

UNDER

THE INQUIRIES ACT 2003

IN THE MATTER

A GOVERNMENT INQUIRY INTO

OPERATION BURNHAM AND RELATED MATTERS

Date of Hearing: 18 October 2019

TRANSCRIPT OF PROCEEDINGS

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FRIDAY, 18 OCTOBER 2019

OPENING COMMENTS FROM SIR TERENCE

SIR TERENCE: Thank you. Please sit.

Good morning, everybody. And good morning, Mr Radich. So I'm glad you've been able to get here. So we'll get underway with Dr Mapp's evidence. Mr Gray, thank you, and we'll take the morning adjournment as usual at 11:30 for 15 minutes.

BRUCE GRAY: I call Wayne Daniel Mapp.

WAYNE DANIEL MAPP (Sworn)

Q: Is your full name Wayne Daniel Mapp? Do you reside at Auckland and are you retired?

A. Yes I am.

Q. Would you read your Brief of Evidence please, beginning at paragraph 1.

A. I have read the briefs of evidence from the following witnesses:

Kevin Ronald Short dated the 11th September 2019;
Gordon Ross Smith dated the 3rd of October 2019;
Richard Rhys Jones dated 3rd October 2019;
Michael Andrew Thompson dated 4th October 2019;
Christopher John Augustine Hoey dated 3rd October 2019;
James Williams Blackwell dated 3rd October 2019.

I understand that some of the intended evidence is that the ISAF Investigation report, IAT report, may have been brought to my office on the 1st of September 2011, and may have been shown to me on that or a later day. I can see that statements of intended evidence include evidence that I was informed that the IAT report did not provide evidence that civilians were harmed, but that the report also concluded that there was a possibility of unintended civilian casualties during Operation Burnham.

I have no recollection of ever reading the IAT report, and I do not remember being given the report to read. In my office all secret documents were kept in the Military Secretary's safe and I have never used the safe in my personal office. I did not want to be responsible for the control of secret documents.

According to my Ministerial diary, which I have recently retrieved, Colonel Blackwell briefed me on four occasions in 2011. The dates of the briefings were:

Monday, 16th May 2011;
Tuesday, 9th August 2011;
Monday, 22nd August 2011; and
Monday, 12th September 2011.

The last briefing, on the 12th September 2011, occupied a half an hour from 3:45 to 4:15, at least that was the slot in the diary. These briefings from Colonel Blackwell were about current SAS operations in Afghanistan. I had asked for these meetings so I could be aware of what operations the SAS were conducting in Afghanistan. They were essentially part of a no surprises policy. I believe the briefings were also initiated by NZDF and which officer briefed me was a matter for the NZDF.

Although the briefings from Colonel Blackwell were fundamentally oral, Colonel Blackwell would typically bring a briefing book and show me a list of the operations that had occurred in the preceding weeks. The book included photographs. The briefings were about recent SAS operations against Taliban insurgents. Some operations involved exchanges of gunfire, however, the majority seemed to result in arrests of insurgents by the CRU. There seemed to be two or three operations per week.

I now have fragmentary memory of being told by Colonel Blackwell that there was no evidence of civilian casualties, but that it was possible that civilian casualties may have been caused during Operation Burnham due to a misaligned gun

in the United States' Apache helicopter. I had no memory of being told this before retrieving my Ministerial diary and reading Colonel Blackwell's evidence.

I have no recollection of the detail of briefing by Colonel Blackwell. However, I was not left with any reason to think that I had to take further action. I did not inform the Prime Minister's Office, discuss it with my political adviser, Mr Stuart Boag, or discuss it with the Minister of Foreign Affairs who I worked closely with on Afghanistan issues. Nor was I left with the impression I had to correct my answers to the Q & A programme from April 2011 as there was no actual evidence that civilians had been killed or injured.

The most important event in the week of the 29th of August was the funeral of Corporal Doug Grant in Linton. Much of that week was given over to dealing with this event. I felt a deep sense of personal responsibility as I had been heavily involved in the decision to employ to Afghanistan.

This was followed shortly thereafter by the death in Afghanistan of Lance Corporal Leon Smith on the 28th of September 2011. I attended his regimental service on the 6th of October.

The other major topic I was dealing with at the time was the upcoming PRT deployment. I was particularly concerned for the safety of the personnel being deployed. This resulted in a number of serious discussions with the CDF, the Minister of Foreign Affairs and the Prime Minister. My Ministerial diary has helped me reconstruct the movements in the fortnight around 1st September 2001 and indeed generally. I did not attend my Ministerial office from the Thursday, the 1st of September to Monday, 5th of September 2001. I was not actually in Wellington on Thursday the 1st of September 2001 - sorry, 2011.

In September 2011, my political adviser was Mr Stuart Boag. I have spoken to Mr Boag to ask him whether he has a recollection of me discussing the IAT report with him in

September 2011. He told me he had no recollection of a discussion of the document or of Operation Burnham. I'm sure that Mr Boag would corroborate what I have said.

When the documentary *Collateral Damage* screened in June 2014, I did not recollect any briefings from Colonel Blackwell about the possibility of civilian casualties. However, based on the photographic evidence presented in the programme, I concluded that it was probable that civilian casualties had in fact occurred and that what I had said on the Q & A programme was probably wrong.

CROSS-EXAMINATION BY KRISTY McDONALD QC

BRUCE GRAY: Would you answer any questions please.

KRISTY McDONALD: Good morning, Dr Mapp. Now just by way of context to help us, could I get you to confirm that you've got a legal qualification, you're a qualified lawyer, am I correct?

A. Yes I am.

Q. And I think also that you have a particular interest, possibly qualification, I'm not sure, in International Humanitarian Law, IHL matters?

A. Not so much that. My qualification is really in international trade. My PhD thesis was on the Iranian United States Claims Tribunal.

Q. But it's fair nonetheless to say that that's a particular area of interest for you - International, Humanitarian Law?

A. Yes, yes. Well more than just aware, familiar with. Not the detail ...

Q. It may just be ...

A. I hadn't kept up to date with current reading but I sort of had a general sense.

Q. It may just be because of the air conditioning unit, I'm having a little bit of trouble hearing you. Could you - thank you. So it would follow, wouldn't it, given your background, Minister of Defence, lawyer, interest in humanitarian issues,

of course that you would have a particular interest in any issues or suggestions of civilian casualties as a result of military operations that New Zealand was involved in?

A. Yes.

Q. And indeed we've heard from Sir Jerry Mateparae and he accepted, indeed told us, that that was a matter of considerable importance to him and you would expect that, and indeed to the New Zealand Government. And you would agree with that?

A. Yes I would.

Q. And that would be, and was, regardless of, you know, who might have been responsible for civilian casualties if New Zealand was involved in an operation where there might have been civilian casualties. So whether New Zealand was directly responsible for it or whether a partner was responsible for it, nonetheless New Zealand Government and New Zealand public would have an interest in that?

A. Yes it would, but it would make a difference whether New Zealand was directly involved or not.

Q. Of course. But nonetheless an issue that the Government would nonetheless be interested in because of New Zealand's involvement in a Coalition operation.

A. Yes.

Q. Now you were aware, and I can take you to the documents if you require me to, but you would have been aware of the New York Times reports following Operation Burnham when the first allegations started to emerge about the possibility of civilian casualties?

A. Yes, we were aware in September of those allegations, yes, and were aware that an inquiry was being undertaken.

Q. Right. And I think it was the following day after the New York Times reporting that you were advised by Sir Jerry that there was going to be this ISAF investigation into the allegations?

A. I can't remember the precise date but I was aware that an inquiry was going to take place.

- Q. I can take you to the documents but we don't need the date. But you're not disputing that you were aware at that time?
- A. No.
- Q. No. And were you aware too of the ISAF press release of the 29th of August? And I will take you to that document, it's at page 79 of that large black ring binder in front of you. Sorry, 71 I'm sorry. You'll have seen that before?
- A. No I don't, I don't recollect having seen that before. I mean I've seen these documents in the book printed - published by Jon Stephenson and Nicky Hagar but, no, I don't recollect seeing that document.
- Q. Right. I can take you to the documents because it appears to be attached to one of the briefings that was given to you in December. Does that ring a bell? I'll just - 16 - if you go to 168, that's the briefing of the 13th of December and then if you - have you got that? 168?
- A. Yes.
- Q. That's your briefing and then if you flick through to 172, 173 you'll see the attached media statements with [inaudible] attached to that briefing. Does that help you?
- A. No.
- Q. Do you accept that those were documents that went before you in December 2010.
- A. Yes they must have - well, I don't recollect them. I had in fact - one of the things I've had difficulty with is actually recollecting the document of December 2010 at all. My memory of this is actually the oral briefings by - I imagine, actually, Jerry Mateparae much earlier. And I'd often wondered why it was that - that was the one that stuck in my mind. Jerry coming and telling me or ringing me.
- Q. Okay. We might come to that in a minute. All I'm trying to do at the moment is just really get the context set. So these briefings, or this briefing, shows that those documents were part of the briefing pack. You don't dispute that you would've got the briefing pack and those documents, even though you

might not now have a memory particularly about them. Is that fair?

A. Yes.

Q. Okay. And if you look at page 72 of that bundle and 73, the email on page 72 at the bottom of the page is from, we understand, your Military Secretary at the time, Edward Poot. And he is emailing Mike Thompson.

A. Yes, yes, I've seen these documents before.

Q. Right. And he's there, isn't he, indicating that he wants an "early note would be appreciated given the issue and visibility it already has", and he's talking about the investigation and the allegations of civilian casualties.

A. Yes, he is.

Q. And then if you go through to page 77 you'll see another email of the 30th of August and it's from Peter Kelly and it just shows, if you look at that, "at this point in time CDF spoke to the Minister last night referring to this and now we are awaiting the official ISAF assessment report from theatre," and it attaches there the media article that I was referring to earlier. So all I'm putting these to you for, Dr Mapp, is just to show the level of interest that there was at this time in the allegations - and I think you've accepted that - and the fact that there was a desire at a political level from your office to try and obtain more information and the findings of the report, findings of the investigation.

A. Yeah, yeah, no, no, I'd approve of that.

Q. You'd agree with all of that? Right, okay. And then just one more document in relation to this issue. If you go through to page 84, you'll see there an email that the Inquiry has had cause to look at from time to time already, but it is an email from Colonel Peter Kelly to Ryan McKinstry, the SNO at the time, and - have you seen this one before? It's dated the 31st of August. I'll just read that first paragraph out while you're looking at it. "This document refers to an interview given by [person's name is redacted] about the findings", and

that's the finding of the investigation, "from the assessment into the Op in Tala wa Barfak. MFAT picked this up off the wire this morning given that he was speaking publicly can we now expect a copy of the assessment or at least a copy of the findings so we can report back to the Prime Minister, the Minister of Foreign Affairs and the Minister of Defence, they are quite exercised, we've heard that they're supposed to be, exercised by this and very keen to hear the official outcome". And that just confirms what I put to you a moment ago, doesn't it.

A. Yes it does.

Q. So it's obvious enough, I suggest, why you would have a particular interest in that but can you just explain why the Prime Minister and the Minister of Foreign Affairs would have such a heightened interest in and be exercised and be wanting to see the outcome of that report? What was their particular motivation for that, can you help us?

A. Well I presume it was because I'd rung the Prime Minister at the time of the operation.

Q. Right. And he and the Minister of Foreign Affairs, I think was Mr McCully at the time, is that right?

A. Yes. And I think, well, from previous evidence I understood it came from some - one of his officers. But I've heard that here.

Q. So it's logical though, is it, that they would have a particular interest in any suggestion of civilian casualties and what the findings of this investigation might be.

A. Yes.

Q. Now page 104 is an email from theatre, from Mr Parsons, which is dated the 8th of September 2010 and he'd taken over as the SNO at that time, and he there in that first part of the email which has been the subject of considerable - consideration - already by the Inquiry, he is there reporting on the outcome of the ISAF investigation, and we've heard, and he has accepted in evidence that what he says there is wrong and he's

explained how that all came about, but it's nonetheless incorrect. Were you verbally briefed on this matter that Mr Parsons is talking about, i.e. the outcome of the investigation around about this time? Did you get any verbal briefing about this?

A. I'm sure I did and I'm sure it was the CDF.

Q. Right. And would it have been to the same effect that Mr Parsons is saying here is that there's no problem here, both the ground troops and their assets have been cleared. Is that the gist of what you would have been told?

A. Well I think it was - no, I can't remember what exactly was said and I'd be hypothesising. But I sort of had a sense there was no issues. Jerry Mateparae assured me, assured me what he assured me.

Q. So it would be logical, wouldn't it, that it would be consistent with what Mr Parsons has reported.

A. Yes, yes.

Q. Yeah, okay. If you go through to 115a, it appears from ...

A. I only have 115. Oh yes, sorry, ...

Q. There should be an a after this. Got it?

A. No.

Q. And the bottom email is from Peter Kelly to Edward Poot and then the top one from Edward back and it's dated the 23rd of September.

A. Yes.

Q. Sorry, I'll just pause. Is there a problem?

A. I can see the email from Peter Kelly.

Q. So I just want to make sure you've got the right page number. It's 115a, is that what you've got?

A. The page I've got is 115 and it's got a reference at the bottom half of that page of an email from Colonel Peter Kelly to Edward Poot.

Q. The bottom email's just has "Ed". Is that the one?

A. Yes.

- Q. We're on the same page. So it appears from this exchange that VCDF is being asked how ISAF have closed the loop with the public given the reports in the media over there. Do you accept...
- A. Yes, yes, I agree with that.
- Q. And that's obviously an issue that's being talked about at your office because Edward Poot's in your office, so you were interested to know, were you, how ISAF were going to close the loop off and report back given what they'd said in their press release, what you by that stage would have believed to be the position as reported back from Mr Parsons?
- A. Well I don't ever recollect reading the press release.
- Q. Right.
- A. But obviously I was interested in this issue, yes, and the process as you've described are the processes I would expected to have occurred and Edward was very diligent.
- Q. So at this time you would have wanted - and I think that the emails, paperwork is consistent with this - you wanted to get access and the government would be keen to get access to the report and that email I took you to which referred to the Prime Minister and the Minister of Defence that the Minister of Foreign Affairs shows that.
- A. I imagine we expected we would get it, yes.
- Q. And following, following all of this, and you got reports - written reports - from Sir Jerry; I took you to one of them earlier - briefings.
- A. The briefings I remember primarily from Sir Jerry were actually oral.
- Q. Right.
- A. Either a visit from him or a phone call.
- Q. But you don't dispute do you, Dr Mapp, that you got those Ministerial briefings which - and the Inquiry's looked at them previously, I can take you to them - but which say categorically that there was no way civilian casualties could

have occurred and you will have looked at those documents before coming here today.

A. I remember being told that.

Q. Sorry? You what?

A. I remember being told that.

Q. You would have read your Ministerial briefings though surely, Dr Mapp.

A. I presume so, yes, I'm not disputing that.

Q. Okay. And those briefings were quite categorical that there was no way civilian casualties could have occurred.

A. Yes they were.

Q. So, coming forward in time then. So the 20th of April 2011, it appears that the allegations of civilian casualties resurface and become front and centre in some of the media reporting that's starting to happen, in April 2011. And you recall that do you?

A. Oh yes, yes, yes, yes. Yes I thought you said September.

Q. No, no. Well if I did I was wrong. And that would have been front and centre of your mind at that stage because you were being asked to comment in the media?

A. No it wasn't that at all. This Q & A interview was an interview that - I'd been told the interview was going to be about ANZAC day.

Q. Right.

A. And matters of that nature, and it wasn't until well into the interview that this issue came up, and well I answered the questions I was asked. And it was being based on my memory that had gone back many months in fact.

Q. Well I just want to take you to some of the press reporting around that time. We'll just work our way through it. If you have a look at that bundle again at page 184, you'll see there the NZDF press release of 20 April 2011.

A. Yes.

Q. And I'll get you to take your eye to the fourth paragraph on the bottom, and I'll draw your attention to the statement "The

investigation" and that's the ISAF investigation, "concluded that the allegations of civilian casualties were unfounded". You see that sentence?

A. Yes I do.

Q. and we've heard evidence that that's wrong. You accept that's wrong?

A. Yes I do.

Q. Right. And then the next page - 185 - we have same day, 20th of August - sorry, 20th of April 2011 - from the TV One News and the very first thing the anchor's saying there is, "We begin tonight with an astonishing admission from the government," it's the lead item.

A. Yes.

Q. And you go through to the bottom of page 186 and 187, you'll see that this is the summary if you like of the Guyon Espiner interview with you.

A. Yes.

Q. Bottom of the page at 186, Guyon Espiner: "There were also claims that civilians died in the Kiwi counter attack." Defence Minister: "that's been investigated and proven to be false." That's what you said at that time.

A. Yes, yes, I did.

Q. Guyon Espiner: "So no civilians were killed in that. You're satisfied about that. You've seen some reports." And your answer "I am satisfied around that." Correct?

A. Yes, yes.

Q. And then there's a reference at the bottom of the page which we don't need to bother with but it refers to a more in-depth Q & A piece. So your answers of course, and they would be entirely consistent with NZDF's reporting, media reporting at that time.

A. Yes.

Q. Sorry, you do need to answer because of the transcript and you'll understand that process from your experience, I'm sure. And that Q & A interview is at page 193, 194. It starts at 190

and it's stated the 24th of April 2011. And the relevant part that I want to draw your attention to, similar to this piece I just took you to, at the bottom of 193, same thing. So no civilians were killed, you were satisfied about that. Your answer: "Yes I'm satisfied about that". Over the page, Espiner says "Only insurgents were killed in that operation." Dr Mapp: "I am satisfied around that."

A. Yes.

Q. So all of this reporting by NZDF and then by you, presumably based on what NZDF are briefing you, is to the effect that the ISAF investigation, the ISAF report, had found that there were no civilians killed. Those allegations are completely false, completely unfounded. That's broadly where we're at.

A. Yes, yes. I understand that.

Q. And then page - if you go towards the back of that volume, you'll see a tab I think that says October?

A. Yes.

Q. And if you go to page 75 of that, you'll see there what I understand was a written parliamentary question - correct me if I've got that wrong - and that's a question from Keith Locke to you about this issue - 16 May 2011.

A. Yes.

Q. And he's saying "What Afghan civilian casualties, if any, have resulted from New Zealand SAS operational activity in Afghanistan" etc. Your answer: "Any persons killed in Afghanistan as a result of NZSAS operational activity have been those persons taking direct part in hostilities and thereby presenting a direct threat to the lives of New Zealand personnel."

A. Yes, yes.

Q. Again, inconsistent. So without wanting to be repetitive, I'd just ask you if you'd accept then that it is clear there was a significant - this was a significant issue occupying a reasonably, a reasonable amount of your time, and I'm not denying that there would have been many other Ministerial

duties you were focusing on, but nonetheless this was one of them?

A. Yes, it was.

Q. You're doing media interviews, answering questions from your political colleagues, we have Mr McCully and the Prime Minister engaged on the issue broadly. And presumably it would be logical, wouldn't it, that you as Minister of Defence would have been giving some assurances to the Prime Minister and Mr McCully that this was, you know, all in hand, it was all okay, New Zealand's been cleared, no problem, no civilian casualties. You know, I'm paraphrasing, but that kind of message would have been going higher up the Beehive?

A. I don't think in the way that you're talking about. Largely I was left to get on with my portfolio myself.

Q. But if the Prime Minister and the Minister of Foreign Affairs had an interest and they obviously did, and were exercised about it, according to that email, it would have been logical that you would have been talking to them from time to time about it and conveying the view that had been put through to you from Defence that this issue can be put to bed, effectively. There's no civilian casualties, the ISAF report has come out, it's unfounded.

A. I don't recall any discussions like that.

Q. So would you not - are you saying you would not have said those sorts of things to the Prime Minister and Mr McCully?

A. I can't recall the issue coming up as such.

Q. But they obviously had an interest in it, they were exercised about it.

A. The documentation shows that and their officers obviously were, but that doesn't mean to say that we ourselves had a conversation on it as such. In the way that you're characterising.

Q. I'm just asking really for you to cast your mind back and just - it would seem logical to me, and please correct me, as you will, I have no doubt if I'm wrong, that with an election only

two months out, with issues generally of civilian, any suggestion of civilian casualties being a matter of interest to the Government and to the New Zealand public as you've accepted, the Prime Minister and the Minister of Foreign Affairs expressing interest and obviously being exercised about it, you were looking for the final report. You then get the answer that this report clears everybody of anything. It would seem to me to be inconceivable that you wouldn't have a discussion with them about that issue along the lines that I've suggested. And I know it's a long question, but I think you understand ...

A. Yeah, no, no, I understand. Look, I don't actually recall any such discussions and I don't think they actually took place. I think the television programme was on, the Defence issued its press release, that was seen as really that.

Q. With an election only two months out from ...

A. No, we're talking April 2011.

Q. Oh yes, you're quite correct, we are talking April. So more than that. We're talking, yes, okay. So a few months out. April to September I think the election was in 2011.

A. No, it was in November.

Q. November 2011. September 2014. Quite right. All right. So we're a wee way out from the election. So you don't think this would have been occupying anybody's mind at that time in particular.

A. Not in the way that you've characterised, no.

Q. All right. So I want to go now, Dr Mapp, to - and I think the easiest way of doing this is to take you to some of the evidence that Mr Blackwell gave to the Inquiry and what I've done is had photocopied, just so that we are totally accurate in quoting Mr Blackwell. I've had photocopied some extracts which I'm going to ask to be distributed to you and the core participants and Mr Gray. Have you got that? [inaudible] Oh, we might do them one by one, okay. Well just while that's being organised I've got a couple of preliminary questions. I

can - that's alright. We'll just hand them out one by one and I'll give you the number of each one to pass [inaudible]. We don't need them yet. And before we go to the actual transcript references of the evidence that Mr Blackwell gave, I want to be very direct with you, Dr Mapp. Mr Blackwell has given evidence which if the Inquiry accepts it, could be taken to suggest that it was you, if anyone, that would be responsible for the cover-up of the findings of the IAT and the possibility of civilian casualties. I suggest to you, and we'll go to them in a moment, that I wanted to preface taking you to those references, out of fairness, to put that to you that, I suggest, was the upshot of the evidence that Mr Blackwell gave. And for that reason it's important that we explore in some detail how those allegations that he has made about your knowledge and your engagement with this issue, and anything to do with your receipt and engagement with the IAT report were dealt with. So the first one I want to take you to is page 676 of the transcript. 676 to 677. Now what I'm going to do, because you won't have read these, and I'm not expecting you to read them - I'm going to read them out and you can follow as we go through and I think that might be a fairer way of dealing with it from your point of view. So start with - well perhaps the bit where the highlighting starts will be fine.

Q: What's your recollection of where you briefed him?

A: I briefed the Minister in his office in the Beehive.

Q. Right, but you don't remember whether you were summonsed.

A: I don't.

Q: Okay. It would make sense though wouldn't it, Mr Blackwell, if the Minister had read the report because it would be immediately obvious to him that it was of some significance.

A: I would have thought so yes.

Q: And I take it that you were completely frank with the Minister and the CDF about the report and its implications.

A: I believe I was.

Q: Well you say you believe you were, you must have known the significance. Well you've told me you'd known the significance of it and you've told us too that you were someone who appreciated the very real need to be open and candid with Ministers. So you could have been candid with the Minister - so you would have been candid with the Minister and with CDF about the implications of the report surely.

A: Okay, as a military officer one must be respectful of the higher office that is held. I made the points known and it was for the Minister and the CDF to determine what they would do with the points that I made."

We'll skip the next question and just go to the answer, well I'll read it out.

Q: Well we're going to spend a bit of time as we go through the questioning today about these matters, but you must have had an appreciation of the public statements that had been made by Defence about the allegations of civilian casualties up to that point".

A: Hence my very strong desire to get a copy of the document and immediately upon receiving the document having it marched into the office of the CDF and the Minister.

And then just go over the page for a bit. Question of course:

Q: And all I'm suggesting to you is given the background, given that you're the subject matter expert, given that you've got an obligation to be utterly transparent with the Minister and with CDF, it follows logically surely that you must have pointed out the significance of the IAT report to them.

