040143 out of US Central Command, CENTCOM, which is headquartered at MacDill Air Force Base in Florida. So the world—

Senator CHRIS EVANS—I am aware of all that. I just want an answer to my question.

CHAIR—Give the answer, Mr Pezzullo.

Senator CHRIS EVANS—You have embarrassed Senator Hill—he cannot do this well in question time!

Senator Hill—We do not believe that any ADF person saw the photos—that is the answer.

Mr Pezzullo—No ADF person saw images. The world at large knew that images were abroad—

Senator CHRIS EVANS—The question is: did any of our people see the images prior to them becoming publicly available?

Mr Pezzullo—I have found no evidence of that.

Gen. Cosgrove—Chair, I am uneasy that in an answer I gave earlier about the situation updates I might have verbalised a couple of government departments by saying that I think they got the distribution. Unusually, the distribution list is officials' names and I had to guess at what departments they were from. I propose to clarify that in writing.

Senator Hill—I said I would take that on notice anyway.

Senator CHRIS EVANS—This is the Amnesty reports?

Gen. Cosgrove—The reference to it.

Senator Hill—Yes.

Senator CHRIS EVANS—You are certain that there was PM&C. You are just not certain about the rest. Is that right?

Gen. Cosgrove—Yes. I think I recognise an officer from PM&C, but I want to be clear about who was on it and who was not.

Senator Hill—We will check that.

CHAIR—Thank you, Minister, thank you Mr Smith, thank you General Cosgrove, thank you Mr Pezzullo, thank you colleagues. Estimates are now concluded. Goodnight.

Committee adjourned at 10.35 p.m.