A: The Minister as I recall asked me whether there were civilian casualties. I said that the document which was a standard NATO response was neither to confirm or deny but that there may have been, but there was no evidence that I had viewed including the footage, storyboard or the discussions I'd had with my colleagues that led me to believe that there were civilian casualties.

Q: All right.

A: Though it could not be discounted.

So just looking at that extract first, Dr Mapp, he is saying there, and indeed he said in other places in answer to questions, that he was completely frank and candid with you about this.

A. I'm sure he told me. I'm not doubting what he said to me and any decisions made were my responsibility, not his. He was passing information to me. And the only real memory I actually have of this is him sitting across the table telling me this. It's the only actual evidence, memory, I have of it.

Q. So you were in your office?

A. Yes.

Q. Right. And he told you of the significance of the report?

A. I don't know whether he said that or not. I don't recall the actual discussion.

Q. So you can't comment on whether what he has told the Inquiry here is correct or not.

A. No, I can't.

Q. Do you dispute it?

A. Well he told me, he told me that there was possibilities of civilian casualties but that there was no evidence that there actually had been civilian casualties. And that's what he told me.

Q. All right. Well we'll come to the issue about there being no evidence of it shortly. He gave you a copy of the IAT report.

- A. I don't believe he did.
- Q. Right, so he said he had, has definitely done that, that he's marched it into your office. So you do disagree with him about that.
- A. Oh, I'm not disagreeing that he marched it into my office. I don't believe I've ever read it.
- Q. Well he - we'll come to some more passages shortly, but he has been very clear with this tribunal that this Inquiry - that you had read it and he engaged with you about the subject matter of it and he had no doubt that you had read it. So you do dispute that.
- A. I've searched my memory very deeply on this over the last, you know, few weeks as you can imagine, and I simply cannot recall that. And, you know, I've asked myself that question numerous times. Did I read it, did I not? And I simply have no recollection of reading that document.
- Q. Surely, Dr Mapp, if you had got it you would have read it. I mean I suggest to you that it would be inconceivable for someone with your background and your interest in this issue that given the matters we've just been going through about you wanting to get the report, that you would not have read it if you had it.
- A. I have no recollection of reading it.
- Q. Do you accept from me, or do you accept the proposition, that if you had been given it, given the matters we've traversed, that you would have read it. Does it surprise you that you wouldn't have read it?
- A. It seems unlikely to me that I've read it because I have no recollection of reading it and I've searched my memory on this, as you can imagine, and I just simply cannot recollect that.
- Q. So sorry ...
- A. I simply have no recollection of ever reading it.
- Q. So does that suggest to you that you didn't read it?
- A. That's what it suggests to me.

Q. Right. Did you - were you given a copy of it and chose not to read it? Or did you - are you saying you weren't given a copy?

A. I have - well, I'm sure I would have read it if I was given a copy of it, but I have no recollection of reading it and this is something I've dredged and dredged my mind on. And I just simply have no recollection.

Q. All right, we'll carry on. Can we go now to the next extract which is at page 683. If that could be handed out please. You'll see as I go through these, Dr Mapp, Mr Blackwell appears to get more and more definite as his questioning progressed or as his answers progress. So we'll go to page 683 and in the middle of the page there.

Q: ISAF had undertaken, General Zadalis had undertaken an investigation where he had come out with a report which said there was a possibility of civilian casualties as a result of the misfiring of the US gunship. Women and children had been identified or had been noted as - those passages have just been taken to you in the talking points. I'm simply asking whether you thought he was wrong and you knew better or whether you accepted there was a possibility of civilian casualties.

A: I've accepted I thought I made it clear there was a possibility of civilian casualties and I accept that and that's what I briefed the Minister on.

Q. So just that statement there, that's highlighted on that page. Do you accept that Mr Blackwell told you there was a possibility of civilian casualties?

A. Yes, I do.

Q. You do.

A. As, indeed, I stated in my primary evidence.

Q. All right, okay, that's helpful thank you. And then if we go to 714.

A. But I would add I was also told that there was no evidence of civilian casualties.

Q. All right. And we are going to come to that point. 714, 715.

Q: Mr Blackwell, the briefing paper that you told us before the break that you prepared for the Minister and CDF, what did it contain.

A: Like any brief that I gave to the CDF or the Minister, I would have broken down what was a lengthy document into a series of dot points which I thought would have been relevant. So effectively an executive summary in civilian terms.

Q: And it would have been faithful to what the IAT report said?

A: It would have been absolutely consistent with what the IAT report said. It wouldn't have all the information but certainly would have had an executive summary. In terms of brevity I would have had obviously the additional information that may or may not have been requested as a result of the questions that would have resulted from my brief.

Over the page.

Q: And it would have said then unquestionably that the IAT investigation or the ISAF investigation and the report had found that there was a possibility of civilian casualties.

A: My recollection from the brief was I made it very clear to the Minister that it was my understanding that there was an allegation for potential for civilian casualties as a result of an AH 64 gunsight not slaved correctly but I didn't have any particular evidence to suggest there were civilian casualties.

And then - just down further -

Q: So you wouldn't have hidden that. You wouldn't have obscured that in any way, would you.

A. I would have had no reason to hide or obscure that.

So Mr Blackwell here is saying he was very clear with you about what that IAT report found and he's also saying that there's engagement with the, again, some of the content of it about the gunship misfiring and not slaving properly. Do you recall that?

A. I don't recall the actual discussion but what you've said there doesn't surprise me. As I said, there was no actual evidence here of civilian casualties. Yes, they were possible. Yes, it was due to an American helicopter which apparently was an accident but that there was no actual evidence.

Q. What do you mean by no actual evidence?

A. Well I mean no actual evidence.

Q. Well you're a lawyer, Mr - Dr Mapp I'm sorry. I mean the report itself was secondary evidence and it was based on primary evidence because the report concluded that there was a possibility of civilian casualties based on the evidence that General Zadalis had considered. Surely that's evidence.

A. Evidence to me in the context we're talking about would've been - well something like in fact what Jon Stephenson did. Who was the hero of this whole situation in fact. And that is why I closed my Brief of Evidence on that point. He had photographic evidence. He had photos of people. The child, Fatima. Names and so forth. That was evidence.

Q. Well ...

A. And whereas in the situation I got, was a briefing from Colonel Blackwell which said possibility but no evidence.

Q. The fact that General Zadalis had reached a view that there was a possibility of civilian casualties based on the evidence which is referred to in the IAT report, I suggest to you is evidence. It's not, it may not be conclusive, but you can't dismiss it as no evidence of civilian casualties, surely. I mean it's just a non- [inaudible]. The fact that

there's a finding of possible civilian casualties suggests - doesn't it? - that there's evidence for that finding?

A. Well they obviously must have concluded there was the possibility but there was no actual people being referred to. And no evidence of people, and in fact as you've heard from previous evidence here, that the SAS in Afghanistan had this long kind of process of working through and in one of those documents - which I hadn't seen I might add until this Inquiry - they sort of say, you know, that there was in fact no evidence of people being in hospital as a result.

Q. You've read that IAT report, haven't you?

A. No, I haven't.

Q. Well - so you, you're absolutely clear you didn't read it at the time, is that right?

A. I am clear on that point, yes. I have absolutely no memory of ...

Q. And have you not read it since before coming here today.

A. Not at all. I mean obviously we have press releases because they're in the book in fact. But I have never read the report. I have absolutely no recollection of it and as I've said to you, I've dredged my memory on that point.

Q. And you have, though, referred to the - at least part of the discussion that you can remember with Mr Blackwell about the gunship misfiring, the Apache misfiring?

A. Yes. Part of that is, you know, we've heard so much of that over such a long period of time, it becomes a little bit unclear what I actually remember and what is in fact a reconstruction. But I certainly remember Jim Blackwell - as I said, I have a memory of him sitting across the table talking to me. That's the memory I have.

Q. And do you have a memory of Mr Blackwell talking to you about the report, referring to the fact that the Apache gun misfiring, rounds hitting a building, women and children ...

A. Not knowing, no, I don't have any memory of that at all.

Q. And if he had briefed you faithfully and consistently with the report, as I think you accepted earlier that he would have done, no reason to believe that he wouldn't have been faithful to what the report said? Or am I wrong about that?

A. I only have a fragmentary memory of this. It's pretty limited memory.

Q. Could you ask and answer the question that I've asked you though. Do you have any reason to think that Mr Blackwell might not have briefed you frankly and candidly about the content of that report?

A. I don't doubt that he briefed me. Well, he briefed me in the way that he did.

Q. That's not my question.

A. I know that, but I can't really add much more to it.

Q. Do you have any reason to think that Mr Blackwell may not have been candid with you and open and frank about the content of the findings of that report.

A. I'm sure he's telling the truth. I mean I expect what he's - but beyond that I can't really say.

Q. So you're sure he's telling the truth when he says you got the report, you engaged with it, you read it, you understood the implications.

A. No I don't, I disagree with you. I have not read it.

Q. So he's not telling us the truth when he says categorically that you had it and read it.

A. I don't believe I've read it.

Q. So you are saying that he's not telling the truth when he says that to this Inquiry.

A. I think over a long period of time people's recollections obviously vary. That's not surprising. But I have no memory of reading the report and as I have said, I've dredged my memory on that very point.

Q. Is there some reason, Dr Mapp, why you want to protect Mr Blackwell?

A. No.

Q. Well doesn't it follow that if he said categorically to this Inquiry that he gave you that report and you read it and you engaged with the detail of it, and you are saying that's not right, that there is an immediate conflict of evidence?

A. Well there's conflict of evidence.

Q. Who's right. You or Mr Blackwell?

A. I can only tell you what my memory is. And my memory is that I've never read the report.

Q. Right. Well let's carry on for a bit then with some of these other extracts. 748. Pages 748, 749, 750 altogether. Right. So starting at 748. So he refers there to document 386 and take it from me we have heard that document 386 is a document referred to in a Defence register which Mr Hoey has indicated he believes would have contained the IAT report.

Q: So you say document 386, a copy went to the Minister, you say document 386 went to the Minister.

A: You'd have to ask Mr Thompson but the Minister was very familiar with the document when I briefed him. So I can only - so he can only have received it because he knew.

So you take direct issue with what he says there, don't you, Dr Mapp?

A. Yes I do.

Q.

Q: So just on that, so the Minister was very familiar. So he'd read the IAT report before you briefed him, had he?

A: He asked me specifically about the, how a helicopter gunsight worked with a slaved - whatever that is - on the gunsight.

Do you remember talking to him and asking him questions about the slaving?

A. No I don't.

Q. It's possible that happened?

A. It's possible it did.

Q. And if that had happened, presumably that must have been because you'd read the report. How else would you know?

A. Presumably he told me.

Q. But you can't remember that.

A. No I can't.

Q. So carrying on then.

Q: So you just said a minute ago that the Minister - your words were that the Minister was very familiar with the IAT report before you briefed him.

A: It was my understanding that the Minister was very familiar with the fact that the IAT report had said there may have been some civilian casualties. That was the purpose of me going to brief him.

So he's saying there that you'd had the report before the briefing, he came and briefed you.

A. I don't believe that's the case. Well, I don't - no, I don't believe that's the case.

Q. What, the fact that you had the report in advance of his brief?

A. Correct.

Q. One matter I didn't touch on when we read the earlier extract, he referred to having a briefing paper and there being a briefing document. Do you remember that?

A. No I don't.

Q. Would it be normal for there to be a briefing document?

A. As I said, he normally brought documents with him. Prior to this situation, my only memory of Jim Blackwell's briefings had ever been about current operations. It wasn't - and you know that already. It wasn't until I saw the diary, the material from a month ago, then seeing my diary and seeing the sequence of dates, then reading the evidence that something of a memory came back.

Q. Thank you for that. But did he bring a briefing paper to the briefing?

A. I can't say.

Q. But he could have.

A. He could, yes he could have.

Q. And if he did, would that briefing paper or a copy of it remain in your office?

A. No.

Q. We'll go back [inaudible].

A. He - his practice always was to come across, talk to me. As I said, the briefings were fundamentally oral, might show me things. The only thing that I really remember in fact of his briefings are photographs. Photographs of weapons, explosive devices and things of that nature and him saying things to me. They were not overly long these briefings.

Q. All right. We'll go back to the extract. Just picking it up. He says - this is Mr Blackwell:

A: It was my understanding that the Minister was very familiar with the fact that the IAT report had said that there may have been some civilian casualties. That was the purpose of me going to brief him.

Q: Right. So what I've said to you is correct. Your evidence is the Minister was very familiar with the IAT report before you briefed him.

A: There would have been no reason for me to brief him if he hadn't been.

Q. And you don't agree with that I take it?

A. No, I don't agree with that.

Q. And we can perhaps go over the page. The same, top of the page.

Q: My question is, is your evidence that the Minister was very familiar with the IAT report before when you went to brief him, answer yes or no.

Answered yes. It goes on.

Q: And he talked to you, I think, you've said about the failure of the gunship firing system to slave properly - that's a question.

Answer: The Minister was a previous territorial force officer, he had a deep interest in things mechanical and military and often asked me questions about various military platforms and their capabilities. I was a qualified forward air controller so I had a deep understanding of the application of fire power from aerial platforms.

Doesn't that suggest that he talked to you about the fire power of the air weapons system in this operation and perhaps circumstances relating to the failure to slave and the misfiring of the Apache helicopters? Does that ring a bell, Dr Mapp?

A. It doesn't ring a bell but I can imagine that discussion occurred.

Q. Right. And it would be logical, wouldn't it, if that discussion had occurred that it would be in the context of - the only relevance of that really would be the misfiring possibly causing civilian casualties.

A. And, as I say, I can imagine we had a discussion on that.

Q. Right.

A. For the reasons of he's actually said. I did take an interest in those sorts of things.

Q. So I suggest to you that that shows you have had some type deep engagement with the substance of what this report said.

A. No, it shows that I had a discussion about that aspect.

Q. Coming on then to page 750. Top of the page, I was asking Mr Blackwell about whether the Minister had an interest in civilian casualties and he'd been saying earlier that he had as well and that resulted in me saying this is not a competition between you and Dr Mapp, we're simply trying to

establish whether you agree that Dr Mapp had an interest in the issue of civilian casualties.

Answer: He did as did I.

Q: Right. And therefore, given he'd read the IAT report, and well familiar with it, your briefing him, you understand candour transparency and no surprises, he would have been left in no doubt about the significance of that report and the possibility of civilian casualties. That's the position isn't it.

Answer: The Minister asked me what my opinion was, whether there were civilian casualties. The answer was very clear. It was I don't have any evidence to suggest there were, but there may have been because there were several rounds from the Apache of an incorrect gunsight slaving. But I had no understanding or no evidence to suggest there was, but there could have been.

Q. And you'd agree with that, would you?

A. I don't disagree with it.

Q. Mmm?

A. Yes, I do.

Q. You agree with that. Now 761 and 762. And here Mr Blackwell's talking about the fact that the IAT findings were inconsistent with your briefings. So in the middle of page -

Q: exactly and obvious to the reader would be wouldn't it that the IAT report was completely inconsistent with what the Minister's briefings had been previously.

Answer: Correct.

Q. Now I'll just stop there, Dr Mapp. That must have also been blindingly obvious to you.

A. Well on the basis there was no actual evidence, I didn't think that I could actually take the matter further. I sort of left it at that, thinking, well, there's nothing more that I can actually do about this.

Q. Okay. And let's explore that then now because what you're saying is you've got a report of an investigation undertaken by a three star General which concludes on the basis of evidence that that General has examined, and his team have examined, that there's a possibility of civilian casualties. You know, don't you, that the essence of that is misfiring of Apache gunships' rounds hitting a building. [Inaudible] that's where the civilian casualties would have arisen [inaudible]. And he concludes it at the level of a possibility.

A. Yes he does.

Q. I've suggested to you that is not no evidence, that's a finding of possibility of civilian casualties. But putting that to one side for a moment, that's light years - now when you're saying is that you've got no evidence and yet you have said you're satisfied - earlier you have said that you're satisfied that the allegations of civilian casualties were completely false.

A. Yes I did say that.

Q. And that's completely wrong, isn't it.

A. I concluded on the - what I'd heard, that there was no evidence of civilian casualties, I thought, well, I can't put out a press release that says there's no evidence of civilian casualties. I can't recall exactly what I did think, but I did think this is not a matter that I should have taken to the Prime Minister's office or with Stuart Boag that there was simply, there was no evidence here so I left it at that.

Q. Dr Mapp, you have said - and your words were - the allegations of civilian casualties were investigated and proven to be false.

A. Yes, I know, I know I've said that.

Q. On any view of it, the findings of this IAT report were completely the opposite of that. You couldn't maintain a position that the allegations were proven to be false,

could you once you saw that IAT report or heard the result of it?

A. But on the basis that there was no evidence of civilian casualties I concluded that I didn't - well, it wasn't necessary to correct what I'd said.

Q. Because Mr Blackwell had told you he had not seen any evidence of civilian casualties? That was what he had said.

A. Well I accepted what Jim Blackwell said to me. I never disputed what he said to me. And what I'd - well, my memory of it is this oral briefing from him.

Q. So you're accepting what Jim Blackwell who didn't undertake the investigation, that he had not seen any evidence of civilian casualties rather than the findings of General Zadalis who'd undertaken an investigation?

A. My memory of this is entirely from Jim Blackwell's briefing.

Q. And what does that answer, I'm sorry, I don't understand that. What I was putting to you ...

A. Well that, that's what I, that's what I heard from Colonel Blackwell. That's what I heard.

Q. You heard from - according to Mr Blackwell, you heard from him that there was a possibility of civilian casualties.

A. Yes.

Q. That's what the IAT ISAF investigation had found. That that had arisen as a result of gunship misfiring, and that when you asked him for his personal opinion he said "I haven't seen any evidence of civilian casualties" or words to that effect.

A. I accepted - well there was no evidence. That's the point. There was no evidence.

Q. How can you say that when the report itself concludes that there was a possibility of civilian casualties based on evidence?

A. Well there was no evidence of actual civilian casualties.

- Q. Because you didn't have a photo of a deceased person. Is that what you're saying?
- A. Well there had to be something more than what there was.
- Q. Well why was the something not the misfiring of a gunship and rounds hitting a building? Wasn't that sufficient for you to say what I've said previously, that the allegations had been proven to be false was wrong?
- A. Well I don't recall, you know, exactly the discussion about where the rounds had gone or anything like that. But it seemed to me there needed to be evidence and there wasn't.
- Q. On any view of it, your statement that the allegations had been investigated and proven to be wrong was totally inaccurate.
- A. I felt on the basis of what I'd heard, I couldn't really take the matter any further. And indeed, actually, no-one ever has. That's the extraordinary thing about this is that no-one has ever taken this matter further. Even after the television programme of June 2014 where there is photographs. Where there is names.
- Q. Well, that's a different issue. What I'm wanting you to focus on now is how you could not have corrected the public record given that you had made a false statement because the allegations had been investigated and they certainly hadn't concluded that the allegations were false. Correct?
- A. My actions were based on the fact ...
- Q. Could you answer that question though? Because I'm - you'd have to accept what I'm putting to you. That that statement was wrong, wasn't it?
- A. My actions were based on the fact that there was no evidence.
- Q. You would have to accept that your statement that the allegations had been investigated and proven to be false is patently wrong.
- A. No I understand the point you're making, but I ...
- Q. Could you answer the question?

A. But I say to you, the reason I didn't make a further statement is that there was no evidence.

Q. I understand that and we could have this discussion all day and I hope we don't. But I want you to answer my question if you would please. Do you accept that your statement, "the allegations have been investigated and proven to be false" was wrong?

A. Well I understand why you say that. But, look, I've explained to you my actions.

Q. Are you not prepared to answer my question, Dr Mapp?

A. Well I think I've actually answered it.

Q. No. I'll come back to it again and I'm going to keep asking it until you do answer it. The question is, do you accept that your statement that the allegations were investigated and proven to be false was wrong. It was either right or it was wrong. Which was it?

A. Well, as I said, based on what I'd heard that there was no evidence of civilian casualties, I did not think it was necessary to correct that statement.

Q. That's a different issue. Was your statement right or was your statement wrong?

A. Well I think I've answered the question.

Q. Well do I take it from that that you accept it was wrong?

A. I've answered the question.

Q. No, you haven't. Was it right or was it wrong? It's a simple question. You said the allegations were investigated and that they were proven to be false. Now they weren't proven to be false, were they?

A. Well this is obviously at variance of it, but there was no evidence.

Q. They were not proven to be false, Dr Mapp. How hard is that question?

A. Well, look, I understand the contradiction there, I know that.

- Q. Well, so do I take it from that answer you accept that you were wrong when you made that statement.
- A. I wasn't. Well, as I said, when I had the briefing there was no evidence of civilian casualties. And that's the basis I made - did what I did.
- Q. Why are you not prepared to make it - to accept now, that you made a mistake then. That that was wrong, that that statement was wrong. I don't understand why you wouldn't accept that. It is so patently obvious.
- A. I should have spoken to someone else rather than just making that decision myself, but I didn't. That's the decision I made. That on the basis of what I'd heard, that I didn't need to make a further correction. In fact I would imagine I'd have been told exactly the same thing by others, but that's the decision I made. I have to - I accept that's a decision I made.
- Q. Well that's very fair of you and I understand, you know, you've got an explanation for why you didn't correct the record. I haven't even got to that point yet. I'm just wanting you to acknowledge for us what seems to be - and I suggest to you is very obvious - that the statement is wrong and you still haven't acknowledged that.
- A. Look, I understand why you say that and I understand that - well.
- Q. Is it right or ...
- A. There is now evidence, there is now evidence that there were civilian casualties. I don't think anyone really doubts that. Notwithstanding that the New Zealand Government has never made a proper investigation of it. There is evidence of civilian casualty. That is true.
- Q. And there was ...
- A. And I accept that so on that basis, and in fact I actually say it in my primary evidence, don't I, that I was probably wrong. I actually say that in my primary evidence.

Q. And what I'm asking you is when Mr Blackwell briefed you in September and you knew about the possibility of civilian casualties, it would have been very clear to you that what you'd said to the media a couple of months earlier, a few months earlier, was wrong.

A. Well I didn't think about it that way.

Q. You didn't think about it that way. But you accept now that it was wrong.

A. I understand why you say that.

Q. Well does that mean you accept what I'm putting to you?

A. Well, as I say, I understand why you say that.

Q. And, similarly, you would have to accept that your agency, NZDF, when they are making public statements at the same time, in April 2011, that the investigation, the ISAF investigation, established the allegations of civilian casualties was unfounded, that given what you found out in September, that was also wrong, that was a Defence statement, public statement, not yours.

A. Yes, and I didn't contact Defence about it and I didn't think about the issue at the time.

Q. But you'd accept that it was wrong? Unfounded? Light years away from a possibility, isn't it.

A. Well, it's a different to a possibility, yes.

Q. Right. No way there were civilian casualties which was the statement in your Ministerial briefings. That, too, is light years away from a possibility isn't it.

A. Yes it is.

Q. So we were at page 761 of the transcript. And Mr Blackwell has just accepted that the Ministerial briefings were completely inconsistent with the IAT report.

Q: And that wasn't drawn to his attention in any form of note or memo or cover note by you?

Mr Blackwell says: I certainly was surprised in 2014 with some of the things I heard in terms of what was remembered and what wasn't, because my memory was very clear.

Q: What do you mean by that?

A: Well I briefed the Minister in 2011 around the IAT report.

And then going on, it says at the bottom of the page:

I was surprised given that I'd briefed multiple Ministers on that objective, Operation Burnham, whatever you want to call it, that Minister Coleman was unaware. I would have thought he would have been aware.

Q: What about Minister Mapp?

A: Oh he was definitely aware because I briefed him.

Q: Are you surprised at how he reacted afterwards?

A: I grew less surprised by the reaction of Ministers as I was longer in the job.

Q: Do you think the fact that there was an election looming in 2011 might have had anything to do with things?

A: That's not for me to comment on, that's the Minister's decision, not mine. I am only simply here to provide the information.

Q: But you're certainly saying that you did your job properly and made him well aware of the significance of this.

A: I think it's obvious that the document says that I provided the document to the Office of the CDF and the Minister so I didn't provide it [I think that actually should be 'I did provide it'] to the Minister. I certainly provided it to the office of the CDF.

Q. So he there is expressing surprise that nothing was done about it. And I was wrong earlier when I said the election was only two months out when we were talking about April. But September was only two months from the election, wasn't it?

A. Yes, that's correct.

Q. And what impact did the fact that the election was looming have on your reaction to receiving this information about civilian casualties?

A. None. I wasn't standing in the election.

Q. But National Party were.

A. Yeah, but I had complete confidence they were going to win.

Q. Right. Was it not the case, Mr Mapp and those of who live and work in Wellington can perhaps relate to this, that a couple of months out from the election there's a reasonably strong desire across the whole of government for there not to be any major dramas unfolding pre-election. Is that a fair comment?

A. But - had I made a different decision and gone and spoken to other people - which I didn't - and the press release had been issued, it would have made no difference whatsoever to the election.

Q. Did you get any instruction from higher up the Beehive that this issue should be put to bed and not raised publicly in the leadup to the election?

A. No.

Q. You're sure about that?

A. Positive.

Q. Did you have any discussions with the Prime Minister or Mr McCully about this issue in September or afterwards?

A. No I didn't.

Q. None at all.

A. None at all.

Q. So you didn't tell them about the result of the IAT report. Notwithstanding they'd asked to know about it?

A. No I didn't.

Q. Why?

A. I just thought it was one of these situations well we'll never actually know. It was, well, as indeed that IAT report apparently concludes, no evidence, possibility and what can we do with this matter any further. And, look, any

decisions that I made are my decisions. Not anyone else's decisions. I didn't talk to anyone else. And I thought about that a lot. Did I talk to someone else? That's why I spoke to Stuart Boag. I said, you know, I must have talked to you about it? He said no you didn't.

Q. But Dr Mapp, you said a minute ago that the IAT report concluded there was no evidence. Why did you say that? Because that's not what it concluded.

A. Well, because that's my memory of the conversation. I don't actually have any recollection of reading the IAT report. And I don't believe I have.

Q. So that's your memory of Mr Blackwell saying that he doesn't know of any evidence. Is that the gist of that? Is that what happened?

A. Yes, that - well.

Q. That's Mr Blackwell's view of the world. Not the report's.

A. I accepted what he said.

Q. Over and above the report.

A. I accept - well, I had no reason to disbelieve what Mr Blackwell was saying to me. I always accepted what he said about things.

Q. So if you say Mr Blackwell's wrong when he says categorically that he gave you the report and you read it and engaged with the substance of it, why - and you say you didn't do that, why didn't you ask him for that report?

A. I don't know why I didn't ask him for that report.

Q. Because that would have been a logical thing for you to do wouldn't it?

A. Yes, you would think it was but, as I say, I have absolutely no memory of reading it. As I say, the briefings I got from Mr Blackwell were fundamentally oral and I treated them on that basis.

Q. But if he had important documents to give you, you would expect him to give them to you? He's briefing a Minister of the Crown, he's told us in his evidence that he understood

the importance of no surprises and frankness and candour. Have you got any reason to believe that he wouldn't be frank and candid with you?

A. No I don't - well, he was. That's why he used to come across, to tell me about operations many which are still not in the public domain.

Q. All right. We go to page 779 now please. So if you go to the second set of highlighted extract towards the bottom of the page.

Q: I want to know whether you or Dr Mapp made a decision to cover this up and play it down to the public. Was it Defence or was it Dr Mapp. Because it seems to me you can't have it both ways.

A: I certainly didn't cover it up.

Q: Did Dr Mapp in your view, did he, did you tell him in a way that drew home to him the significance of it? Because if you did, then he didn't do what you'd expect him to do. You'd have to accept that.

A: I don't wish to make any remarks on what Dr Mapp may or may not have done.

Q: Why?

A: It's not for me to do that. It's inappropriate and unfair to do so.

Q: Well we'll put it this way. So your evidence then is that you drew to Dr Mapp's attention in a clear, proper, fulsome way the implications of the IAT report. You gave him a copy of it. He read it. To your knowledge true?

A: I believe so.

Q: You had a briefing with him in which you talked about the findings of the report.

A: I answered the questions that Dr Mapp put to me, yes.

Q: You had a briefing in which you answered his questions about the findings of the report?

A: Correct.

Q. Now you disagree with Mr Blackwell, Dr Mapp, about that?

A. Well, as I say, my only memory of Jim Blackwell is him telling me this. But, you know ...

Q. So do you accept that he briefed you in a clear, proper, fulsome way about the implications of the IAT report?

A. He gave me a briefing and I'm - yes.

Q. You do? You accept that evidence?

A. Yes. But I don't accept that I've read the IAT report.

Q. No?

A. No, I don't.

Q. What I put to you was do you accept that he briefed you in a clear, proper, fulsome way on the implications of the IAT report?

A. I guess he must have, yes.

Q. And do you accept that in that briefing he answered your questions about the findings of the report?

A. I must have spoken to him about the report.

Q. Right.

A. I must - 'cos otherwise - I must have spoken to him about it, yes.

Q. He goes on - the question goes on, next question:

Q: Right. And you were left in no doubt that he understood the significance of it?

A: I believe that Dr Mapp was fully aware of what I had briefed him on.

Q: And you were also aware yourself and I suggest you would have, you must have been clear with Dr Mapp because it must have been part of the discussion that what had gone on previously and what had been said publicly was inconsistent with what the IAT report was showing. That must have been the case Mr Blackwell.

A: Correct. That's why I asked for the IAT report in the first place, in April.

Q. And then he goes on to talk about the primacy of public statements generally being conveyed by the Minister of

Defence. You'd accept that would you? That it was really up to your office to correct the public record? Or was it Defence's?

A. No, I accept it was - look, the decisions made were my decisions. Not anyone else's decisions. It wasn't Jim Blackwell's job to make the decisions on these matters. It was mine.

Q. Right.

A. And I accept that.

Q. And the evidence we heard yesterday from the Chief of Defence at the time, Mr Jones, I'm sorry I don't have the extract so I'll paraphrase it, but it was to the effect that he did not, he had no recollection - he didn't recall being briefed on the IAT report, had no recollection of Mr Blackwell giving it to him, providing it to him, and his Deputy Chief of Staff, Mike Thompson, gave evidence that contrary to what Mr Blackwell had said, he didn't believe he was asked to give the IAT report to the CDF nor arrange a meeting for a briefing between Blackwell and Mr Jones. Mr Jones got to the point where he accepted that he disagreed with the evidence that Mr Blackwell had given about being briefed by him on this. You would expect, wouldn't you, and you will know this I suggest, Dr Mapp, that the normal course would be for Mr Blackwell to brief the CDF before he briefed the Minister on something like this?

A. That's the normal course, yes.

Q. So if this Inquiry accepts Mr Jones' evidence about that rather than Mr Blackwell's, namely that he wasn't briefed, you'd accept that that would be unusual?

A. I'd accept it would be unusual. But I can't make any further comment on that.

Q. No. Was the position that you and Mr Blackwell together reached a view that you didn't really believe there were civilian casualties and this would all be better just

pushed to one side and no light shone on the report?

Something like that?

A. No, I don't believe that would have been the case. I would never have - I would never have implicated Jim Blackwell in that kind of thing. The decisions that I make are my decisions.

Q. So you made a conscious decision not to correct the public record?

A. On the basis there was no evidence.

Q. Well we've been through that.

A. Yes, I know we have.

Q. And do you accept that the IAT report concludes there was a possibility of civilian casualties.

A. Oh yes, yes. That's been what this whole Inquiry's been about so obviously I accept that.

Q. Do you now accept that you should have corrected the public record?

A. I've thought about that a lot, as you can imagine, and my view is on the basis of what I'd heard, no. On the basis of there being no actual evidence of civilian casualties then I thought no, that was, you know - now people are going to make comments and observation about that, I realise that. But - and they might come to a different view. I mean, as I say, what I should have done - I've thought about this a lot as well - I should have talked to someone else. I didn't. But that's what I should have done. And I may well have been told if I'd talked to someone else "no, no, Wayne, don't issue press releases that there's no evidence." I make effectively that judgement myself.

Q. Are you aware that the New Zealand Defence Force position is that a copy of the IAT report was taken to your office?

A. Yes, that's what you've been asking me. I know that. I've read the Briefs of Evidence.

Q. Do you accept that?

A. I accept - well, I have no reason to dispute it.

Q. So what do you say then. So you've got Mr Blackwell saying you read and engaged with the IAT report. And you've got evidence which you can't dispute from NZDF saying it was delivered to your office and taken to your office. Are you saying you didn't read it?

A. Yes, I am saying that.

Q. Is that acceptable?

A. I have absolutely no recollection of reading the IAT report.

Q. Is that acceptable?

A. And I've ...

Q. Dr Mapp?

A. Whether it's acceptable or not is not really the point. It's a factual question. Did I read it, did I not? I have no recollection of reading it.

Q. Have you got any recollection that your staff engaged with that report? So you're saying that the report comes in and no-one engages with it in your office? None of your expert advisers?

A. Well, that's for them to say what they did.

Q. If they had, Dr Mapp, they would have briefed you on it and talked to you about it, surely?

A. I don't recall anyone doing that.

Q. So we've got a situation ...

A. As I said, I've spoken to ...

Q. Mr Boag.

A. ...to Mr Boag about that precisely that point because, you know, I've wondered myself, you know, how on earth could this happen. And I said, you know, "did we ever talk about this, Stuart?" The answer is "no we didn't, Wayne."

Q. So this highly important secret partner document comes into your office. You've got expert military advisers in your office. No-one looks at it or reads it - apparently. You say you didn't look at or read it despite the fact that you'd been asking earlier in the year to get a copy of it.

A. I wasn't actually aware that it was in my office.

Q. Right. And then Mr Blackwell comes along and briefs you on it.

A. Yes. He does.

Q. Why didn't you say to him well where's the report, Jim?

A. Because I tend - briefings with him were always oral. Fundamentally oral.

Q. Well what's that got to do with what I've just asked you with respect, Dr Mapp. Because surely, I mean this is now getting, I suggest to you, a little silly. Because you've got Mr Blackwell in your office briefing you on the findings of the report and you're saying the report's sitting out in somebody else's office next door to your office in a cupboard or safe or something. Jim's talking to you about it and you don't say "Where's the report?"

A. No, I have no recollection of reading the report. I don't recall knowing about it.

Q. Why didn't you say to Jim "Where's the report, Jim, let's have a look at this report?"

A. I don't know why I didn't say that.

Q. Wouldn't that be the most logical thing in the world for you to have done?

A. Perhaps I should have done that, but I didn't.

Q. I suggest to you that you looked at the report. You had the report.

A. I didn't.

Q. Mr Blackwell was right about that.

A. I did not look at the report.

Q. How can you be so clear about that when you're not clear about anything else?

A. Because I have dredged my mind on this very point. Have I read this report or not? And I keep coming up with a complete blank no I have not read it. And I've thought about this a great deal, as you can imagine, and I simply cannot recollect it.

Q. Well does that suggest to you that you didn't get it?

A. Yes.

Q. It didn't come to your office? That the NZDF position's wrong?

A. No, I'm not saying that at all. I am saying that I never read it. I can't speak for other people. I can only say what I can remember and I have no memory of reading it.

Q. Well you'll forgive my frustration, Dr Mapp, but this is an Inquiry that's trying to get to the bottom of matters. You are the Minister of Defence. This is your office. You have got responsibility for it.

A. Yes.

Q. Surely, surely you would expect your staff to have given you that report if they had it. Is that fair?

A. That - yes, I accept that.

Q. And do you have any reason to think that your senior staff who were advising you on these matters lacked either the competence or the motivation to give you such an important report? Why would they not give it to you?

A. I don't know, I can't - I can't say.

Q. Isn't that inexp - it's inexplicable isn't it?

A. Maybe things got too busy, I simply don't know why.

Q. Sir, I wonder if we could take the break at this point so that I can just regroup on what I have left to do.

SIR TERENCE: All right. We'll take an adjournment for 15 minutes, resuming at 20 to 11. Dr Mapp, while you're under cross-examination, please don't discuss your evidence with anyone.

A: I understand.

Resumed after adjournment

SIR TERENCE: Please be seated. Ms McDonald.

MS McDONALD: Thank you, Sir.

CONTINUED CROSS-EXAMINATION BY KRISTY McDONALD QC:

Q. I wonder if you could be given please a copy of Mr Blackwell's Brief of Evidence which I think you've told us you read before giving evidence to the Inquiry. Could I ask you, Dr Mapp, to turn to paragraph 13 of Mr Blackwell's evidence?

A. Yes.

Q. He says there doesn't he, by reference to the AR15-6 investigation report, the subsequent report which is public, which he says summarises the findings of the IAT and just putting aside for one moment the extent to which that's entirely accurate but nonetheless in this brief Mr Blackwell says there, or sets out there a quote from the AR15-6 report and you would have read that when you read his brief of evidence?

A. Yes.

Q. And that quote from that report says that the investigation concurs, that's the AR15-6 investigation the second one, concurs with the IAT observation that based on the weapon system video evidence it is possible that civilian casualties occurred because at the time of the Air Weapon Team engagement, women and children appear to have been present. However, there is no evidence in the video that confirms that there were civilian casualties. The only piece of information that can be confirmed is that rounds impacted the rooves of buildings where it is possible that civilians were located. Based on the evidence I have reviewed I concur the IAT findings that civilian casualties are possible but it cannot be confirmed. So, presumably, Dr Mapp given that's what Mr Blackwell's Evidence in Chief was that's - and he is

saying there he's using the AR15-6 report because he can't quote from the IAT report, but that would capture the essence of his briefing to you when he briefed you in September.

A. I don't recall him saying that, no.

Q. Which bit don't you recall him saying?

A. Well women and children present and things of that nature. No, I don't recall that.

Q. But you've emphasised earlier that there was no evidence and what I'm suggesting to you is that what he's saying here is that there's no evidence in the video that confirms it.

A. No, I simply don't recollect that.

Q. Clearly you would have to accept that Mr Blackwell thought that the IAT report and its findings were sufficiently significant that you needed to see them and he said that in the next paragraph of his brief. Goes on; "my recollection is that after reading the IAT report, printed a copy, took it to the Office of the Chief of Defence Force, I gave it to Mike Thompson who was the Deputy DCOS etc and responsible for co-ordinating briefing between the OCDF and the Office of the Minister of Defence, I said to him that this was a document that the Chief of Defence and the Minister of Defence needed to see". So he obviously reached the view quite quickly on reading the IAT that you needed to see it, it was of such significance. Correct?

A. Yes he did. Well, apparently so.

Q. In those - given that, how could you think or conclude that it wasn't of sufficient significance for you to correct the public record?

A. Well I don't recall. If you - going back to paragraph 13, I don't recall any of that. I don't recall being told anything like that. My memory of it is much more sketchy than that and, my memory of the conversation seemed relatively short.

Q. Well you see what - this is all - on the one hand you're saying you accept what Mr Blackwell says he said to you. And now on the other hand you're saying you haven't got much memory of it. So which is it? Are you accepting that what he said in evidence is true, because I thought you said earlier that subject to the business about not giving you the report, I thought you conceded earlier that you accept what he said was true.

A. I have ...

Q. If it's not, now is the time to say.

A. I have no recollection of him mentioning this sort of detail. I have absolutely no recollection of that.

Q. So are you now saying then that it is - that Mr Blackwell did not brief you in a clear, fullest and frank way that he said he did?

A. No, I am not saying that. I am saying I have no recollection of being briefed in this way. I have no recollection of this.

Q. So you're saying that it - you accept it happened but you just don't remember it? Or you are doubting that it happened?

A. Well I can't say can I. All I can say is I have no recollection of getting this sort of detail.

Q. And if you had had that sort of detail what would you have done?

A. I would have thought I would have taken more action than what I did, the conclusions that I made.

Q. Well that would suggest then wouldn't it, Dr Mapp, that maybe Mr Blackwell didn't brief you in the frank, candid, full way that he has told this Inquiry.

A. Well I can't answer that question.

Q. Well you can and you just ...

A. How can I answer that question? I can only answer what I can recall ...

Q. Well you've just ...

- A. And I can only - and I don't have this kind of recollection.
- Q. You've just said to the Inquiry, Dr Mapp, that you would have expected that you would have taken some action if you'd been briefed in the sort of detail that has been set out in this Brief of Evidence at paragraph 13.
- A. Yes, I have said that.
- Q. Right. Now doesn't it follow, as a matter of logic, that if you had been briefed in that way you would have taken the action? Done something about it?
- A. Yeah. Yes, that's a logical conclusion, yes.
- Q. And is it not also ...
- A. But I don't have a memory of this.
- Q. I understand that. But this ...
- A. So I can't really take the matter further, unfortunately.
- Q. I'll ask you again. You're on oath. Is there some reason why you are wanting to protect Mr Blackwell?
- A. No there's no - no. I don't know why you put the question the way you even put it to be honest.
- Q. Because I suggest to you, Dr Mapp, that as a lawyer, as a Minister of the Crown, as someone with a high interest in International Humanitarian Law issues, that it is utterly inconceivable that if Mr Blackwell had briefed you in the way that he says he does, you wouldn't have taken some action.
- A. I'd agree with that, yes.
- Q. And I also suggest to you that it therefore follows that Mr Blackwell patently couldn't have briefed you in the way that he says. What do you say about that?
- A. I can only - I don't have a recollection beyond what I've said.
- Q. I also suggest to you that if you had read this report - and you've said you haven't, but if you had knowledge of this report, let's put it that way, and the conclusions

that it had, surely you would've made that known to an incoming Minister.

A. No I didn't.

Q. You didn't. Why not?

A. Probably because I actually had no recollection of it.

Q. But you see there's all these - I simply don't understand your position. Because if you had been briefed as Mr Blackwell says, then you would have had a recollection of it and you would've briefed an incoming Minister, surely?

A. I have no recollection of mentioning this to Jonathan.

Q. No?

A. And in fact I actually don't think I gave him a huge briefing anyway. We just talked kind of broadly and generally.

Q. But if you had had - if you had been aware of the significance of that report, the inconsistency with the Defence briefing, the inconsistent public statements that had been made about it, at a political and at a departmental level, surely you would have briefed an incoming Minister.

A. But I didn't.

Q. No I know you didn't. And I'm suggesting to you that had you had the implications, understood the implications of that report, if you had been properly briefed on it, surely that's logical you would have done that. Is that not fair?

A. Well, it's speculation, isn't it? The reality is I didn't brief him on it.

Q. Why didn't you brief him on it then?

A. It wasn't in my mind.

Q. And why wasn't it in your mind? Because it wasn't important?

A. No I don't know why it wasn't in my mind, but it wasn't.

Q. Well ...

A. I can only assume, actually I can only assume it was the deaths of Leon Smith in particular which was - well, both the deaths were traumatic events. I felt deep personal responsibility about them and, as you know, and I'm not going to go into the detail why too much, I was also deeply, deeply concerned about the PRT.

Q. I don't deny or dispute any of that, Dr Mapp. But if you had, as you did apparently, been briefed on the fact that an international organisation, ISAF, had reached the conclusion that there were possibility of civilian casualties brought about as a result of American airships where New Zealanders had been a partner in that operation, you would have - and should have - corrected the public record, briefed your incoming, the new incoming Minister, made sure that Defence corrected the report as well. You did none of those things.

A. No I didn't. I've told you why I didn't.

Q. Well I, no, I'm not sure I do understand why you didn't. Why didn't you?

A. There was no evidence of civilian casualties.

Q. That was your understanding.

A. Correct.

Q. Based on what Mr Blackwell told you.

A. Yes, yes.

Q. You can't remember precisely what he did say?

A. No I can't.

Q. Because when Mr Parsons - I'll just find his Brief of Evidence here - Mr Parsons gave evidence at the last hearing about his reaction when he read the report, and this is at paragraph 27 of his brief of evidence. "When I finally saw the full report I realised that other paragraphs that I hadn't seen previously concluded that there was a likelihood or a possibility of civilian casualties. Had I read those paragraphs at the time I would never have expressed the email of the 8th of

September in those terms. Rather, I would have confirmed that the IAT report had reached the conclusions tentatively expressed in Ryan's email that civilian casualties were possible as a result of rounds falling short due to a gunsight issue, but that New Zealand troops were not responsible." And I suggest to you that after Mr Blackwell's briefing, he briefed you as he says he did and you seem to accept at least most of that. You'd have reacted much the same way as Mr Parsons wouldn't you?

A. But I didn't.

Q. No, you didn't. And we also heard evidence from Mr Smith when he found out about it. I think his description and evidence in September was when he read it his heart sank. But your heart didn't sink when Mr Blackwell told you about the findings?

A. I thought on the basis of what I'd been told I can't take this matter any further. Because there was no actual evidence.

Q. You keep saying that but - I'm getting repetitive now but I'm afraid I just don't understand.

A. Well I can't really add anything more to what I've just said.

Q. Why were you saying there was no evidence?

A. No evidence of civilian casualties.

Q. What were you looking for? What difference did that make? You had a finding from a three star General saying that civilian casualties were possible.

A. I don't recall anything about a three star General.

Q. Well you know it was General Zadalis, didn't you?

A. No I don't think I did actually.

Q. Well, you knew it was an ISAF report.

A. Yes, yes I did know that.

Q. And you knew they'd come up with a conclusion based on an investigation where they reviewed evidence?

A. Yes. Yes I did know that.

- Q. And you're saying that you were prepared to just either accept Blackwell's comment or dismiss the IAT report because ...
- A. No I didn't, no, not dismiss it. That's not correct. That on the basis of what I'd heard ...
- Q. From Blackwell.
- A. ...from Jim Blackwell, Colonel Blackwell, that I didn't feel I needed to take further action. I simply didn't feel that. You know, you can make the judgement of that, The Inquiry can make the judgement of that as they will. I'm responsible for the action that I made, I understand that.
- Q. Right. And you didn't call CDF and others back at Defence and give them a telling off for their wrong briefings, erroneous briefings earlier?
- A. No I didn't.
- Q. Why not?
- A. I don't know why I didn't. I just didn't. I kind of made a conclusion myself and that was that.
- Q. Did you ever ask NZDF or Colonel Blackwell what steps had been taken to gather evidence?
- A. No I didn't.
- Q. Didn't - so complete lack of curiosity on your part. You didn't ask Jim Blackwell - anything, any detail about it.
- A. I thought it was one of these things that was a fault of war. And obviously ISAF, as we've heard, has never taken the matter further. As we have heard, the New Zealand Government has never taken the matter further.
- Q. What's the relevance of that answer to my question? Are you trying to dismiss the validity of an ISAF investigation?
- A. No I'm not trying to dismiss the validity. The reality is I didn't take any action. I know that.
- Q. And you should have, shouldn't you?
- A. It would have been better if I'd - well, the minimum - the things I could've done is this. I could've talked to

someone. And that would have been primarily the - first of all, I guess, Stuart. Second the Prime Minister's office. Third, Murray McCully. That would have actually been how I would have thought about it. But I didn't do that and well, as I say, I didn't do that.

Q. Okay, so you didn't do that. To be fair, Dr Mapp, you should've done that, shouldn't you?

A. Yes, I agree with you. On reflection I thought why didn't I talk to people about this?

Q. And you should have ...

A. And having said that, I also believe that I would have been told - because I had been told more than once - by the Prime Minister's office that I was taking too much stuff there anyway and, you know, I'd had a few knockbacks as you know, we've discussed, and I made that decision myself. I would have been told, "Wayne, on the basis of no evidence of civilian casualties we're not going to be issuing a press release on that basis." And so I ended up making that decision myself. So the responsibility's mine.

Q. And that's a fair concession I think, Dr Mapp, if I might say so. But you also accept you should have made a public statement at that stage. Because the public had been told that the outcome of this investigation was that the allegations of CIVCAS was false.

A. I've thought about that and I don't think we would have made a public statement based on what I'd heard, we wouldn't have.

Q. If you had ...

A. That's the assessment I made. Look, in hindsight it might be a wrong assessment but it's the one I made.

Q. If you had engaged properly with that IAT report, I suggest to you it would be inexplicable that you wouldn't have corrected the public record because on any view of it, on any interpretation of it, that report did not say the allegations were false did it? You know that.

- A. Well I've never read ...
- Q. You know that from the summaries and from the briefing. Let's not ...
- A. Yeah, look, I've read all this material obviously, I've been at the Inquiry and heard all of those things so, yes, I know that. As I say, the Inquiry will make their own judgement about me.
- Q. I suggest to you if you didn't read that report you should have. You're the responsible Minister. This is a significant issue. You have to accept that. Correct?
- A. Well I didn't, did I?
- Q. I know that. I'm putting to you ...
- A. And as I say, well ...
- Q. You should have.
- A. As I said, I should have at least talked to someone else but I didn't.
- Q. And you should have, I suggest to you, if you didn't, you should have read that report. You'd been looking for it for goodness sake, Dr Mapp.
- A. Yes, I can understand why you say that. But I didn't read it.
- Q. No, I know. So do I take that to be an acceptance of my proposition?
- A. That I should have read it?
- Q. Yes.
- A. In hindsight the answer is yes but I wasn't operating in hindsight, was I?
- Q. And had you read it, you would have, and should have, corrected the public record.
- A. I actually think - because this would have been required Prime Ministerial approval - I reckon I would have probably been told we don't issue press releases on that basis.
- Q. So are you saying that the Prime Minister would have told you that it was acceptable to leave an incorrect, false

impression with the public about what an international NATO investigation had found? Is that what you're really saying, Dr Mapp?

A. Well I'm saying that it's not - well, that on the basis of no evidence, that's what I anticipated I would have been told and I ended up making that decision myself. People here are entitled to make a different view and I accept that. I accept the responsibility for that.

Q. Thank you for that. But my questions were premised on the basis that had you read that report, and you said had you read that report you should have, and you would have, talked to the Prime Minister and you speculated that you would have been told there was no need to make any correction in the public record. Now I'd like you to reflect on that answer. Do you really think that's what you would have been told by the Prime Minister?

A. Yes I do.

Q. Despite the fact that there was false statements by the Government on paper.

A. Not the Prime Minister. It would have almost certainly been Wayne Eagleson I would have talked to in fact.

Q. And you think Wayne Eagleson would have said to you no need to correct public record. Is that something to do with the election?

A. No. On the basis that, well, as I said, on the basis of no evidence we don't issue press releases on the basis of no evidence. That's ...

Q. My question's premised ...

A. Look, I may have made - look, I may well have made the wrong decision.

Q. Thank you.

A. I accept that. And that's, you know, I accept that I got a briefing, I made a decision, I am responsible for my decision.

Q. And you never talked to CDF about this?

A. No, no I didn't.

Q. No, not at all. And you never talked ...

A. I didn't talk to anyone about it.

Q. All right. Well we come then to 2014. So I'd like you please now to have a look at another document - under the October tab in the bundle. If you turn up that October tab and go to page 111 please. And if you have a look on page 111 at the email from Niels Holm is it? 1st of July 2014.

A. I've got 111 here.

Q. In the middle of the page there's an email. You got that? Dated 1 July 2014? Are you looking at the same page? It's on page 111.

A. On 111 there's emails from Ross Smith.

Q. In the middle of the page there's one from Niels Holm.

A. Oh yes, it's at the bottom of the page.

Q. This is dated the 1st of July 2014. Do you know who he is? Dr Mapp?

A. Oh yes, yes, I do.

Q. Who is he?

A. Prime Minister's Honours Secretary I think.

Q. Right. And he's saying "Dear Ross" and this is to Ross Smith. "Former Minister of Defence, Dr Mapp, has contacted this office" - which is DPMC - "seeking clarification of the briefings he received as Minister from the Governor-General in his former role as CDF". And that's Sir Jerry you're talking about there? It's being talked about there?

A. Yes, yes, it is.

Q. "I have relayed to Dr Mapp the Governor-General's advice that he should pursue any matters arising out of the events of 2010 with the Honourable Dr Coleman". Do you remember asking for this enquiry to be made of Sir Jerry in 2014?

A. No I don't. But I knew of course when Sir Jerry left, I knew he wasn't - I knew Sir Jerry had left in January 2011. No I don't recall making that enquiry.

Q. But you don't dispute that you did.

A. No, I don't dispute that.

Q. Why did you have that enquiry made in 2014?

A. Because I must have - when I saw the programme I thought - well I was obviously wrong in Q & A. I mean that was blindingly obvious that I was wrong, what I'd said in Q & A, so I must have thought why was I wrong?

Q. Because this suggests doesn't it that your memory in 2014 when you were looking at the programme was that there was no civilian casualties.

A. That's correct, yes. Yes, that's absolutely right.

Q. Well how can that be the case if Mr Blackwell briefed you as you say he briefed you? It doesn't make sense does it, Dr Mapp?

A. Nevertheless, this issue had entirely gone from my memory.

Q. So you'd completely forgotten that Jim Blackwell briefed you on something as significant as this ISAF investigation and findings?

A. Yes I had.

Q. Is that true?

A. Yes it is true. And I've - you can imagine how much thought I've put into that over the last four weeks and I just kept coming up with a complete blank on this issue. As to say, the only memories I've ever had of Jim Blackwell's briefings were of current operations. And I just kept - that's what kept coming back into my mind. I thought about this and thought about this and thought about this and I could never get beyond that. It wasn't until you in fact in our last conversation mentioned the work "Outlook diary" that I realised oh, I've actually got that diary somewhere and so I then went down the basement, hunted through all my boxes and eventually found it. And

then, as you know, we sent you parts of the diary that were relevant.

Q. And they're relevant.

A. Yes. And then we sent you more and more and more of the diary. Because - and then I saw Jim Blackwell's evidence and that's when the memory of it came back. But up until that - and so, yes, you're right.

Q. So your memory prior to seeing Mr Blackwell's Brief of Evidence was in fact that you weren't briefed on this, wasn't it, Dr Mapp?

A. When I looked at the diary and I looked at the date I thought mmm, I wonder if I was actually briefed then. That's when it started to - I saw that date, I thought the 12th September. And I looked at all of the other dates, I looked at the materials that had been supplied to the commission, you know, all those things, all the - Sir Terence in fact, found it of the safe logs and that's when I thought maybe then. And when I saw Colonel Blackwell's evidence I thought well yes.

Q. And what you've just told me, I'll just get this clear, and it's correct, isn't it, that prior to seeing the Blackwell brief and you say you were looking at your diaries, your recollection was that you weren't briefed on the IAT report.

A. That's correct.

Q. [Inaudible]

A. Yes. That is absolutely correct.

Q. And what was, what brought about this dramatic change in position just a matter of a few weeks ago. Because it changed a few weeks ago, didn't it, Dr Mapp?

A. Yes it did. Because I've been thinking about this for the entire last four weeks.

Q. Have you been ...

A. I can tell you that.

- Q. Have you been asked to take responsibility for this matter?
- A. What do you mean by that.
- Q. It's a simple question. Has someone asked you to take responsibility for not correcting the record and - with the public?
- A. No. I'm not quite sure what question you're actually asking but ...
- Q. Can you have a look then - can you just have a look for me, and we've looked at that email that you sent to Sir Jerry - to his people when he was Governor-General in 2014. I'd also like you now to have a look at an email on page 101. The 6th of December 2011. And this is a, this is 6th of December 2011 so less than two months after you supposedly got a briefing on the IAT. And it is an email from your Private Secretary, Mr Franklin - correct?
- A. Yes.
- Q. And it's dealing with responses to some OIA questions. Correct?
- A. Yes.
- Q. And in it, it reads: "The Minister was going to call DSO" - and that's Mr Blackwell.
- A. Yes.
- Q. "About this but he's changed his mind. He has some concerns with the response to question two, the way it is worded combined with the response to question three, would suggest that there had been civilian casualties. If there are none, then the response will need to state that." And questions one and two are shown on the pages that follow it. Question two I think is shown on page 105. It's a question about the number of civilian deaths resulting from NZSAS operations in Afghanistan. So the point I'm putting to you here is why two months after this apparent briefing from Blackwell, your staff and you have obviously

engaged with this, it's so clear there are no civilian casualties and that's how the response should be made.

A. No in fact I actually interpret this document differently.

Q. All right.

A. And I think that the words to the best of my knowledge were put in there specifically on that basis. I'm surmising that.

Q. You're surmising that.

A. Yes.

Q. You'd have to accept though that given what you - even what Mr Blackwell and you have given evidence about, relating to the discussion and findings of the IAT report, there would have been a rather more accurate way to answer that question?

A. Well on the basis there was no actual evidence, it seemed an appropriate answer.

Q. Well we won't revert, I'm sure you'll be happy, to no evidence issue again. The other document I wanted to talk to you about was page 93 of that same bundle. And this is 8th September. So you - when do you think your briefing was with Mr Blackwell? The 12th?

A. It has to have been the 12th.

Q. The 12th. So this is before then?

A. Yes.

Q. It's not quite so significant but it is some talking points which for you in relation to the Nicky Hagar book, in which again at the bottom of the ...

SIR TERENCE. Identify the book, *Other People's Wars*.

A. Are you sure about that?

Q. Yes, *Other People's Wars*. Sorry. And at the bottom of page 95 there's the same statement recorded again that the allegation of civilian casualties was unfounded. I assumed that was the position that your office understood at that time. It was, however, after the IAT report had been apparently marched into the office of the Chief of Defence

Force, arrived at Defence. And indeed into your office, according to the New Zealand Defence Force evidence.

A. I'm not sure what response you're ...

Q. Well what I'm suggesting to you, and perhaps you can help us, is why your staff is putting together talking points which refer to the fact that the allegation of civilian casualties is unfounded when the IAT report has been received on the 1st of September.

A. Why do you think these are my staff?

Q. Have a look at page 93.

A. Yeah, no, I'm looking at 93 and it refers ...

Q. Isn't Kirsty Doig-Taylor or Taylor-Doig a member of your staff?

A. No.

Q. She's not?

A. No. Not that I'm aware of, no.

Q. I had understood she worked in the Minister's office but that may be our error. All right. So coming on then please to another document I want to take you to which is an extract from former Minister Jonathan Coleman's diary. If we could have that handed out please. Sir, there's been sections of this deleted. It's been provided with the consent and agreement of Dr Coleman. Oh, the handwriting's a little challenging so I'll read it out to you. You're looking first at the entry for 28th of the 6th and this is 2014. Now it says there "Dealing with Defence issue, Jon Stephenson doing another of his documentaries this Monday. Wayne Mapp very exercised." Now just stopping there for a minute. So this is the 28th of June 2014. Do you now recall having a conversation with then Minister Coleman about Jon Stephenson doing another documentary on that Monday which would have been the Native Affairs programme and expressing to Mr Coleman, Dr Coleman, that you were exercised about that?

A. No I don't. what I remember is sitting in my living room and watching the documentary and thinking I was wrong. And seeing the photos and the names of the people - because I respected Jon Stephenson as a journalist. A lot of my colleagues didn't, I've got to say, but I did. And I thought "Jon's right." There were too many times Jon had been right and he was obviously going to be right here. And, as I said, Jon is the one who did all the work on this.

Q. And I'm not ...

A. And I've had numerous - I'm just going to add this point. I have had numerous discussions with Jon over the years. Some of which appear in the book. I have absolutely zero recollection of ever having had this briefing from Colonel Blackwell and all of those discussions.

Q. You have absolutely no recollection of that.

A. No.

Q. Don't you find that surprising? If Mr Blackwell had briefed you in the way that he said he did?

A. It's the facts.

Q. Turn-over. So I take it from that answer that you don't dispute that you had some conversation with Dr Coleman in which you appeared to be exercised about the documentary. Is that correct?

A. I don't recall it, no.

Q. But you're not disputing it?

A. I'm not disputing it. Maybe Jonathan gave me advance notice or something, I don't know.

Q. In any event, come over the page if you would to the entry on the 2nd of the 7th. It's a Wednesday. And I'll just read that whole extract out for you. There's only one bit that I really want to ask you about, but will read it out.

"Major preoccupation for week was Monday night's Māori Television documentary, Jon Stephenson claiming civilian casualties during an SAS op in 2010, was up late Monday

analysing and preparing briefings for PM. Big problem. NZDF advice called into question when I unearthed a copy of the ISAF report exec summary which they claimed they didn't have. Basically Mapp poorly briefed in 2010 and I was also incorrectly briefed on Saturday night." I'll stop there. He's saying there that, as well as the issues that were arising for him in 2014, that you were poorly briefed back in 2010. And what I want to ask you is did you have any conversation with Dr Coleman at that time about being poorly briefed in 2010.

A. I don't know.

Q. You might have?

A. I must have had a conversation with Jonathan. Well obviously I did, didn't I? On the Saturday. But other than that I don't know, look I don't know.

Q. It didn't ring a bell that you would have said to him that you too were poorly or badly briefed by Defence about this issue?

A. My memory of this, as you know, had been the briefings in September 2010, the Q & A interview in April 2011 and then the television documentary of June 2014. That's how the events have all - for years - been in my mind in that sense. And it was only really Sir Terence's discovery if you will of the safe log and me looking at my own diary which I recollected because you had mentioned the word "Outlook diary" in your telephone conversation which triggered that memory and then reading the evidence of Jim Blackwell that a memory came back. And it's a limited memory but it's a memory.

Q. And these briefings that Jim Blackwell gave you, you said covered lots of operations, two or three a week or something?

A. Yes, my entire memory of Jim Blackwell's briefings had been of essentially contemporary operations, ones that had

- been done, you know, in the preceding two or three weeks and, well, we won't go any further than that on those.
- Q. How long did this briefing last with him about the IAT report and the outcome of the ISAF investigation?
- A. The diary says 30 minutes.
- Q. That's quite significant isn't it?
- A. Well I was about to elaborate on that point. The diaries of course are drafted up in advance. They're not post-reconstructions, they're bookings if you will. And it may have been less than that. It certainly wouldn't have been more because as you well know, immediately after that there was a Cabinet Committee meeting which I couldn't afford to be late to because apparently I was presenting documents at it which were probably to do with civilianisation of the NZDF which was not going well.
- Q. Sorry. Were you briefed on other things as well during that briefing with Mr Blackwell?
- A. I've thought about this a lot and it would be a complete reconstruction on my part. The memory I had of Jim Blackwell's briefings were also of contemporary operations. And that was my memory of his briefings. He used to come along, sit across the table with me. They weren't - it was always just him and me and he would have sort of like a - not a ring binder, something less than that. Sort of things that you - like PowerPoint presentation documents and he'd flick through photos and so forth. That's my memory of those briefings.
- Q. So ...
- A. So - yes, well that's what they were.
- Q. No, I was just going to say, so he might've just dealt with this matter in amongst other things in a fairly light touch way.
- A. Yes. He could have.
- Q. And is it correct that the overwhelming message you took away from that briefing was that there was no evidence of

civilian casualties and therefore nothing to worry about the Minister effectively?

A. Yes, yes.

Q. And coming back to where we started earlier in the day. Given that concession, Dr Mapp, doesn't that rather suggest that the evidence that Mr Blackwell gave to this Inquiry is in fact not correct?

A. No, I'm not prepared to say that. You have to make - because it would be inappropriate for me to say that. I wasn't here, I didn't hear his evidence. I know you've presented to him. I can only remember what I can remember. He remembers what he remembers. You have to make your own conclusions.

Q. Well you're a lawyer, Dr Mapp, and you know full well that I need to put to you and in fairness to you and in order to assist this Inquiry. The Inquiry needs to understand quite clearly from you what your position is, when Mr Blackwell has said very assertively and categorically that he briefed you in a full - what's the word - fulsome, candid, thorough manner on the implications and findings of the IAT report. Because what I'm not hearing from you is something different from that. Now you can see that conflict, can't you?

A. I can see it's a conflict. But I can't really assist you because I don't have that level of memory.

Q. So you're not prepared to say that Mr Blackwell is wrong. Is that the position?

A. Correct.

Q. And I'm asking you ...

A. Because I can only remember what I remember. I can't remember what he remembered.

Q. Can you explain to us and help us with why the documents, if the Inquiry accepts the NZDF position that one of the documents in the folio numbered 386 was the IAT report,

why was that shredded in your office on the 5th of December 2011?

A. And I have read the Brief of Evidence on that and I have no explanation for it at all.

Q. No explanation?

A. Well in the sense - I didn't control, I made damn sure I didn't control anything to do with secret material. In fact I never opened my office once in my entire time as Minister. I thought that's something I do not want to have to worry about.

Q. Because surely this is a matter of - two months after the briefing you're going, new Minister coming in, same Government. Surely it would have been of the utmost importance you would think for him to - the new Minister to have access to that report. You'd accept that wouldn't you?

A. Well I'm not disputing what you're saying, except that I had no control over what happened in that safe.

Q. All right. But it is your office and you're accepting, I think, on that answer that it would have been important for the new Minister to have access to that report in the normal course.

A. Well I didn't - what Mr Hoey did with his safe was what he did with his safe. I didn't investigate that. I think I may have told you at one stage I got well behind in actually reading material from the safe and, well I did. And, as I say, what he did with his safe is what he did. He was a responsible officer. He was a captain of the Navy which is a senior rank just as Jim Blackwell's a senior rank. And I trusted them to do their jobs.

Q. I'm not suggesting that you shredded it. I'm simply saying that as a Minister of the Crown going, new Minister of the Crown coming in, important document, secret, partner document, you would have to accept, surely, that that was

the sort of thing that a new Minister would be interested and it would be important for a new Minister to have?

A. You would think so, yes.

Q. And you, I take it, can't provide any explanation as to why it was shredded.

A. No I can't.

Q. So - see, Dr Mapp, I suggest to you that there is a rather brighter line between the two positions, yours and Mr Blackwell's, than is suggested by your Brief of Evidence and by much of your evidence today because either Mr Blackwell briefed you in the clear way he said he did, in which case I put to you that you are responsible for misleading the public and failing to correct the record. Or Mr Blackwell did not brief in the way that he claims and the responsibility for misleading the public rests instead with the New Zealand Defence Force. And I want to ask you just to pause for a moment and you think about that. Because it can't be both, I suggest to you, and I want to ask you which one it is. Is it you or is it NZDF?

A. I'm responsible for the decisions I make.

Q. So you are accepting responsibility for not correcting the public record?

A. Yes I am. But that's not in dispute.

Q. All right.

A. That is not a question you have to put to me like that. I'm not disputing that. I never have disputed it.

Q. And are you accepting responsibility therefore for misleading the Parliamentary colleagues and misleading New Zealand public through doing that?

A. Well I didn't think I was doing that.

Q. But if that is the effect of it, are you accepting responsibility for that?

A. Well, as I said, I did not think I was doing it. I am responsible for the decisions I made. Others will judge them.

Q. And I'll just give you one further opportunity, Dr Mapp, in absolute fairness to you. Are you here - you're here on oath today. Are you absolutely sure that you are not falling on your sword over this matter for some reason that we're unaware of?

A. No.

Q. Thank you.

SIR TERENCE: Mr Radich, you had some questions.

MR RADICH: Only a small number, Sir Terence, thank you.

CROSS-EXAMINATION BY PAUL RADICH QC

MR RADICH: Dr Mapp, thank you for being here today to help the Inquiry. Very little to cover with you. Your evidence has been comprehensive, thank you. I just want to be clear - am I right in thinking that you haven't disagreed that the IAT report, through Jim Blackwell, was marched into your office and put into the safe.

A. Look, I can't disagree with that. But as I've said, I have had no memory of whatsoever of reading this report. I have dredged my memory on that. You can imagine that I have done that over the last four weeks and I have had no memory of that.

Q. Yeah, okay. I think you said that - if I get your words correct - that you don't disagree that it may have been marched into the office and that's a fair way of putting it do you think.

A. Well, yes, put like that.

Q. Okay. Your paragraph 7, you mention in your Brief of Evidence that is that there were two or three operations per week. I'm looking at your very last sentence of paragraph 7 and these are the operations that Colonel Blackwell was briefing you on. Do you see that there?

A. Yes I do.

Q. Yeah. So during your time as Minister, Dr Mapp, there would have been, I'm guessing, hundreds of operations that you would have had information on?

- A. There were certainly a huge amount of operations that they were undertaking, most of which remain not public.
- Q. Absolutely. And they would have all involved, am I right in thinking, factual and technical detail to varying degrees?
- A. Well, as I said, the briefings I got from Jim Blackwell were always fundamentally oral briefings supplemented by a sort of a folder with those sleeves that you have ...
- Q. Plastic sleeves. PowerPoints, yes.
- A. Essentially PowerPoint type documents.
- Q. Presented in that way because it's easy to absorb I guess. And there was seldom paperwork handed over to you that you retained, was there really?
- A. There would never have been.
- Q. No.
- A. The briefings - no, there wasn't. He would come in, give me a briefing, mostly oral. I'd look at it, you know, these folders, hand them back, he would go.
- Q. Your diary, and you mentioned just a moment or three or four ago that it was forward looking, you know, you weren't actually recording things on, you know, reflection that had happened. It was a set of appointments that were upcoming. That's a fair way of putting it, isn't it?
- A. Correct.
- Q. Am I right in thinking that there may have been some unscheduled meetings apart from those specific programmed entries?
- A. Well there's bound to have been. Probably not by Colonel Blackwell, however, because he didn't have the role that would enable him to do that. The unscheduled meetings would have been with CDF.
- Q. Yes, I think you mentioned it.
- A. I mean I respected the chain of command and - so my relationships if you will were with the CDF, the VCDF and the Service Chiefs on the NZDF side. And any other people

who came and saw me were as a result of their decisions to send them to me.

Q. Might they have come over more spontaneously if there was a specific event of significance? For example, a member of the NZDF being killed in action, something like that.

A. Obviously. Those events, I can tell you, those events were absolutely overwhelming for both the system as a whole and for myself. As I think I have said publicly here already, seeing the families of the soldiers and knowing that in large measure, that in large measure they were in that situation because of what you'd done.

Q. I understand. And thank you for that. It was suggested to you by my learned friend Ms McDonald when she first started talking to you that the upshot of Colonel Blackwell's evidence was that you might have been responsible for a cover-up. Having now had the discussion, would you like to comment on that? Do you see that the Colonel had somewhere accused you of a cover-up?

A. No I don't think he has. He understood that ...

MS McDONALD: To be clear, Sir, I didn't actually say that Colonel Blackwell did that. I said that the evidence could be taken, if accepted, to suggest that. I think it's quite important that that's put accurately in the media again. I don't want to be misquoted in any way.

SIR TERENCE: Let's re-frame the question if you're satisfied.

MR RADICH: Yes, I'm going on quite a careful note that I took. Which was that the upshot of Colonel Blackwell's evidence was that Dr Mapp might be responsible for a cover-up. I think that's accurate, and I was asking - and I think you've answered the question already, Dr Mapp. So, yes, thank you, Sir Terence. I have nothing further.

SIR TERENCE: Right. Mr Salmon. We'll stop at one so that'll give you a bit of extra time after lunch.

MR SALMON: Certainly, Sir.

CROSS-EXAMINATION BY MR SALMON

MR SALMON: Dr Mapp, I know it's been a long morning but as you've heard, we'll have a break in 20 minutes or so. This, while one of many operations, was slightly different wasn't it, both for the people involved and from your perspective. Firstly because, as NZDF has said in its various statements, in most operations not even a shot was fired. But secondly, as you've written about in your Pundit article in 2017, this was - and these are your words - quote "among the most significant operations that New Zealand had undertaken in Afghanistan." That's right, isn't it? This was a significant one?

A. Yes it was.

Q. And it was even more significant because you were there and had personally authorised it, understanding its significance, so for you it had a personal significance?

A. Well, I hadn't personally authorised it. But I had contacted the Prime Minister about it.

Q. My apologies. And your wording in your Pundit article is "I had been fully briefed on the plan the morning before it took place. Based on the briefing and on the advice of the military professionals I recommended that it proceed".

A. Correct.

Q. And that was a recommendation to the Prime Minister?

A. Yes.

Q. Now a number of witnesses had said in their written briefs, but later amended them to say otherwise, that you were in the command centre, or whatever the room is called, when it happened. Is that not right?

A. No that's not right. And the reason it's not right is because I made a judgement that it was not appropriate for me to be in the command centre as a civilian Minister, otherwise I would effectively have been part of the operation itself. It's a bit different - how can I put this as a way of analogy - you've seen on TV that President Obama, people like that, seeing things as they

go down so to speak. But they are removed, they're remote. This was actually the operational command headquarters. It was the military headquarters that was actually running the operation.

Q. Sure. And so I just wanted to clarify your position on that. That's fine. In terms of your interest in these issues then, looking at other matters that perhaps meant they had particular gravity for you, or interest for you, your legal training and your PhD being on international legal issues would mean that you'd naturally be interested in the international law issues raised by events such as these and the fallout of these. Is that fair to say?

A. Yes.

Q. And I've taken it from observing events I guess that you continue to have a strong interest in humanitarian law, International Humanitarian Law and the law of wars?

A. That would probably be overstating it a bit. I am interested in international affairs.

Q. Right. But also interested to some degree in the rules that govern such events?

A. Yes, yes, that's correct.

Q. And you have a reasonable understanding of them - and this is not heading to some cross-examination about the detail of them - but you have a reasonable understanding of them and that informs your general views, not just about what must be done but what should be done following events such as this. Would that be fair to say?

A. Yes.

Q. And so quoting again from your Pundit article - and this is from 2017 - "for me it is not enough to say there might have been civilian casualties. As a nation we owe it to ourselves to find out to the extent reasonably possible if civilian casualties did occur and if they did, to properly acknowledge that". That reflects your view both on a moral

and policy level but also reflects your view of our international legal obligations. Fair to say?

A. Yes it does.

Q. And very broadly speaking, those obligations would include the obligation to find out, as you've said in that quote, whether there were casualties once we know there may be, and to render assistance to those who are hurt.

A. Well I think once you've got actual evidence and there is no doubt, at least in my mind, that Jon Stephenson's work and his programme that he did in 2014 which surprisingly didn't really get much pickup, proved to me that civilian casualties had in fact occurred.

Q. Yes.

A. He had photographs. Names. And this was no longer, you know, might've been, could've been. That happened, and in that situation I believed we needed to do more.

Q. Well in your Pundit article you were still treating it as not proven and your concluding words included the view that part of protecting the reputation of our forces is also finding out what happened, particularly if there's an allegation that casualties, civilian casualties, may have been accidentally caused. You'd agree that your view of our obligation as a nation state include to find out if potential civilian casualties are in fact real civilian casualties - in broad terms?

A. Yes.

Q. So against that background, I just want to move now to the specific points you've talked about today. You made a wise observation to my learned friend Ms McDonald when you were being cross-examined about what you could and could not remember. And you said, on my note, quote: "we must have caution about what was said and what was reconstruction. I have a memory of Mr Blackwell sitting across from me." And then you said that's effectively all I've got. And several times Ms McDonald asked if you had confirmed that you

didn't in fact remember what he said to you on this occasion and so what I've taken from that is the memory you have is of him being there, and you have no memory of particular words he used about this operation. You've said that a number of times in the transcript. I'm just framing where we're going. That's right, isn't it?

A. I don't have - I don't have a detailed recollection.

Q. That's not what you said to my learned friend. Now this isn't a trap, but you've been on oath. Twice before the morning break you said you didn't have a recollection at all of what he was saying and said. And then two more times after the break you said it. You also said it specifically about the slaving of the gun point. What you've been saying, if I can put it to you as I have heard it, and others may have, is that you don't want to dispute that Mr Blackwell may genuinely believe what he said but firstly - and I'll check this with you - you can't remember him saying any of those things. And now that's just the honest truth, isn't it?

A. No, I have a fragmentary memory of him telling me that there was no evidence of casualties but that they were possible.

Q. Dr Mapp, you've ...

A. And that it was due to the misaligned gun. I don't have a memory of the actual words he used about that, but that's a memory I do have.

Q. Dr Mapp, you clearly didn't have that memory at multiple times in the past that Ms McDonald was taking you to in the documents.

A. No, I don't agree with that.

Q. Well there's no indication that you thought that there were potential civilian casualties. In the past. And you have multiple times today said that you don't recall and used words of "he may have" or "I wouldn't dispute his evidence", but you have been pretty clear, I suggest to

you, that you don't remember that in fact happening. And what you're doing is courteously accepting that he may genuinely believe this happened. That's all you're saying, isn't it?

A. I'm not quite sure what your question is. I don't quite understand your question. Can you re-phrase it in a different way?

Q. Yes I will. Let me be fair and direct about what I'm saying. I completely understand why you would feel some form of a variation on Cabinet responsibility, or responsibility to your portfolio to stand in the front of the line for any blame that may be attributable to this. But can we separate that from what you remember. Because you've said a number of times you don't remember what Mr Blackwell had told you. And now you're starting to suggest you do. And I just want to let you be really fair. I know you're not saying he's a liar. You've made that very clear. Let's take that as your evidence. But you're also not saying that you remember him saying those things. And then we can move on.

A. No, I said I have a fragmentary memory.

Q. You did in your written brief.

A. I can't tell you exactly - I can't tell you the exact nature of that fragmentary memory, but I have a fragmentary memory. I can't - that's - that is reality.

Q. All right.

A. I can't recon - going more than that is essentially to reconstruct it based on what I know subsequently as opposed to the fragmentary memory of the time itself.

Q. Now another thing that my learned friend put to you which I'm interested to explore is that it was put to you that if you were told the things that Mr Blackwell says you were, you would have expected yourself to have taken more action. You used the words "quite inconceivable" that you

wouldn't. Do you recall that? Do you accept that's broadly right? Do you have trouble answering that?

A. No, no. I'm just trying to understand the question.

Q. Let me put it to you differently. You understand by the time that you were aware of the allegations at least in the briefing as Mr Blackwell describes it, that there was an IAT report saying there may have been casualties? And you understand that IAT report was based on a brief period of studying video footage only? You understand that don't you?

A. Well, only subsequently. I certainly didn't understand that from the briefing.

Q. Well how do you know that given that you've said you don't remember it and that you're not disputing Mr Blackwell's claim that you understood all of this intimately. Do you dispute it or not?

A. Look, I can only say - the memory I have is the memory I've got.

Q. Do you dispute it or not?

A. I can't speak for what Mr Blackwell said to me. I can only remember what I remember.

Q. And I'm asking you not just what you remember, but whether you say you would not have failed to do the investigation you wrote in Pundit should be done once you knew there may be casualties?

A. Based on the fact that there was no evidence of casualties, no.

Q. Okay, let's then just ...

A. I didn't think it was necessary to take the matter further.

Q. Mr Blackwell says you were aware of the nature of the slaving of the gun issue and of the fact that the rounds were hitting residential houses. You understand enough to know these were explosive cannon rounds. What do you, as the Minister of Defence, regularly briefed by

Mr Blackwell, think the possibilities are of civilians being caught when explosive cannon rounds are thudding through the walls of their house?

A. I don't recall him actually saying that to me. I don't recall him saying ...

Q. Do you dispute that he said it to you?

A. I have no recollection beyond what I've said. And I'm not going to ...

Q. Okay, so this is the problem.

A. ...take that further because I can't.

Q. Okay, well I'll just ask you to answer my questions as well as you can. I understand it's difficult. Mr Blackwell is saying that you knew that, you knew what the video showed and you knew all about the slaving of the gun. He was clear about this. I know you don't want to ...

A. I ...

Q. Hear me out. I know you don't want to say that he's said anything that he knows to be untrue. Fine. But you are on record in Pundit sincerely saying that where there may be casualties we owe it as an international obligation, and you've confirmed moral obligation, to investigate it. But you didn't. And what I'm putting to you is given your core values, and we've seen the emotion you've had today, given your core values, would have dictated investigate it. And you didn't investigate. Don't we just know that you weren't told about all of that?

A. I wrote the Pundit article in the knowledge of (a) the book, (b) the television series. Where to my mind this was not a question any more of there was no evidence, there was compelling evidence. Not just possible, it was no longer just possible, it was ...

Q. But let's just park that because ...

A. That's the basis I wrote the Pundit article.

Q. And Dr Mapp I thought you might say that out of your concern not to criticise Mr Blackwell which is why I got

you to agree on the general principles you outlined in the Pundit article. So let's stick with those. If there may be civilian casualties we have an obligation to investigate. You really believed that and that's clear, isn't it?

A. Well to my mind you've got to have some evidence.

Q. Right.

A. Before you do that. And we didn't have evidence.

Q. So park there, park there if we might, Dr Mapp. The proposition that's being put to you which you are clearly uncomfortable about but don't want to say it's false for some reason, is that you knew there was video footage of explosive rounds slamming into residential houses.

A. No I actually didn't know that.

Q. Right.

A. I have never seen any video evidence.

Q. I didn't say you'd seen it. But you knew there was. And you've just said "No I didn't know that". What that means is that you, on whatever you were told, were never told how the civilian casualties might have been caused. Agree? That must flow from your honest articles, you see.

A. That's a proposition you're putting to me. It's - I can't help you with that answer because I can only remember what I remember.

Q. You went further than what you remember and you said exactly what I think we all expect you to say as an honourable person who actually cares about these issues. You didn't know that. And that was the truth wasn't it, Dr Mapp? You're not saying I don't remember, you are saying I didn't know about those rounds. And the reason you're saying that is because you weren't told about them. It's just here and now on oath, the truth isn't it?

A. I can only tell you that my memory of this is that there was no evidence that there were civilian casualties, that I knew it was a result of a misfire of a gun. Beyond that actually I can't actually add anything further. And for

you to ask me to add something further is something I simply can't do.

Q. I'm not asking you to add something further. My questions just then were about your confident, immediate assertion that you didn't know something. Not the vague I can't remember that you're coming to when the clash between you and Mr Blackwell arises. If there's one thing you have been clear about, it's that you didn't have the IAT report or read it. And then secondly just now you did not know the nature of the ways in which the IAT report suggested civilian casualties might occur. And I suggest to you that it's entirely at odds with your character and your integrity and your sense of duty to have behaved the way you did if that's wrong. In other words the fact that you didn't investigate when you believe such evidence would require investigation shows you didn't know. And this is a compliment to you, Dr Mapp.

A. The evidence I was presented with led me to believe that I didn't have to do anything further in fact. That on the basis of no evidence that kind of - it ended it at that point essentially.

Q. Right. And what I'm taking from that is you more or less agreeing that you mustn't have had evidence of the extent to which we can see around the IAT report and what we know - I haven't read it either - of the gunship video. You mustn't have had that because you were left with the view that there was nothing to see.

A. I don't believe I've ever had that sort of detail.

Q. Right.

A. And the reason I don't is that I have no memory of it.

Q. That's not the only reason though, is it? You do agree that if you'd known more you would have acted because once you knew more you did act.

A. When I saw the television programme.

- Q. Right. Now another thing you did is - you've said this yourself and I just want to be clear about that because I act for Mr Stephenson as you know - but you've said yourself that you I think approached him and that you spoke to him for the book.
- A. I think he approached me.
- Q. All right. Whichever it was. You spoke willingly and did so because of the importance of shining light on some of these events and finding out what happened to the victims?
- A. Correct.
- Q. You've criticised today - I took it to be a criticism - the lack of any steps by people other than Mr Stephenson to investigate what happened to the victims. That is a criticism you make, isn't it?
- A. It's an observation I make that certainly once the television programme was on, we could have done more. We haven't. And I know people will make assessments about me, they'll make them.
- Q. Well they might be concerned that you are being rather too much of a responsible former Minister and offering to take rather more blame than you should. Do you see why they would think that?
- A. People will think what they think.
- Q. All right. When did you first see or become aware of the content of the ISAF press releases from 2010 that made clear that there may be civilian casualties and that there was another investigation being undertaken?
- A. I don't believe I was ever aware of those. Well, I have no memory of them, let's put it that way.
- Q. If you knew of ...
- A. My memory is of Sir Jerry Mateparae talking to me about these things.
- Q. But if you knew of those you'd agree given your curiosity and interest in these issues you would have been querying

and following up what happened with the second investigation, correct?

A. I don't think I was actually aware there was a second investigation. That was kind of news to me ...

Q. Agree.

A. As a result of the Inquiry and - well actually, as a result of Nicky Hagar's work.

Q. And that's why I ask, Dr Mapp, had you known, you would have wanted to find out what happened on it?

A. Well we were trying to find out back in September that - the record shows that.

Q. Well let's talk about that then. On ...

A. September 2010.

Q. September 2010, right. And you've mentioned this fragment of a memory of being told that civilian casualties were possible. Of course for a brief period that was the NZDF internal position too, wasn't it, as you probably now know. In a brief period following the raid the NZDF were aware there may be casualties. And it was only when it was claimed that Chris Parsons viewed the IAT report that NZDF rule out that possibility and say there was no way there could have been casualties. You're aware of that?

A. I was here when all that evidence was given and I also noted the detailed work that they'd gone to to put people into different categories, you know, likely, possible, not possible. And I also noted that apparently there was a question of two people in hospital and in fact they were found to be two military aged males.

Q. And just once - we're about to go to lunch ...

A. I did note all that, yes.

Q. I'm not talking about what you noted last week. What I'm leading to is the suggestion - given your careful and thoughtful observation that we can over remember this long after the fact and given how much you don't remember in between, if you do have a fragment of a memory of knowing

there was a potential civilian casualty, or possible civilian casualties, that could be a fragment of a memory from 2010, before Chris Parsons reported back that there was no way there were, couldn't it?

A. No, it couldn't.

Q. It couldn't be?

A. No, I believe - I believe I have a real memory of being briefed by Colonel Blackwell.

Q. A real memory that you didn't remember at any time until a few weeks ago when Colonel Blackwell's story made clear that he was saying you were.

A. That's correct. And that baffles me as much as it does you.

Q. Well, we're about to go to lunch but could it be that with your courtesy and sense of team play, you're not sure it's right, but you're lining up with it so as not to embarrass him.

A. Sorry, can you say ...

Q. Is it possible that you are more being courteous to Mr Blackwell in saying this might have happened than that you actually have suddenly remembered something you'd forgotten for so many years.

A. No, I don't believe that to be the case.

Q. You rule that out. Right, so that's one o'clock.

SIR TERENCE: All right. Well, we'll take the adjournment now until two o'clock. Thank you.

Resumed after adjournment

SIR TERENCE: Thank you, please sit. Mr Salmon.

MR SALMON: Thank you, sir.

CONTINUED CROSS-EXAMINATION BY MR SALMON:

Q. Dr Mapp, if I can just attempt to capture what I take from your answers earlier and then move on. We can take your evidence as being then that in terms of what you understood from your briefing in September 2011, your understanding of the issues around potential civilian casualties was taken entirely from Mr Blackwell's oral briefing to you?

A. Yes.

Q. And the effect of that briefing was that there was no evidence of civilian casualties and thus you did not need to investigate any and that is why you took no steps to investigate and that is why you didn't take any steps to correct prior statements?

A. Correct.

Q. All right. Moving from there, can I briefly check whether you agree with a couple of statements made in file notes which we've looked at. I'll just relay them to you in general terms, but which we've looked at, from 2014 where the Chief of Defence Force and the Chief of Staff of the - Chief of Defence Force each expressed concerns in a file note about the manner of SAS reporting generally on issues. I'll just give you a general sense of what I take from these file notes rather than lead them out to you in detail. But if you can take it from me to that approximate effect, what I'm wanting to know is whether you agree with their general effect. They are to the effect that there's an issue with SAS accountability and a need - this is 2014 mind, after you'd gone - but a perceived need by them for more formal briefings and a problem with Special Forces' perception that they are not fallible and possibly an associated loss of credibility within the SAS and regarding their briefings of more senior personnel. Do you - looking back on things now - share the view that perhaps there is a need for more discipline around the way in

which SAS and Special Forces' operations generally are reported? Is that a learning we can take from what's happened here?

A. I think the single biggest learning to take from it is in fact an initiative which was initiated by General Keating. Which was - well he never actually made a recommendation in fact, but I was at the relevant conference anyway where we got a briefing - not a briefing, a presentation from the Inspector General in Australia who, as you well know, is undertaking an inquiry at the present moment. And I think we need something like that. Fundamentally a more formalised system than we've got.

Q. So that's helpful. What about in terms of the way briefings are done to Ministers? Just dealing with your experience. Looking forward, should we be hoping to see more formal documentation, strict record keeping of briefings and the like?

A. Not necessarily. I mean not - it's caveated of course by my comment about the Inspector-General's role. But, you know, most - many I should say - SAS operations are going to be in the nature of secret. And the nature of the briefings - remember I got - stepping back one point. I got these briefings because I actually didn't know what they were doing. The only way I knew was what I saw on TV. And I felt that that was unsatisfactory. So I asked CDF - that would've been General Jones at the time - if I could have something a little bit more better. And the decision was made, I guess by General Jones, or maybe Jack Steer because I think the accountability was through Admiral Steer, that the proper course was for Jim to come across on a reasonably regular basis and give me briefings as to what missions were actually taking place. Not all of them obviously, but I got an overall sense. That was why Jim was coming to see me on - when he did.

- Q. And I understand why you implemented that. Now with the benefit of hindsight, do you agree that a greater level of discipline and documentation around those briefings would be appropriate given that the very lack of knowledge of what the Special Forces are doing means that you are particularly reliant on what they tell you has happened. Just with hindsight. No?
- A. I think if you had the Office of Inspector-General, that would be - they'd be able to set up their own procedures.
- Q. All right. In that case can I move to my last topic with you which is just to talk to you about Jim Blackwell given we've heard his evidence and you haven't. I understand you're concerned to caveat what you do and don't know and what you can and can't remember. But I want to ask you this while we have you hear on oath. Firstly, have you ever expressed concerns to anybody about the reliability, about Jim Blackwell's reliability on facts? Thinking carefully. Have you ever done that?
- A. I've had private discussions with Jon Stephenson.
- Q. Anyone else?
- A. No. Not that I recall.
- Q. What are, or what have been, your concerns about Mr Blackwell's reliability?
- A. Oh I think he's fundamentally reliable but, you know, Jim is Jim.
- Q. And for those of us who only know the Jim we've seen, what do you mean by that? He's clearly a forceful man it would be fair to say?
- A. Everyone in the SAS is. I mean there's a range of personalities and I'm sorry to be a little bit discursive here, but I am going to be. There's a range of personalities within the SAS. Few people can match up to the requirements of those roles. Fewer still have the senior officer role. You have to be a very capable person.
- Q. You also have to ...

- A. But you're also operating - let me finish - you're also operating in the world of shadows.
- Q. Right.
- A. So they compartmentalise their lives.
- Q. Right. And occasionally that means keeping a game face on perhaps while saying what needs to be said?
- A. That's your observation.
- Q. Well you tell me if you disagree strongly with it, Dr Mapp?
- A. As I said, the SAS are extremely - they're extremely disciplined people. You have to see them to understand just how, how much depth of discipline and capability they have got. Hardly any of us in this room would actually measure up. Probably, possibly none of us. In fact if I look around the total room, add up the numbers of people, knowing who gets through and who doesn't, maybe one.
- Q. All right. Well we might find out that is on another day. But for present purposes can we agree that that discipline and that focus is probably more channelled towards their areas of speciality rather than democratic processes in the briefings of Ministers. That's fair to say is it not?
- A. They are experts in their craft. If I could put it that way. The profession of arms would be probably a better way of putting it.
- Q. All right. And then, again, on Mr Blackwell and to round it out, have you had any contact with Mr Blackwell in recent years?
- A. Once.
- Q. When was that?
- A. It was in passing. I had had a good relationship with Jim and he, he must have retired I guess at that point. But anyway, we saw each other in Tauranga. He was in a car driving; I was either walking, cycling or something and we stopped and had a brief chat.
- Q. All right. Not about this though?

A. No.

Q. All right. Have you had any contact about this with any people connected with him or representatives of his before giving evidence?

A. No.

Q. Has there been any contact between your team, including your legal team, and his?

A. I wouldn't have thought so.

Q. What about between you and the business that now employs him? Or persons interested in that business?

A. No. No, no, no.

Q. All right. Is there anything else that you can help us with in terms of your views about what steps should have been taken after you ceased being Minister of Defence once you saw that there were casualties?

A. Well as you know, and as in fact everyone here knows, I thought once, once we saw the television programme, once we saw photographs of people, names of people, then the level of information had risen so that we were required to make some form of inquiry. I don't mean this Inquiry ...

Q. You mean an investigation into casualties?

A. Yes.

Q. And you've also perhaps got some final observations on the extent to which the Defence Force focus perhaps could have been better directed following the release of my client, Mr Stephenson's, book on those issues rather than on seeking to discredit the book. Any final comments on that?

A. Look, I think we'll just let things stand as they stand on that.

Q. All right. Thank you, Dr Mapp. Sir Geoffrey, Sir Terence, that's time for me.

SIR TERENCE: Thank you. Mr Gray.

MR GRAY: No re-examination thank you, Sir.

SIR TERENCE: Thank you, Mr Gray. I've got a few questions. Just take the black volume and I just want to take you to

page 164 of the main part of it, the front part of it, yes. The number's on the top right-hand corner. Now this is a document that was - familiar with, so this is the briefing you received from General Mateparae, he was actually absent so it's signed by somebody else in relation to the operation and the subsequent one. And it records at page 167 at 11D the note "Allegations as to civilian casualties" and describes how it was investigated by a joint assessment team. And they've concluded that the allegations were baseless and cleared actions of the response task force and the Coalition here of all allegations. So that purports to be a description of the IAT's findings. Do you accept that?

A. Yes, I do.

SIR TERENCE: Now if we turn over to the next document on page 168, this was a document that Ms McDonald referred you to, but if you look at the purpose on page 168, the purpose of this note is to provide releasable information to the Prime Minister about the operations. And then attached to that is an abbreviated version of the briefing. And attached also to it at page 171 is a list of risks associated with releasing the information. And my question is this. I assume the Prime Minister made a request for some form of releasable information. Is that correct?

A. No. I don't believe that is correct. I was always under the impression when I read this note, PM and Minister agreed to not to release the information to media. That this was a decision from his office, and by that I mean his office rather than him. Although I notice my diary has a meeting with him.

SIR TERENCE: So you then asked for some releasable information or potentially releasable information?

A. No. I wouldn't have done that.

SIR TERENCE: So did NZDF do this off their own bat?

A. General Mateparae, yes, the answer is yes to that. General Mateparae had a policy of wanting to open up, give the public more information about the sort of role of the SAS. And there was the book written, there was some discussions with the senior team in the SAS. There was a bit of conflict there I've got to say. General Mateparae, of course being an SAS officer himself, albeit for a short period of time, and so I presume that's why he put this in there, there **was** some other mind [inaudible]. We were conscious that in Afghanistan a number of the operations were actually in the public eye. They were taking place on literally live TV.

SIR TERENCE: Yes.

A. The hotel in particular, there was a sort of a what you'd call a blue-on-blue situation in December 2010, I think. And there was, of course, the famous photograph of Corporal Apiata. So, yes, and this was all new to the SAS. They were never used to operating like this. They were only used to operating in the deepest of deep cover. And if you've done, you will have done some work to understand the depth and nature of the operations they were undertaking in Afghanistan and the - just after September the 11th, September to November, the only way that ever became public is when the Americans talked about it. We - actually it would've been the previous government in fact. Helen Clark's government had a tight rule on this and we followed this tight rule as much as we could.

SIR TERENCE: Now then in - you were referred to the - and so why was the decision not to release it? I mean it records here the Prime Minister and the Minister agreed not to release the information to the media. What was the reason for that?

A. I presume because the operation had not already been in the public domain. So the policy was, and it was quite a

strongly held policy, was that only the operations that were already in the public domain would be discussed.

SIR TERENCE: Now your responses in that Q & A session with Guyon Espiner in April 2011 reflected the advice you were given in that there's been an investigation, I'm satisfied that the allegations were unfounded and you just relied on that.

A. Primarily my memory was actually of the oral briefing by Jim Blackwell.

SIR TERENCE: Not the written one. But it was for the same though?

A. Yes, yes.

SIR TERENCE: And then we have in May the answer to Mr Locke in the House. Then on September the 1st 2011 we have the publication of *Other People's Wars* which refers briefly to this operation and as Ms McDonald referred you to those talking points that were NZDF talking points, but they reiterate the fact that there was this investigation was unfounded and then as we saw, there's questions under the Official Information Act about civilian casualties involving the SAS and if we have a look at your comment in a December email about an appropriate response, but that request was actually made at the beginning of October. So the question of civilian casualties was constantly coming up. Would you accept that?

A. The OIA I think went to NZDF rather than myself.

SIR TERENCE: That's right.

A. And well I guess the answer is it was coming up, yes.

SIR TERENCE: Yes. And you were consulted about it because you would have been seen as a stakeholder and there is consultation among stakeholders of answers. That's correct, isn't it?

A. Correct.

SIR TERENCE: Yes. Now you've said that you decided not to raise this publicly, having got the briefing of whatever

nature it was from Mr Blackwell because there was an absence of evidence about civilian casualties. I just wanted to ask about that. Because your public statement was a statement about the effect of the report and you said the effect of the report that was that it cleared - it basically meant the allegations were baseless. Now that wasn't the effect of the report, was it?

A. No, I would agree with that.

SIR TERENCE: Right. And really there was, having taken that position publicly, there really was, wasn't there, an obligation to correct the public record about what that report said?

A. Well I didn't think there was on the basis that there was no evidence.

SIR TERENCE: But we're not talking about - we're talking about what the report said. And that - on any view of it, whether you thought there was or was not evidence of civilian casualties, it certainly did not clear everybody involved of all allegations, did it?

A. No, it didn't. And there was a possibility but I relied on the fact there was no evidence.

SIR TERENCE: Right. Now if we come forward to 2014 and the *Collateral Damage* programme. Mr Coleman - Dr Coleman sorry - was in precisely the same position as you were. In the sense that he was forewarned about the possibility of this programme on Monday the 30th of June. He sought a briefing from NZDF on the 28th of June and was told - we don't know precisely what - but effectively the same as you had been told by General Mateparae and was reflected in that briefing to you in December. So he got the same misinformation.

A. You mean initially?

SIR TERENCE: Yes. The Saturday briefing. Is that your understanding of it? Or just accept from me that ...

A. He did, yes, yes, yes.

SIR TERENCE: All right. Now he then asked for some follow-up by his staff and we've heard the evidence and I think you've heard it all too about how the IAT report was discovered and how he read it on the - sometime on the Monday and then having watched the programme, became very angry at the fact that what he had been told of the position was not consistent with what the IAT reported and, as we know, he then called the CDF in Australia and the CDF said there is evidence. He was very angry. The Minister was very angry about the erroneous briefing he had received, his - I don't know what he was, but one of his assistants called up the Vice Chief of Defence Force and similarly said that the briefing was inconsistent with what the IAT report said. And as you heard in the evidence the following day on the Tuesday there was a big meeting and I think we can say a full, free, frank exchange of views. Now one of the striking things about this case, Dr Mapp, is the extraordinary contrast between his reaction and yours to exactly the same thing. You both had an incorrect briefing, misdescription of what the investigation showed, both found out the truths, at least if Mr Blackwell's evidence is correct. You regarded it effectively as a non-event. He became very angry and concerned about it and took a number of steps to deal with it. Now do you have any comment about that?

A. He was fundamentally responding to a television programme which actually showed what it showed. That was the difference.

SIR TERENCE: So the television programme from your perspective makes all the difference?

A. It certainly did to me. By my own reaction. As a result of that television programme I felt - well I spoke to Jon Stephenson on a number of occasions. In fact I actually said to him "You need to write a book on this, you should be writing a book on it". And he then was

starting on it, he had some ill-health issues so he also asked Nicky who was a good friend of his to help him write the book. So the television programme is always in my mind being the turning point.

SIR TERENCE: Now of course if NZDF, or the Government, had itself carried out something of an investigation in, say, 2011 when the IAT report came to light, presumably similar evidence would have been discovered?

A. There was no prospect of an inquiry being undertaken on the basis of no evidence of civilian casualties. Well that's the assessment I make.

SIR TERENCE: Well isn't it, it's a matter of - you've got allegations, you've got a credible account of how civilian casualties might have resulted. The only way you're going to find out whether there are any substance to them is to look at the report.

A. Yes, I know. I accept the point you make.

SIR TERENCE: All right.

A. But that has never happened I might add. Hasn't happened in 2011, hasn't happened in 2014 and as far as I'm aware hasn't happened in 2017.

SIR TERENCE: No, part of the thing we are concerned about, of course, is what we can learn from all of this. All right, well that's all I wanted to ask, thank you. Oh no, hold on, sorry, I forgot. One of the things that Mr Blackwell said in his evidence was that he often briefed the Prime Minister personally about special operations. Were you aware that he did so?

A. Well I'm not aware that Jim did it but I was certainly aware that the Prime Minister had his own direct line. Because I got told off by the Prime Minister after what I'd said in the press conference involving the death of Leon Smith. And where I had said there was some element of the - I can't remember the exact words I used, but essentially I said there were some elements of the SAS

operations that involved combat. It seemed an inescapable conclusion given that two of our soldiers had been killed in combat. So, yes, they had - there was a direct line between.

SIR TERENCE: So does that answer mean you're not sure whether it was Jim Blackwell? Somebody did, but you're not sure whether it was Jim Blackwell or who it was?

A. Well I knew in particular Colonel Chris Parsons and the Prime Minister talked regularly. I wasn't aware that Jim did, but it doesn't surprise me.

SIR TERENCE: Right. So I take it from that answer if Mr Blackwell did brief the Prime Minister, the Prime Minister certainly didn't discuss that with you or inform you about it?

A. Except on that ...

SIR TERENCE: Except on that occasion, yes. Now Mr Blackwell also said that he briefed the Minister of Foreign Affairs and Trade from time to time. Were you aware of that?

A. No I wasn't. Well I have no recollection of that. No, I don't think I was aware of that.

SIR TERENCE: All right.

A. Until you said it.

SIR TERENCE: All right. That's all I needed to ask. Thank you.

SIR GEOFFREY: You mentioned that one of the learnings that comes out of all these events is perhaps the introduction of an Office of Inspector-General. Now what would that Inspector-General do?

A. I think all these sorts of reports would have to go to the Inspector-General. That would be, you know, you've seen the chain of how reports are circulated and the Inspector-General - a bit like, in fact, with the SIS and GCSB, the Inspector-General would be of a similar - have a similar role, and they would undertake the investigations that they thought necessary.

SIR GEOFFREY: It's a watch dog function then?

A. Yes, it is. Statutorily established.

SIR GEOFFREY: Statutorily established.

A. Independent?

SIR GEOFFREY: Yes.

A. And in essentially the same process as exists with the Inspector-General for the SIS and the GCSB.

SIR GEOFFREY: Yes, now can I just go into the functions that such an office might have. Would it conduct inquiries into any matter relating to the New Zealand Defence Force at the request of the Minister of Defence or the Commander of the New Zealand Defence Force or a select committee of parliament perhaps? As well?

A. I think you'd want it a bit more independent than that.

SIR GEOFFREY: Well it's independent all right, but that's very similar to what the Australian statute provides.

A. If that's what the Australians say, yes, I would follow that practice.

SIR GEOFFREY: To report to the House of Representatives from time to time on the performance on the NZDF in meeting its constitutional obligations, to be accountable to the Minister of Defence and to the House of Representatives?

A. Yes. Fundamentally I think what we should do is what the Australians have in place and if you're quoting their legislation that would seem to be appropriate. Obviously we're not as big as Australia so it would be a smaller office. But I presume that's also the case with the current Inspector-General of the SIS and GCSB.

SIR GEOFFREY: The Australian statute isn't identical to the draft I just read you but the question that I want to put to you is should it also be able to conduct investigations on its own initiative? The Inspector-General?

A. Yes, it should.

SIR GEOFFREY: And what you're really saying is when a Minister or the CDF's unhappy and they want something looked at,

they can go and look at it and they see documents on a continuing basis so they can move in and satisfy themselves that everything's all right?

A. Well the military organisation, the system of the military, is hierarchical, as you know. So therefore there's kind of quite a - there's a deep respect of the rank structure. As you need in fact. The advantage of the Inspector-General, even though it might be still part of the military ranks and all of that, that gives them a certain amount of authority, I know that from experience that if there's someone with the rank and who's gone through the training and has gone through those selection courses and has gone through the fire, so to speak, then they get more. And so that's why it's important that the office of the Inspector-General is actually staffed primarily, and is led, by uniformed personnel.

SIR GEOFFREY: But not part of the command structure.

A. But not part of the command structure.

SIR GEOFFREY: Because if it's not independent of the command structure you won't get the independence that you need, will you? For an objective ...

A. It needs to be statutorily independent.

SIR GEOFFREY: Yes.

A. That's the point. So that the person heading up would have to be of a rank of not less than a one star officer, has the authority. By analogy, one of the things that General Mateparae did with me was to change the rank levels in my office from sort of Lieutenant Commander level to Captain - we're speaking Navy here of course. And the comparatives in the Army and Air Force. and that's what he did. So that's why you had Group Captain Edward Poot, and that's why you had Captain Hoey.

SIR GEOFFREY: Well now with an amendment to the Defence Act that would be required to set up the Office of Inspector-

General, it's not an enormous change but it would be significant expense, wouldn't it?

A. A couple of million dollars. Five million dollars. Somewhere in that space.

SIR GEOFFREY: And that would be able to give the assurance that is needed that all is going well?

A. Yes.

SIR GEOFFREY: And appropriately?

A. I believe so.

SIR GEOFFREY: Now can I just come to one other matter relating to that office. If that office is established, it seems to me that there will be greater protection. But could I ask you some questions about openness which you've just been talking about not long ago. Wouldn't it be possible to give more regular briefings on the SAS's activities to the public after they took place?

A. Yeah, it's a very difficult that one, isn't it? At some point - let me go back a bit. It took years and years and years before the books were written about what happened in Vietnam, including involving the New Zealand SAS. That was part of the book that was essentially commissioned by General Mateparae. It's not complete. At some point something like that will need to be done - and obviously as a result of this Inquiry more fulsome, viz a viz Afghanistan. Other countries do that. In different sort of ways of course, but nevertheless they do. General Mateparae saw the necessity to change the culture of the organisation. He started that process. That process needs to continue. I might add I saw the same thing happen with the Navy diving unit. They had to fix things up there and one of the ways they fixed it is actually put a non-diver in as the CO.

SIR GEOFFREY: But coming to the question of culture, wouldn't you perhaps also deduce from the experience this Inquiry's had and you've been at many of the hearings, that the

culture needs to change further in this age of criticism and scrutiny. There's not enough information out there available about what is going on. There needs to be a different culture.

A. Well it's interesting that other nations seem to be much more open about what their Special Forces do than we.

SIR GEOFFREY: Well why can't we be?

A. Well that's what I'm implying. That other countries are and we haven't been and maybe we should be.

SIR GEOFFREY: Thank you very much.

SIR TERENCE: Now counsel, is there anything arising from any of that? No.

Thank you very much, Dr Mapp for coming down and you are excused.

(Witness excused)

MR SALMON: Sir Terence, Sir Geoffrey, I understand you're more or less aware of this but for immovable reasons I need to need to be on a flight at 5:45. I have raised this with Ms McDonald and understand the preference is still that I have my time after her. I just foreshadow I have real difficulty not leaving so if we get tight on time with your leave, I'll just quietly exit the room.

SIR TERENCE: Yeah. Okay. Well we are conscious of that but we would prefer to stick to the order, but you should feel free to go when the ...

MR SALMON: And if it's helpful Sir I am happy to fit in wherever it might work if that is the way of dealing with it [inaudible].

SIR TERENCE: [Inaudible] underway.

MR RADICH: Yes. Nothing more from me. Just thinking Air Marshal, you're now at the point where you will be asking questions by my learned friends and by the Inquiry Members. So I'll leave them with you.

SIR TERENCE: Ms McDonald.

KEVIN SHORT CROSS-EXAMINATION RESUMES

MS McDONALD: Thank you, Sir. Mr Short, so can I start please just by talking about your own history with NZDF. So August, September 2010 when Operation Burnham occurs, and when the reporting arises and issues arise about possibility of civilian casualties, I'm correct, aren't I, that you were at that time Assistant Chief Strategic Commitments and Intelligence?

A. Yes, that's correct.

Q. It's a bit of a mouthful. Can you tell us what that role really involved?

A. Okay, it was about engaging across government agencies about where the Defence Force would actually operate, whether that be engaging with exercises or senior engagements around the globe, plus the sort of operations we might suggest to government that we could operate in. The intelligence side is because the head of intelligence reported to me. So it was strategic commitments and then the intelligence side.

Q. So did that mean that you would - you or your office would see, for example, intelligence reporting about an operation of note?

A. No.

Q. You didn't. That didn't come through your ...

A. The people worked for me were the head of intelligence, and it was strategic intelligence, so it was advice that was prepared for the CDF about what was happening in a global sense. When it came to detail on actual operations it went to the J2 and Joint Force Headquarters.

Q. Right. And did you work out of the same building as the Chief of Defence?

A. Yes, I did.

Q. Were you in the same suite if you like?

A. I was on the same floor.

Q. Same floor, right. Now I think if we look at the large bundle in front of you that you've I see got open already, page 79. This is an intelligence brief in relation to the Operation we've been concerned with and it's really just that front page I want to take you to, page 70 ...

A. This starts with 13, turn the page and it says 80.

Q. Page 79 at the top? Right-hand side?

A. No. Not in this folder.

Q. All right. Well we might just regroup on that. I wonder if I could go back one. It's that - it's the attendance page that I wanted to have a look at so whatever page number that is.

A. Okay, right.

Q. What page is that?

A. 79.

Q. It is 79, all right. So I see the initials ACSCI there. That's the acronym for your position is it?

A. Yes it is.

Q. So does that tell us that you would have been in attendance at that briefing about the Operation?

A. I'd have to - it would normally, yes. Those that are attending.

Q. Thank you. So actually, just with that, that - if you flick through that briefing pack, the next few pages, you'll see it's an update on the operation. So that is quite detailed operation briefing about that particular operation, isn't it?

A. Yes it is.

Q. Right. So you would have got that level of detail about that particular operation in any event.

A. Yes. But I cannot confirm - I just flicked through those pages, I can't confirm I actually remember that briefing.

Q. No. That's fine.

A. I ...

Q. Sorry?

A. I was just saying the reason I say that is I don't remember that and plus it's a generic attendance list. For instance it says Service Chiefs or deputies. So it's a list of those that would normally be invited to attend the briefing but I cannot remember attending this detail.

Q. So your deputy might have attended.

A. No what I mean is it says Service Chiefs or deputies half-way down the first list. So it's a generic list of those who would normally attend this level of briefing.

Q. And then the AC SCI - which is your position ...

A. Yes.

Q. Right. So would you or one of your staff go generally to?

...

A. Yes.

Q. Yes, right. And there's an intelligence update at page F in that pack.

A. Right.

Q. 79F. Of course it's been heavily redacted. All I'm suggesting to you is that you or someone from your office clearly would have had at the time some information about the intelligence reporting to do with this operation. That seems to be apparent from that document.

A. It would be apparent from this, yes.

Q. Yes. Thank you. And I can go to the documents if you want to, but you can take it I think from me that those various intelligence reports that we've looked at during the course of this Inquiry indicate a possibility of civilian casualties and I put it no higher than that. Do you accept that? We can go to the various intelligence reports if you like but ...

A. Because I don't remember the brief, I don't know what that actually said sorry.

Q. All right, well we'll leave it at that. You would have been aware of the 29 August 2010 ISAF press release?

A. Yes, but only years later.

Q. So not at the time? In your position?

A. No.

Q. I take you to the other bundle. If you look to the spiral bound bundle there, page 23.

A. Yes.

Q. This is a ministerial briefing dated the 25th of August 2010 and it says under the purpose section "The purpose of this note is to inform you" - that's the Minister - "that ISAF has initiated a civilian casualty investigation stemming from the operation conducted by the Crisis Response Unit etc. Now I see under contacts there, number 1, Air Commodore. Now I may be wrong, but is that you? In the box under contacts above the purpose box?

A. That could well be me, yes.

Q. And that would suggest, wouldn't it, that as at August 2010 then you were at least broadly aware of the Operation and the initiation of the ISAF investigation into the allegations of civilian casualties.

A. Yes.

Q. Thank you. And when in December 2010 Minister Mapp was being briefed about this, and we now know and it's accepted that those briefings were wrong, you were in the same role as ACSCI?

A. Yes.

Q. Coming through to April 2011 when NZDF issued what we now know to be the misleading press release or the erroneous press release and the Minister as we've just heard was questioned about civilian casualties, you were still in that same role?

A. Yes.

Q. And in September 2011 when the IAT report appears to have arrived in the same office where you worked, the OCDF, you were still in that role?

A. When was this?

Q. September 2011.

- A. No, in September 2011 I was Deputy Chief of the Airforce. I was in that role form June '11.
- Q. June '11 until - right.
- A. Yes, until February '13.
- Q. I thought you - no. And then in June 2014 I think you became the Vice Chief of Defence. Is that correct?
- A. Yes. Late March.
- Q. Late March. And we know - and we'll come to this in more detail - but you were involved in 2014, weren't you, in ministerial briefings and meetings about the discovery of the IAT report in 2014, June 2014?
- A. Yes, with the then Jonathan Coleman, Dr Jonathan Coleman.
- Q. And the investigation, enquiries he directed be made following the discovery of that? You were involved in that?
- A. I wouldn't say I was involved in the work that happened after that particular meeting. It was handed over to the then Chief of Defence Force. So I took - I was in a meeting for - in fact Acting CDF for a matter of 24 hours and then handed the matter across to the then CDF Tim Keating and one of the reasons I had three pages of notes in my own booklet was to make sure I passed on the fullness of detail to the CDF on return.
- Q. All right, so we're going to come to look at that issue, that topic in some detail because I want to take you through your diary. But anyway, for the purposes of the present questioning I just want to establish that you were involved in the issue when it blew up with Mr Coleman, you were at the meeting, you took notes and we'll come to that.
- A. Yes.
- Q. Right. So you were there with Minister Coleman when he pulled people into his office and expressed his anger or annoyance?

- A. Yes. There was two of us from Headquarters NZDF - Commodore Ross Smith and myself.
- Q. And you remained in that role of VCDF through until 2017?
- A. Yes. Well, no, through to the end of June 2018.
- Q. Right. But you were in the role obviously when the book *Hit & Run* came out?
- A. Yes.
- Q. And as part of that when that book came out you would've been involved in the strategising and work done in terms of the response to that book?
- A. Some of it. The reason I say some of it for a matter of days, again because I was Acting CDF when the book came out.
- Q. Right. So you have been involved at senior levels, Mr Short, haven't you, during all of the critical phases that this Inquiry is engaging with over this issue really? You've been there in the Office of the Chief of Defence Force in one capacity or another?
- A. Yes I have.
- Q. Now ...
- A. And can I just comment - you say critical parts and times. I do want to re-state that in the positions I held, I wasn't in the primary line of command when it came to Special Forces operations. Which limited my access and understanding.
- Q. I understand that and appreciate that but nonetheless you're at a senior level within Defence. You're in the same sort of offices of the Chief of Defence and to a greater or lesser extent you are aware of the issues that we're talking about throughout this Inquiry and that are subject of the Terms of Reference.
- A. Oh yes, yes.
- Q. Were you aware that Jim Blackwell had obtained a copy of the IAT report in 2011?
- A. No.

- Q. And you were the AC ...
- A. AC SCI.
- Q. At that time. So it wasn't the subject of discussion in and around your suite of offices?
- A. No. In fact that a change in the way the Special Forces reported occurred later and it wasn't really until Peter - Colonel Peter Kelly - came into the position that actually I had weekly meetings with what was the DSO position. So that occurred later in my time at SCI. Before that with Jim Blackwell, there was very little interaction at all.
- Q. The reason I put that to you, Mr Short, is it would seem logical at least to me, and I'd ask you to comment on this, that given the difficulty NZDF had had obtaining a copy of that report and all of the evidence that we've heard about the steps that were being taken to try and get one, interest at political level and obtaining a copy etc etc, that when it finally did arrive, I would have thought it would have been something that senior members of the military operating in the Office of the Chief of Defence would have been aware of. Is that a fair observation?
- A. We should have been made aware, but we were not. My first understanding of that, actually having a copy of the report and even then the discussion - it was a summary report - was with Dr Coleman and that was in 2014.
- Q. And when you say you should have been made aware, I take it that you mean you should have been made aware by Jim Blackwell?
- A. Well by staff that knew where the information was coming from.
- Q. And that would be Jim Blackwell?
- A. If - I don't know if that was where it came from, sorry. I haven't been privy to all the ...
- Q. Mr Blackwell has - have you read Mr Blackwell's evidence?
- A. No, no I haven't.

- Q. Mr Blackwell's given evidence that he obtained a copy of that report in September 2011.
- A. Okay, that would make sense because of the role he was filling.
- Q. And so when you say you should have been made aware of it, given the role he had, had he obtained a copy of it as he says in September 2011 you would expect he would have made that note.
- A. Possibly not to me though in that role during that time as AC SCI. He had direct access to CDF and had no reason to go outside what I call compartmented number of people that he would inform.
- Q. You would expect that he would tell the CDF?
- A. Yes.
- Q. And the VCDF?
- A. No.
- Q. Who else would you expect him to tell?
- A. Within the original construct it would have been a line of command from the commanding officer of NZSAS through the DSO through to CDF and it was up to the CDF to decide who he would bring into - I'm going to say a compartmented brief.
- Q. So you would expect then that when Mr Blackwell got this IAT report which hadn't been able to be obtained apparently previously, and he says he got it from the SNO in theatre?
- A. Yes.
- Q. You would expect that he would have told the commanding officer of the SAS that?
- A. Yes.
- Q. Right. Now you - if you go to the - in the big black folder again, the black one, big one. Just so that I can explain how it works, there's about three quarters of the way through that you'll see a tab I think saying October and then another one saying supplementary.

A. Yes.

Q. Well go to the supplementary tab. At page 53. You'll see a letter from you to the Inquiry dated the 23rd of August of this year.

A. What page is that sorry?

Q. 53.

A. Yes.

Q. Now in that letter in the first paragraph, which was just two months ago, you advise the Inquiry, don't you, that Defence took receipt of the IAT report on the 7th of September 2011?

A. Yes.

Q. And I take it that that information's based on the register that we've been hearing evidence about?

A. Yes, I think that's the date that I thought and with the Inquiry office that I had set up to provide documents to the Inquiry. That was the date that I was given for when we receipted the document.

Q. So clearly when you wrote that letter you were unaware that Jim Blackwell had marched it in on the 1st of September. Is that correct?

A. Well I didn't know we had that document until, as you say, three years later but I was given that date and believe that date. So what you're saying is this date is different to what Jim Blackwell ...

Q. Yes.

A. Well I don't know his evidence.

Q. Well take it from me his evidence is that he got it on the 1st of September.

A. In what year?

Q. 2011.

A. Okay.

Q. So what I'm putting to you is obviously when you wrote that letter you weren't aware of that information, that it had come into OCDF on the 1st of September?

- A. No.
- Q. 2011. Would you expect that NZDF would have accurate records of when the IAT came into its office?
- A. Yes.
- Q. Does it surprise you that we've had so much difficulty identifying when that report came in and how it was obtained?
- A. I have to say yes, but I don't know all the machinations of evidence which you have been given because I've been trying to, as you say, as a witness myself, not be encumbered with everybody else's evidence so I don't quite know where you're going with that. If you're talking ...
- Q. You don't need to worry ...
- A. If you're talking about the difference between the 1st of September and the 7th of September, I would only propose that that might be a typing error. Because I don't know the background sorry.
- Q. Just going back to a matter you mentioned earlier and sorry, I'll just flick back if you don't mind. You said, I think, in answer to a question of mine a few minutes ago that it wasn't until Peter Kelly came into the DSO role that you had weekly meetings with the DSO. Is that right?
- A. Yes.
- Q. Now Peter Kelly was the DSO before Jim Blackwell though wasn't he?
- A. I can't remember the order sorry.
- Q. Well the evidence has been that he was. So I just want to ask you this question. Did Mr Blackwell stop the weekly meetings?
- A. They were my weekly meetings with staff.
- Q. Right.
- A. And Jim Blackwell did not attend those?
- Q. Right. So he didn't want to ...
- A. No.
- Q. Be part of those meetings?

A. No.

Q. Why?

A. Because of the reporting lines. Peter Kelly - a different personality, wanted to know broader issues within the headquarters of things that were going on and as a matter of interest he said he would attend those meetings.

Q. So was this sort of part of the compartmentalisation if you like of Special Forces, special operations of SAS?

A. Yes.

Q. Not integrating with the rest of the organisation. Is that fair?

A. Well we don't share all information across the organisation. It does depend on the task and the mission and Peter Kelly's attendance at the weekly meeting was to understand what else was going on in the organisation. He didn't share what was going on within the Special Forces and I didn't expect him to because that wasn't part of his mandate or my mandate.

Q. But what I'm hearing from you though is that Peter Kelly had a more open attitude to that than Jim Blackwell. Is that fair?

A. Peter Kelly still didn't share Special Forces information. He absorbed what was happening across the organisation.

Q. I understand that but what I understood you to say was that Jim Blackwell had a different approach even to that?

A. Well he didn't attend.

Q. No.

A. I'll just leave it there. He didn't attend.

Q. Well why didn't he attend?

A. He didn't need to.

Q. Hmm?

A. He did not need to.

Q. Why, because he wasn't required to and he chose not to? Is that fair?

- A. Well you'll have to ask him. I don't know the reason but I'm saying that he didn't need to attend my meetings. He was not expected to.
- Q. Right. Would you have preferred him to?
- A. Yes.
- Q. Mr Short, we've got Mr Blackwell's evidence that he received a copy of the IAT report on the 1st of September electronically. And we have no evidence of emails to support that or any evidence of an electronic footprint of any sort to corroborate what Mr Blackwell has said. As Chief of Defence does that surprise you?
- A. It does. But I have made enquiries about the way our secret wide area network, the way we managed data on that system and how we recorded both emails, data related to operations. If an individual saved data onto what is called a personal drive, it was either called an H: drive or S: drive and set up a series of folders within that, when that person left the organisation that was deleted because it was considered a working drive. Not where you saved and documented the final products. There were SharePoint drives that you were meant to save things on. So that policy, to be blunt, was not known to me until recently and the education process that we've put in place - that I've put in place - is to actually educate people how they are to work within the system and save important documents. So when Jim Blackwell left, if he had used what I call his personal drive, hard drive, to save documents on, that would have been lost on his departure from the organisation.
- Q. Wouldn't it be surprising that he would use his personal hard drive to save a separate classified partner document?
- A. No because it was - it's still a secret system and for him to work on that and the error was not putting it then into a shared drive where it is archived.

- Q. Well why would you say for him to work on that? Why would he be working on an IAT report, an ISAF report? He wouldn't be working on it.
- A. No. But if he'd set it up and said that's where my documents are going and out of habit used that as his primary drive, then that's where it would have been.
- Q. So you - and I'm not being critical of this - but I take it from your answers you are speculating about that because you don't know it do you?
- A. No I don't know. But I have made enquiries about other people that have left and what was happening through the IT system and it isn't in accordance with our policies. So there was a - our IT support people were putting this into practice unbeknown to the organisation.
- Q. It isn't?
- A. Our IT support people were putting this into practice unbeknown to the organisation.
- Q. And emails though? I mean you would expect there to be emails. If emails were coming from theatre on the SWAN system to Mr Blackwell you would expect there to be a record of those?
- A. Yes.
- Q. Does it surprise you that there's not?
- A. I am surprised.
- Q. And the document that appears to have been emailed, and I can take you - and I might come to this later where I've got the page reference noted, but the document that appears to have been passed on in - I'm just going to check the dates - passed on in 2014 following the issues arising with Mr Coleman, the document that was sent from Mr Blackwell or his office to Rian McKinstry, and we understand and we've been told you haven't got the email and the document associated with each other but we have been told that that is the IAT report and that is a Word document. Can you explain why the IAT - if that is correct

and that's what we understand the shape of things seem to be - can you explain why the IAT report would have come into New Zealand as a Word document rather than a PDF? Does that strike you as odd?

A. No. The reason I say it doesn't strike me as odd is the early days of using documents and depending on who's at the other end transmitting it may not have had the systems to actually put it into PDF. I mean we're talking about 2010 and the primary - the individuals at the other end within ISAF, they're primarily all fighters, they're not data managers, they're at a desk, they're managing operations. It doesn't surprise me that whatever form of document that an individual thought was easiest to work with and comfortable with would have been transmitted.

Q. Well I suggest to you that that's not what you would expect from an official ISAF report, that I would have expected be a PDF document, a final document, and the fact that it's a Word document - and I also understand it's not signed in the version that we have had referred to us?

A. Well it probably wouldn't have been signed if it was sent as a Word document.

Q. No. Does that suggest to you that it might have come through unofficially?

A. I'd be speculating on that. But I do know, having worked in Afghanistan in 2006 and 2007, that it was not uncommon to get Powerpoint briefs, Word documents or PDFs depending on who you were actually communicating with. That's why I say that I'm not surprised.

Q. And I can understand that, Mr Short, when you're talking about Powerpoints perhaps but surely not when you're talking about a formal ISAF report of an investigation.

A. No, but if we were after a copy of it I'm not surprised. If we're after the final signed copy then PDF or actually a paper document would be expected.

- Q. Mr Short I want to ask you this in your position of the Chief of Defence, the current Chief of Defence. Do you accept that NZDF whether deliberately or inadvertently, has misled Ministers and the public about the outcome of the IAT report and the possibility of civilian casualties?
- A. I would say inadvertently, yes.
- Q. Do you also accept that NZDF have never apologised to the public for that?
- A. I'm only hesitating because it depends on if you're expecting the NZDF to put something out quite definitively, I know we didn't do that. I do know that when Ministers - and again Mr Coleman makes a very clear statement, that overrides anything that would come out of the NZDF. It was not unusual for Ministers to actually discuss who will put out a document, a statement, and the basis of it.
- Q. I'll ask you again though, and I understand what you've just said, but given that you've accepted and you qualified it by saying inadvertently, but NZDF have misled the New Zealand public, do you not think it's reasonable that NZDF should have apologised publicly for that?
- A. The apology and the basis of it I think may have clarified the situation, yes.
- Q. So you agree with me? It's not that hard to apologise is it?
- A. No.
- Q. Because you would have to accept, wouldn't you, that when mistakes of this nature are made it's appropriate for people to take responsibility for them.
- A. Yes.
- Q. And I want to also put this to you too because I put it to Mr Keating. Do you accept now looking back at this and the way that NZDF have handled matters have led to confusion publicly?
- A. Yes, I do.

Q. And do you also accept that that confusion has had the effect, at least potentially, and I suggest to you in reality, of leading members of the New Zealand public to in fact the view that the New Zealand ground forces were directly responsible or may have been directly responsible for civilian casualties? What I'm suggesting to you is that message has got lost.

A. I believe that the NZDF hung on to the initial information that came from theatre from Chris Parsons and we, if you like, kept going back to that and I say that because I saw that twice in the time I was acting CDF and that was part of the confusion. It was no attempt to hide any information from the public, it's going back to the original source and original statement. Because it was so long a period after before we actually knew we had the report and from my perspective when it was pointed out by Dr Coleman I even thought it was only a summary, not the report itself. So I think our error is going back to an original piece of information, using that as the basis and continuing to put that out. It is also true that we used different words than what was put into the IAT report where it said civilian casualties may have occurred, we said that civilian casualties are unfounded.

Q. No it actually said that the results of the ISAF investigation was that the allegation of civilian casualties was unfounded.

A. Well, yeah, I could ...

Q. You misrepresented the outcome of the ISAF investigation.

A. That's because we had from theatre saying - and this is where the confusion is, I'm not denying that - where it said that the ground forces were cleared. So there was an understanding of that.

Q. And we've heard evidence about that. And I'm not so much talking about the reasons why, I'm simply wanting to put to you do you accept that that confusion has led to

confusion in all likelihood in the minds of the New Zealand public?

A. Yes.

Q. All right. Can we move now to 2014 please? And you've told us you took over in - did you say March 2014?

A. Yes.

Q. Now you were, and I'm going to your notes, but you were called to the Minister's office?

A. Yes.

Q. Right. And he, amongst other things, said to you that he felt very let down by his Saturday night briefing.

A. Yes.

Q. Who briefed him on that Saturday night?

A. I don't know.

Q. Surely, Mr Short, you made enquiries to find out who briefed the Minister.

A. The next day when CDF came back I passed on all of that information. I did not know who that brief was from.

Q. Do you now know who the brief - who did the briefing?

A. No, I don't.

Q. Was it CDF?

A. I don't - no, I don't know who actually gave that brief even to today, because I've kept away from other witnesses. And I have not read their briefs. So I do not know.

Q. I can understand you being kept away from other witnesses for the purposes of this hearing because you're giving evidence at this hearing, but back in 2014 when the Minister is asking for answers, indeed demanding answers, and demanding an investigation and expressing - and you're the man on the spot because CDF's not there, and he's telling you in words of one syllable that he's been let down badly by a briefing on the Saturday night, that it never occurs to enquire about who that was?

- A. Both Ross Smith and I didn't know who that was and we were going to find out when we went back to the office and there was a series of things we were going to find out. At that stage I handed it back to CDF, he said it's mine. It is about which role and who's actually briefing. I didn't know if it was CDF himself. He said, you know, in the handover, it was all his role thereon. The very next day. It wasn't ...
- Q. So the very next day Mr Keating took it out of your hands and said don't worry Mr Short, I'll look after this, it's all mine?
- A. Yes.
- Q. And you've had nothing more to do with it?
- A. No.
- Q. And you would expect then that Mr Keating would have enquired about who gave the briefing?
- A. Yes.
- Q. And you've absolutely no idea who that was yourself now?
- A. No.
- Q. We know it was someone referred to as a subject matter expert. Mr Keating says that in his Brief of Evidence, that it would have been a subject matter expert. Who would be the subject matter expert?
- A. The DSO.
- Q. Mr Blackwell.
- A. Yes.
- Q. Now I'll take you to that big tag and under the - so the big folder but under the October tag at page 1120. So this is an email from DSO analyst to Rian McKinstry attaching a whole lot of Operation Burnham documents saying that those documents are being pulled together for the ministerial briefing over the weekend and I'm suggesting to you and asking for your comment but does that suggest to you those would likely to have been pulled together by Mr Blackwell given that email?

- A. Yes, particularly because it comes from the email line which is the DSO.
- Q. And we appear to have no record of the talking points or the briefing notes, whatever you want to call them, for that briefing on the Saturday night and that appears to be another missing document. Do you know if enquiries have been made to see if that document can be located?
- A. I'm not aware, no.
- Q. Can you now as CDF take steps to see if that document can be located? Or have steps undertaken, I don't mean you personally.
- A. I could attempt to but I would be surprised if it turned up if it's not actually part of a pack for this Inquiry. But I can look specifically for that.
- Q. You know, don't you, Mr Short, that we've had a progression of documents over many months and we're still missing documents and it's an ongoing process and there's been a level of frustration about that. That message must have well filtered through to you in your position as Chief of Defence?
- A. Yes it is and, you know, the New Zealand Defence Force is a very complex organisation. We have over ten different, I'm going to say systems, which we have information on and if you extend that to a couple of the intel sites, you know, you're pushing 15 different systems which have different processes used for disseminating and storing of information and it is therefore classification reasons and under security requirements it does make it difficult. I'm not surprised that it has taken time because of the number of systems and the way you have to search those systems. Some of them, as you would see through this, have actually come from theatre as well which has other restrictive requirements and makes it difficult to actually retain all of that information. It's not saying that we don't keep all of it, it's an explanation of - it's not a case of

having it all at your fingertips, there are so many different systems.

- Q. Trust me, Mr Short, I work with a lot of government agencies. I understand that and I fully appreciate that Defence is a very complex organisation. But, nonetheless, you would accept, wouldn't you, as CDF, that there is an obligation on the organisation to have a good record keeping system?
- A. Yes.
- Q. And there is also, I would have thought, a particular need for an organisation like NZDF to manage classified, secret partner material in the most appropriate and proper way.
- A. If it's secret and partner information they own it. We can use it when they allow us to use it.
- Q. Right. It wouldn't be a good look to lose that kind of material would it?
- A. No.
- Q. To make copies of it without having a proper record of copies being made?
- A. No.
- Q. Now coming back to the briefing note that I was talking about from the 28th, the reason that I am putting to you that that's obviously a critical document that we don't have is because you will understand and appreciate, given that you were at Mr Coleman's - the meeting with Mr Coleman where he was very angry that that briefing was obviously completely wrong given what he found out subsequently through the discovery of the IAT report in the safe. Correct?
- A. No, the words he said to me was not as complete as it should be, something like that.
- Q. He said he felt very let down as well didn't he?
- A. Right, yes.

Q. Does that not suggest to you that the briefing was not consistent with the findings of the IAT? That's the upshot of it isn't it?

A. Yes, I assume so.

Q. And if you look at the large black volume - folder sorry - at 217, what we have here are the amended talking points dated the 1st of July 2014 which appear to have been prepared by the Minister's staff which correctly state the position. If you look in the middle of the page you'll see the sentence starting - bottom line is you can't rule out that the US or Afghan troops killed civilians - question - certainly there were no deaths inflicted on any ground troops from any nation. So no civilian deaths from ground troops. So these are talking points to assist the Minister presumably. And they're described at the top under the very first line ...

A. Is this page 217?

Q. 217 of - yes, that's right. And if you look at the - so have you got from Ross Smith there dated the 1st of July 2014?

A. Yes.

Q. Right, come down where it says FYI. Below is our draft updated talking points.

A. Okay.

Q. And it's related to the response to the *Native Affairs* programme.

A. Right.

A. And what I'm suggesting to you is these have been updated by the Minister's office, updated from the erroneous ones that were provided a couple of days earlier which would suggest the ones provided a couple of days earlier didn't say what these ones say. That would be a fair assumption wouldn't it?

A. It would be an assumption yes.

- Q. So we go then to your diary which I think is in the supplementary bundle, so if you go to that supplementary tab and I'm sorry we're flipping around a bit. It starts at page 9. Got that?
- A. Yes.
- Q. And I think that's just a summary on that first page of the Māori Television programme.
- A. They were just the points I made as I watched the programme.
- Q. Right. Coming over the page then and you've got there under the underlined there, the first underlined bits, there's questions. Does that say responses does it?
- A. Remains.
- Q. Sorry?
- A. Questions remain.
- Q. Questions remain. And then we've got NZDF stated, stands - by its 20 April statement and that's presumably the press statement from the 20th of April 2011?
- A. Yes.
- Q. Which is what was reissued in 2014.
- A. Yes.
- Q. And then manage situation? Mark, that's Mark Chadwick isn't it?
- A. Yes it is.
- Q. Took documents to the Minister of Defence that - what does that say? We were from ISAF?
- A. That was from ISAF.
- Q. ISAF that indicated there may be civilian casualties. Question there - was there a document? What does over on the right-hand side where you've got joint assessment team is it 29, 28 August report for Mapp mean?
- A. At the time I was listening to the comments that were being made because I didn't know anything about their assessment report coming through so in this case I suggest that Minister Coleman at the time said joint assessment

team 29th of August report for Mapp, in other words a report that possibly had gone to Mapp, Minister Mapp.

Q. And where it's got underneath that that Josh - and that's Josh Cameron - 09:35pm so 9:35pm, now I understand he called you then did he?

A. Yes.

Q. Right.

A. And he said there might be a meeting at 10:00 and then he said maybe 09:00 and 08:30 was the sort of time that was set as I was scribbling in the book.

Q. Now as I understand the evidence, I'm sure I'll be corrected if I'm wrong, Mr Hoey gave evidence that the bundle had been located in the safe with Mr Chadwick at about 7 o'clock that morning. Is that your understanding?

A. I cannot remember.

Q. That is the evidence though?

A. Okay.

Q. What I want to ask you is what happened between 7am and 9:35. Presumably you'd been alerted and were waiting, expecting this call?

A. Sorry I'm ...

Q. If Mr Hoey - if the bundle in the safe was found at 7am that day and you're getting a call from Josh Cameron ...

A. This is ...

Q. Oh is that the day before, the night before.

A. This is the night before, sorry, that was at 9:35pm.

Q. Right. It's half-past three, Sir. I wonder if this is a convenient place because I'll spend a fair bit of time with the diary?

SIR TERENCE: Well I was wondering if we just go on unless there may ...

MS McDONALD: Could we take five minutes?

SIR TERENCE: Pardon?

MS McDONALD: Could we take five minutes?

SIR TERENCE: All right, we'll take five minutes, but I am concerned that Mr Salmon has ...

MS McDONALD: Yes, I just need to have a short break.

SIR TERENCE: Oh, right, yes. So we'll break for five minutes.

HEARING RESUMES

SIR TERENCE: Thank you. Please sit.

MS McDONALD: It's amazing what a break does, Mr Short. I actually don't think I was wrong before when I put to you the issue about all of this unfolding at 7 o'clock in the morning and then you getting the phone call at 9:35 at night because that is the same day. If you look at your notes ...

A. Sure.

Q. Page 10 for the 30th of June, Josh Cameron's ringing you at 9:35pm talking about the primary course document contradicting the brief to the Minister of Defence. And we know from what Mr Hoey's told us that he found these documents or the documents were found in the bundle in his safe at about 7 o'clock that morning. So what I'm suggesting to you, or asking you, is what communications you had between 7 o'clock in the morning and 9:35pm to alert you to this issue?

A. My recollection is none.

Q. Isn't that surprising? It's a reasonably big deal when it unfolds at 7 o'clock in the morning. We've heard evidence about this already and you weren't here obviously but there was a sort of a lightbulb moment if I can put it that way when the bundle was found and a realisation that the IAT report contradicted the briefing etc and everything else that had gone before it, I would have thought that the most logical thing in the world would be to contact you because you're holding the realm at that stage aren't you?

A. Yes.

Q. But you're saying that didn't happen?

A. From memory, no. The only piece that I was alerted to was the *Native Affairs* programme on Māori TV to watch that and that I would get a call from Josh Cameron later after that. But I don't remember getting a briefing or an indication of what had gone across to the Minister's office.

Q. So did you not know when Josh Cameron phoned you what he was calling about?

A. I knew he would be calling about this particular programme, but not the detail of that.

Q. Not about the fact that they had found this IAT report.

A. No.

Q. Sure?

A. Yes.

Q. No emails about that?

A. Not that I can remember sorry.

Q. You would've expected your staff to have given you a heads up wouldn't you, surely?

A. Yes.

Q. Right. So - sorry, staying with the note for a minute. So then coming to the 1st of July the note, picking up what we were talking about earlier, the Minister felt let down by his Saturday brief, this was casual and did not contain all of the information held, critical piece left out?

A. Yes.

Q. The Minister was angry at that stage when he's talking about this?

A. Forthright. I wouldn't say - you said angry, I'm saying he was very forthright, very ...

Q. Disappointed?

A. Strong in his views, in his statements, yes.

Q. So strong in his views, I didn't catch what you said after that?

- A. Just strong in his statement and his views about what he'd been told.
- Q. Okay. And then we've got here when, how did NZDF get this document, once Rian McKinstry interviewed, what did he know, how did he interpret. Why was Rian McKinstry identified as someone to be spoken to?
- A. He may have been an SNO, a previous SNO and therefore would have some knowledge about what was going on within ISAF.
- Q. Were there some documents that had been found in the safe that related to him to your memory?
- A. No, I'm sorry I don't.
- Q. You don't remember or there weren't?
- A. I don't remember and I don't know whether I was told.
- Q. Did you actually see the bundle of documents that had been located in the safe?
- A. No, I did not.
- Q. You didn't ask to?
- A. I was not - it's one of those interesting things, until - was it 8:30, 9:35 phone call, I didn't know there was information about an executive summary or that IAT report at all. And going to the Minister's meeting the next day, it was verbally discussed but I still hadn't seen the complete bundle. Prior to actually having the meeting with the Minister.
- Q. And then what follows there is a heading that says "SAS accountability". Have you got that?
- A. Yes.
- Q. Please help me with this. So credibility eroding over time. [WITHHELD] Not fallible. No question of core skills. Political judgement. Lack of insight. Confusing - what's that word? Desirability of activities is it?
- A. ... my own writing.

Q. Looks like desirability of activity. Not sure.
Desirability of something. Having a particular shielding effect.

A. Yes.

Q. So what were you capturing there? This was the Minister expressing his view?

A. That was the Minister's commentary and I put on the box on the left-hand side that this was backed up by the Secretary of Defence at the time, in other words echoed.

Q. So this was Helene Quilter at the time?

A. Yes.

Q. So she was reflecting a similar view.

A. Yes.

Q. And then the next entry, DSO look at the position not being SAS. Jim going soon.

A. Yes.

Q. So what was that discussion? How did that arise?

A. That was a follow-on really as part of the SAS accountability. But because an individual position had been named I'd just underlined that, just in the way I was taking the notes.

Q. So was the review being expressed, just cutting through this, was the review being expressed by the Minister and Ms Quilter that the SAS were a bit of a closed shop and not sufficiently accountable?

A. That was coming through as you can read from this, yes.

Q. And it was shortly after this wasn't it that there was some restructuring of the position of DSO?

A. Yes.

Q. So then we've got a heading "Actions taken" and reference there to the fact that presumably the Minister's here saying that the Prime Minister had spoken to the media saying no civilians were killed and that Stephenson was again wrong. Minister of Defence wants a brief on how the

assessment team summary document was not available to CDF. And then somebody Macpherson briefed on the situation.

A. It's Taha Macpherson.

Q. Right. Secretary of Defence stated CDF was let down by Defence to MinDef and Taha Macpherson. And then we've got report back in two days on - and this is the Minister saying he wants a report back in two days I assume?

A. Yes, yes.

Q. The McKinstry interview, the ATS document, presumably that's the IAT document?

A. Yeah. At the time I was calling it the Assessment Team Summary because I hadn't actually seen the document myself.

Q. Right. How did we get that, handled by whom? Request for full assessment document, assurance on voracity of briefs particularly involving SAS. So this is what the Minister is saying he wants enquired into by you and you're the senior man in his office at this time?

A. Yes.

Q. And Mr Smith's with you?

A. Yes.

Q. Anybody else?

A. Well the Secretary of Defence would've been there.

Q. Right.

A. Josh Cameron. Probably - was it Mark Chadwick as well? He would have had his staff in there. And there would have been the three from Defence.

Q. Right. So can you tell me what the report back was then to the Minister in two days?

A. No I cannot tell you.

Q. Why is that?

A. I didn't attend the report back.

Q. You didn't what?

A. I didn't attend the report back.

Q. Was there a document prepared?

- A. I do not know.
- Q. There should have been, shouldn't there? You would expect there to be a document given this level of annoyance expressed by the Minister?
- A. In the normal course of things yes.
- Q. Who undertook the investigation?
- A. I would - I think some of it was done by Ross Smith. Some of it would have been questions, I guess, by the CDF of the day at the time as well.
- Q. Did the Minister refer specifically to Mr Blackwell's briefings being inadequate?
- A. No, he didn't.
- Q. Right. So when do you say that you were told not to have anything more to do with this by CDF?
- A. We had an understanding so that you didn't, I guess, tread on each other's toes, give different direction to different parts of the organisation, that there was a very sure handover of who was handling this situation. So as soon as CDF was back and briefed he took control of this information in this briefing.
- Q. He took it out of your hands, really didn't he?
- A. Yes. Well it's positive - who is taking this forward was not me from that time.
- Q. Again, in your position now as CDF, can you understand that there might be a level of frustration by the Inquiry that there is not one single written piece of paper or note that shows the outcome of this investigation?
- A. Okay. Is that for all the actions taken.
- Q. Well there's some record of an interview with Rian McKinstry that's recorded in Mr Smith's notes and those kind of - there's records in Mr Smith's notes but in terms of a report were there talking points for an oral briefing, anything of that type, we haven't seen anything of that nature as far as I'm aware? And I'm suggesting to

you that that's not acceptable and I would ask you to comment on it.

A. Normally with the level of detail and discussion that came from the Minister and the fact that there was a report back required in two days, normally you would have a written document that you briefed the Minister with so that, one: you would give the oral side of it but - two: the leave behind would be a document which would allow the Minister to understand the summary points of what has been briefed.

Q. So you agree with me that that's not ...

A. It would be normal, yes.

Q. And it's not very good that it hasn't happened here? That we haven't got it?

A. I don't know the detail sorry.

Q. Well I'm sorry to pressure on this, but you are the Chief of Defence. It is your organisation ...

A. But you're asking me something that I wasn't at, at that time, but I can say that it would be unusual not to have a written document.

Q. Best practice would be to have a written document?

A. Yes.

Q. Good practice would be to have a written document?

A. Yes.

Q. Acceptable practice would be to have a written document?

A. Yes.

Q. Thank you. Right. So I want to come now then to the documents in the bundle that you say you didn't see at the time and they start in that supplementary section again at page 55. Did you see these - have you seen these before today? These are the documents that were appended to the back of Mr Hoey's affidavit that were provided to the Inquiry in September.

A. Sorry, it's from 55 through to where?

Q. Pretty much to the back I think. 55 through to 67, 69. Just a couple of blank pages there where the IAT report was. There's a storyboard, some draft ministerial briefing papers.

A. Yes, I have them.

Q. This is the bundle from the safe.

A. Some of these look familiar. The notes that were produced to go to the Minister of Defence. But not all of them, there's only a few that look familiar, or familiar information.

Q. I assume though, again, recently, again, given your position as CDF, you would have been told that a bundle of these documents had been located quite recently and were presented to the Inquiry in September.

A. Yes.

Q. Right. And did you see them at that time?

A. No.

Q. And did you see them at the time that they were found in the safe in 2014 during the Coleman ...

A. No.

Q. Right. So looking then at page 57 and 58, you'll see that that's a draft ministerial briefing and it's got some handwritten notes on it. Do those look at all familiar to you, those handwritten notes?

A. No.

Q. So you can't help us identify those?

A. No, sorry.

Q. And go over to page 60 please, again handwritten notes. Do you recognise those?

A. No. I do not recognise them.

Q. And then there's some underlining at paragraph 4 of that brief and it's photocopied but highlighting and then the copy and then if you flick over to page 64, you'll see paragraph 7 circled, highlighted under, section underlined, same on 65.

A. I don't know who did that.

Q. No. Okay, and then just for completeness, keep going.

Page 66. That document has been heavily redacted but I can tell you it's a cut and paste document that's been put together from an email from Rian McKinstry when he was - he sent that email in August - 26th of August I think - about that time in 2010, but we know from the metadata that it was actually created as a cut and paste Word document on the same day that Mr Blackwell says he got the IAT report, namely the 1st of September 2017. Are you aware of that? Sorry, 2011.

A. No.

Q. Right. So you've not been told anything about the discovery of the analysis of that Word document?

A. No.

Q. Right. And I take it from what you said earlier, and just for completeness, the IAT document which is obviously not part of this public pack has got a section that was - the classified version's got a section marked up which shows the contradiction with the ministerial briefing papers. Right? So suggesting that whoever's marked up those briefing papers ...

A. Oh, I see.

Q. ... and the IAT report has analysed them and worked out that there's a contradiction between the IAT report and what's in the briefing papers.

A. Right.

Q. And I take it from your answers you don't know who that person was?

A. No, no I don't.

Q. And would you have expected that whoever was carrying out this investigation at the request of the Minister back in 2014, you might have expected them to get to the bottom of the sort of analysis of who marked up these papers, who was responsible for doing these kind of markings?

A. Yes. It should have been easier than today for instance because of people still serving the databases and information that would have been held then.

Q. You would expect that to be the case, wouldn't you?

A. Yes.

Q. And I take it that you didn't have anything to do with that because it was taken away from your mandate?

A. Yes.

Q. So moving forward then to 2017 and the publication and release of *Hit & Run*, you're VCDF by now?

A. Yes.

Q. Did you agree with the media strategy adopted by the Chief of Defence at that time to criticise the book based on the allegations that it was the wrong location?

A. I wasn't asked.

Q. So you had nothing to do with that?

A. I wasn't asked my opinion about what was said about the book.

Q. Are you prepared to offer an opinion now about what you think about that strategy?

A. Not really. I think from my perspective the error in location was significant in case it was a completely different operation. I put it that way. No different to you going to a bank at this end of the city when someone robs something down the other end and saying it's the same bank.

Q. It's a wee bit different I suggest, Mr Short, because how many operations were you doing in the Tirgiran Valley in 2010?

A. No, it wasn't the fact that whether we were, it's whether another troop-contributing nation, of which there were 50, could have actually conducted operations in that area that we didn't know of. That's what I'm saying.

Q. You knew that the village - and this is shown in the NZDF's own documents that we looked at in the September

hearing - there's a reference to the village being called Naik?

A. Yes.

Q. Right. And that's the same village that was referred to in the book?

A. I think it was, yes.

Q. And you knew that it was in the Tirgiran Valley and that was referred to in the book?

A. Yes.

Q. Right. And I suggest to you that the author's mistake was really about an aerial map rather than the identification of the name of a village?

A. Yes, but it is more than that though. Because it could have been a different operation in a different valley by a different contributing nation. The point of saying it was a different place, I think, is not what Tim Keating was doing. He was saying "I will tell you about the operation that the NZDF undertook and I'll tell you the facts of that". So he was saying if that's what the book says, let's tell you what we did. In both cases you get the two sides. I'll put it that way.

Q. Hmm.

A. So it wasn't a deliberate - what did you call it? - strategy to discredit the book, it was saying this is where we operated, this is what we did, this is how the mission was undertaken.

Q. It was the same night. The identification of the incident was the same night, the book, and the operation you did?

A. Yes.

Q. It was in a valley called the Tirgiran Valley. Correct?

A. Yes.

Q. It was referenced to a village called Naik, both. Where you were - well not you personally, but where NZDF were and what the book said. I suggest to you that - and I'm not holding you personally responsible for this, you

didn't do it, but you are now trying to defend the actions of Mr Keating in terms of how he presented this matter in the media. I suggest to you that there was an attempt to distance NZDF from this operation that was being talked about and being referred to in the book.

A. How can you distance yourself from the operation when you actually lay out all the facts about what happened in that operation.

Q. Where did he do that?

A. At that same briefing.

Q. Oh, did he? Right. Well I'll ask my colleague to find the right [inaudible]. We'll come back to that and I'll just ask Mr Isac to find the right page for me where we can look at what Mr Keating actually said about that. Now you've said that at this time in 2007 there was a failure to connect the book to the *Collateral Damage* programme?

A. In 2017 yes.

Q. Yes. And I think you've said in part that that was because of the pressure and the speed and that you just didn't remember. Correct?

A. Yes.

Q. Could I suggest to you that's not quite correct because didn't you have some notice that there was going to be a release of the book prior to its release?

A. Yes.

Q. Because you had someone go to the book launch, didn't you?

A. We had someone pick up those books the evening it was launched.

Q. Right. So they went to the launch and I think purchased six books or something at that time?

A. Yes.

Q. Right. And isn't it also - do you know the name Mike Shatford?

A. Yes.

Q. And isn't it also the case that Mr Stephenson gave Mr Shatford advance notice, and he was a Lieutenant-Colonel wasn't he working for Minister Gerry Brownlee at the time?

A. I'll have to take your word for it. I don't know who he was working for at the time.

Q. All right. Well I understand he was. Did you know that Mr Stephenson gave him a couple of hours' advance notice of the book so that would minimise any risk of danger to your soldiers?

A. No.

Q. Did Mr Shatford not pass that information on? Or do you not know whether he did?

A. No I don't know whether he did.

Q. Right.

A. But whether it was a couple of hours or, you know, before 5:15, we still didn't know what the content of that book would be. We had to physically pick it up and read it to understand what it was saying.

Q. Well you know it was the same journalist?

A. Yes.

Q. You knew it was the same location?

A. We didn't know what - no, we didn't know what this book was going to contain.

Q. Once you got the book you knew what it was talking about?

A. Yes, yes.

Q. And I suggest to you that Mr Shatford received enough information but you won't be aware of that. Same date, you knew that. Same timeframe?

A. Yes.

Q. Same allegations of civilian casualties?

A. I'm only hesitating because the number of civilians killed, the number of casualties, the number of buildings that were destroyed seemed like a different story initially.

- Q. Well I suggest to you they're a remarkable coincidence. You've got the same journalist, the same location, allegation of civilian casualties, reference to Tirgiran Valley, both incidents are linked to the tragedy involving Tim O'Donnell, you knew that.
- A. Yes.
- Q. Right. The preface to the book and pages I think 105 to 107 refer to the *Collateral Damage* programme. So the staff that you would have had running round reading the book and prepping for you would have worked that out surely? They would have, you would expect, read at least the preface?
- A. Yes.
- Q. And you say that someone found the press release from April 2011 and stapled that in your diary on the 21st of March 2017?
- A. Yes.
- Q. And it was that that led to the mistake. Or the erroneous press comment?
- A. Yeah, going back and - as I said earlier - going back and using the original statement from 2011, again in 2017.
- Q. But that press release relates directly to the same operation?
- A. Yes.
- Q. So you must have known it was the same operation. I mean the press release from 2011 - forget *Collateral Damage* - for a minute.
- A. Yes.
- Q. The press release from 2011 related to the operation in the Tirgiran Valley in 2010.
- A. Yes.
- Q. The book *Hit & Run* related to the Defence operation in 2010 called Operation Burnham in the Tirgiran Valley.
- A. Right.

- Q. So why were you - why did you not make the connection between the operation when the very press release from 2011 related to that operation?
- A. At, you know, an hour and a half after individuals had read certain parts of the book, thinking about the operation and where we were, there was an inkling that it was something that we'd reported on before. So that's when I asked them to go back and see what we'd said before and that particular statement, because of the timeline of when it was said, I thought it was significant enough to keep a copy and actually note when it was discovered to put in my diary. The point you're saying is when we went back to the civilian casualties are unfounded, right?
- Q. Mmm.
- A. And since the timeframe that had passed, we still didn't have any - I'm going to say confirmation - so it seemed like a correct statement still that civilian casualties were unfounded. I wasn't so sure so I actually sent that off to the CDF at the time and asked him to have a look at the press release that was to go, and he confirmed it was what he had put out.
- Q. So just to unpack that a little bit. Are you saying that when you got the draft stapled to your diary ...
- A. Yes.
- Q. ... in advance of it being released ...
- A. No. It was from that night.
- Q. Right. So before it was released, you're saying, you sent it to Mr Keating to check?
- A. Yes. Yes I did.
- Q. Because you weren't too sure?
- A. Yes.
- Q. And was that because you had actually made the connection with the erroneous comment made in 2011 about the operation?

- A. I was concerned about continuing that line but not sure what the statement should be, knowing that CDF would have to carry that forward on his return so the whole statement, the way it was drafted, was sent to him for confirmation.
- Q. So I think that's quite important, I think, Mr Short, so we just need to work our way through this. So you're actually now saying, helpfully I think, that it did dawn on you in fact that this was the Operation, that had been the subject of the 2014 debacle hadn't it?
- A. It looked very much like that, yes.
- Q. Right. And you knew that at the time, didn't you? In 2017?
- A. Yes.
- Q. Because it would be completely inconceivable, frankly, that you wouldn't join the dots given the hauling before the Minister that had occurred in 2014?
- A. To a point. Believe it or not, when you're on receive with the Minister and you're writing that detail, remember I hadn't seen the document. Handed it across to CDF and because CDF had the detail on it, I was concerned about putting something out that he wouldn't have accepted.
- Q. So the truth of the matter is that you worked it out and because CDF was going to carry the responsibility for it, you pointed it out to him and it was his call how he dealt with it. That's the fact isn't it?
- A. Yes.
- Q. Right. When you did that, did you mention to him - did you talk to him about events from 2014?
- A. No. He was out of country and in fact most - I'd had a phone call with him and then we did the confirmation through his personal staff officer.
- Q. It's fair to say, Mr Short, that had you been the person holding the responsibility for issuing that press release you wouldn't have issued it in those terms?

- A. But I mean I do take some responsibility because I did release it.
- Q. But if you had not had CDF making the call to do so, would you have done it differently?
- A. I think that whole particular night we would have done things differently. Because of the speed with which media and the Government wanted us to put out a statement, having just got hold of the book, that there was a series of other - like the Prime Minister and others were going to put out a press release. So under the pressure of time, I wanted to give myself more time and not actually put out anything because I thought it was too soon and we needed time to absorb everything that was stated in that book. There were a number of factors, I think, that really said don't do this in a hurry, take time, this is important, but there was pressure for us to put something out.
- Q. It's pretty extraordinary though, isn't it really, when you look at and you think about the size of the NZDF and all of the staff that you've got, and the comms people that you've got and you've got analysts and, you know, and you've got information from 2011, granted that you didn't know about, that show that what was said in April 2011 was wrong. You have a Minister expressing considerable annoyance in 2014 which you were aware of where he and the Prime Minister have misled the public as a result of the briefings they've had from NZDF. And then in 2017 the very same operation comes up again and NZDF doggedly maintains the same erroneous position publicly. It's quite extraordinary isn't it?
- A. I can understand how that would appear but I do note that in the intervening period, and it depends on the individual you talk to, but the fact that our ground forces had been cleared of any wrongdoing in the investigation and, yes, that was part of that report - IAT report - that individuals were saying but we were cleared.

We only fired two shots. We had followed all the rules of engagement. We had completed the mission as required so I'm not surprised that in looking at the words "civilian casualties were unfounded" people are relating to our NZSAS at the time. And, you know, unfounded in that cases, you know, civilian casualties haven't been proven, it doesn't say they didn't occur.

Q. But it's talking about the outcome and the findings of the ISAF investigation.

A. Yes, I know.

Q. And that's completely wrong. You know that. It's not what the ISAF investigation found.

A. No, it said that ...

Q. It was a possibility.

A. In two different parts, yes, it's a possibility. May have.

Q. So for NZDF to continue to repeat the erroneous view that the ISAF investigation found something completely different to that, I suggest to you is pretty egregious. What comment do make about that?

A. I think it's poor that we kept going back to the original findings and bringing up that same issue each time and hence in my time as the - when I was Acting CDF - those same statements were always put in front of me as if that was the - follow the same line each time.

Q. Have you improved your systems since then, Mr Short? About this sort of thing?

A. We're in the process of doing that with both policy, a new document management system and the new command lines, all of which is about improving the way we do record and report the way we do any particular mission.

Q. I suggest to you that the other rather striking thing about these events in 2017 is it's not just you who were involved in this, you know, press release and what have you, but you've got Mr Smith and Mr Hoey. If you look at page 289 of that big bundle. 24th of March 2017 an email to

Chris Hoey and Commodore Ross Smith. So they're obviously involved at this time in the response to *Hit & Run*, aren't they?

A. Yes.

Q. This is Mr Hoey who at 7 o'clock on the morning of the 30th I think it was, of June, found the IAT report. Mr Smith, who you tasked to undertake the investigation on behalf of, for the Minister, and to report back in two days. So you've explained - so not only have you not made the connection, nor has Mr Hoey and nor has Mr Smith presumably, otherwise they'd have told you?

A. Yes.

Q. I suggest to you that that defies belief really. Do you want to comment on that? Have you got any observation to make on that?

A. It does.

Q. I just want to take you back in fairness to what I was talking about before, about the location. And there's a number of documents about this and I don't want to take too much time with it but if you look quickly in that bundle at 342, you will see there one of Mr Keating's comments in an interview. Second answer in. Have you got that?

A. Yes.

Q. And he's saying there - and he's discussing the location issue - "No those casualties mentioned in the book or the names mentioned in the book are from a village two kilometres to the north that we have not visited. We have no knowledge of those villages". Now what I'm suggesting to you is that is a very misleading position. He could easily have clarified the position there. NZDF knew full well you were in the village called Naik and the Tirgiran Valley. And what the authors had, had made a mistake with the aerial maps. But you're talking about the same operation and the same village surely?

- A. They do, but also mention a different number of buildings and structures which, again, just puts some doubt on to it. Look, I know that ...
- Q. Did you - sorry to interrupt you - but did you really seriously have any doubt that they were talking about a different operation in *Hit & Run*? Really?
- A. No. But I do want to say that I know Tim Keating was saying if we put the book aside, we'll tell you what we did in the village which we conducted the operation.
- Q. He criticised the book. He tried to undermine the credibility of the book on the basis of the view that they had something wrong about the location. And I'm suggesting to you, just to cut to the chase, Mr Short, that that was unfair because it was blindingly obvious that it was the same location. Sure there'd been some mistakes. But you're not talking about an operation in two different places on the same night. Are you?
- A. No.
- Q. Thank you. Right.
- A. So are we saying that what is in the book is correct and what Tim Keating is incorrect?
- Q. I'm not saying that everything in the book is correct at all. I'm saying it's the same operation and I'm suggesting to you that NZDF's, or Mr Keating's response in 2017 to criticise the book on the basis that the authors had got some aspects of the location wrong was an unfair attempt to undermine the book and suggest that nothing to see there.
- A. Well I'm hesitating again because the name of valleys, the name of various villages, the size of those, can be quite confusing within Afghanistan and I can tell you that Tim Keating was saying to stop that confusion I can say this is where we did our operation. If it confused where it was, that was not the reason, it was so let's just -

again, put the book aside. We'll tell you what we did in that particular village.

Q. And you think he did that?

A. Ah..

Q. Or NZDF did that. Let's not personalise this.

A. Yes.

Q. Can I - sorry, we'll need to labour this a little more now. Can I take you to 308 please? This is the NZDF press release of the 26th of March 2017. I'll just read from this. This is NZDF press release. "The central premise of the Nicky Hagar and John Stephenson book *Hit & Run* is incorrect says the Chief of Defence Force Lieutenant-General Tim Keating. New Zealand Defence troops never operated in the two villages identified in the book as having been the scene of combat operations and civilian casualties". Now I'll just stop there. What do you think what do you take the message to be from those two paragraphs?

A. It's saying it occurred at a different position to what was indicated in the book.

Q. It says, "New Zealand troops never operated in those two villages". It's a denial of that, isn't it? And saying that the authors have got it wrong.

A. The way they had indicated on the charts within the book, yes.

Q. Come down to a couple of paragraphs now. "The villages are named in the book as Naik and Khak Khuday Dad, but NZDF can confirm that NZDF personnel have never operated in these villages". We know that's not right because NZDF did operate in those villages, didn't they?

A. I'm only hesitating because I would need to re-look at the book and what they were calling those particular villages, that's all.

Q. All right. Well we won't take it any further in fairness to you, Mr Short. These matters have been covered with

Mr Keating in any event so I'll move on. Do you accept as CDF that the Government is entitled to full and accurate information from NZDF?

A. Yes, I do.

Q. And I take it that you would accept that the Government and New Zealand public are entitled to full and accurate information about a matter such as we're dealing with here - allegations of civilian casualties because that's an important matter?

A. Yes.

Q. Right. And that's particularly so in circumstances where the Government may be asked to account in some way internationally for issues of this type?

A. Yes.

Q. Providing accurate information to Ministers in full is something that no government agency must fail to do. It's of, I suggest to you, the most significant constitutional significance. Would you agree with that?

A. Yes.

Q. Looking back now, Mr Short, you would be aware, wouldn't you, that the NZDF had had a protracted and bitter defamation with Jon Stephenson between 2013 and 2015 which settled?

A. Yes.

Q. But we'd had the *Collateral Damage* item in 2014?

A. Yes.

Q. But Mr Hagar had released a book *Other People's Wars* on the 1st of September 2011 which related to the same operation and allegations of civilian casualties?

A. Yes.

Q. Do you think now looking back on matters that NZDF's responses over this period from 2011 to 2017 were influenced by its attitude to the authors to some extent and desire to reject whatever was being put up by Messrs Hagar and Stephenson?

- A. From my perspective no.
- Q. What about more widely?
- A. I wouldn't like to speculate about other individuals that have been witnesses, but for me it shouldn't make any difference at all. We have to do the right thing, we have to abide by rules of engagement, international law, the tasks that we're given and the circumstances around that shouldn't be influenced by individuals.
- Q. No. And I'm not - to be absolutely fair to you, I'm not criticising you personally. You're just the person in the hot seat now because you're the current CDF.
- A. Yes.
- Q. But I suggest to you that what - if we step back from this, there appears to be an almost dogged, stubborn refusal by NZDF, or at least some people within NZDF, to refuse to admit errors or mistakes about these things and I really wonder whether some of that might be because of some attitude or view about the authors. Do you think that's a fair observation?
- A. It's an observation. But I can't, I don't want to speculate on that. It's not the way I see the individuals who have served in the New Zealand Defence Force and who have held high positions. I see them as very open and honest and professional men who would do the right thing in the right circumstances.
- Q. Do you think though for some people this bitter defamation case and the authors constantly criticising NZDF has led NZDF to respond in the way that it has? Failing to and refusing and not wanting to admit mistakes where they've been obvious?
- A. No, I think it's a case of using a piece of information from theatre and hanging on to that that actually the compartmentalisation of Special Forces operations mean you haven't got the same inject of what I call the planners, the analysis, the intelligence. Those pieces that feed

into it. Because at the time it was so compartmentalised. You haven't got what I call the same oversight and injection of other views that go with it.

Q. Have you yourself at any stage during your time in the Office of the Chief of Defence - or anywhere else for that matter - ever been aware of Mr Blackwell expressing very strong animosity towards the authors?

A. Yes.

Q. And do you think that that may have influenced his reactions and attitudes to things at times?

A. Again, I don't want to speculate on how someone else was thinking at the time.

Q. You've just told me you've heard him make comments to that effect.

A. Yes.

Q. Do you think that might have influenced his responses and his reactions?

A. It could have.

Q. Thank you. I suggest to you that NZDF as an organisation, no matter how angry or unfair, angry they may feel or how unfair they may feel they're being treated and how they feel that their reputations may be being impugned by the sorts of comments that are made in publications and TV programmes, would you accept that you have a responsibility to put those sort of attitudes, those sort of personal feelings, likes and dislikes, to one side and operate in a principled way as you would expect your SAS soldiers to do?

A. I'd expect people in the NZDF to do as you say, to operate with professionalism and to put personal biases, grievances or other personal thoughts aside and provide professional advice.

Q. Because one of the very things you train, and I know you're not an SAS man, but one of the very things that the

SAS soldiers are trained to do, isn't it, is to put emotion to one side so they can operate effectively.

A. Yes.

Q. Now we're very close to finishing you'll be pleased to know. There are just a couple of more things I want to take you to. In terms of documentation, and I'm not going to trawl through a great list of documents at this time on a Friday night that we don't have, but do you accept that the Inquiry was not informed that NZDF had the IAT report in a safe since September 2011 until one week before the September public hearing.

A. I think that is correct.

Q. So that critical piece of information, which is highly relevant to the Terms of Reference, that relates to the allegations of cover-up did not come to light despite the fact that it's been around for some years and I suggest to you that that's unacceptable. Would you agree?

A. It is unacceptable. Something of that importance to not just the NZDF but to government information is critical and should have been available.

Q. Thank you. That's very fair of you. And had the Inquiry not determined to hold a public hearing which resulted in the need for that evidence, I suggest to you that it's highly likely that that piece of information may never have surfaced to this Inquiry. Because it was identified effectively by the Inquiry.

A. I believe a copy of it would have been available through the discovery back in - I'm going to say for me - 2014, so it would have been available for the Inquiry. The fact that a copy had come in in paper form and was in the safe was discovered a matter of weeks ago.

Q. And the bundle in the safe, we heard evidence from Ms Van Dam, the bundle in the safe only came to light as a result of her assiduous enquiries. Not something that was

provided to the Inquiry through the disclosure process.
Were you aware of that?

A. No.

Q. And I suggest to you that that shows even now that NZDF through this Inquiry process have not been forthcoming in the provision of material to this Inquiry. And does that concern you?

A. I think if I look at the team that was put together to provide documentation of what actually occurred, it worked incredibly hard to provide all documentation they could find. I'm only hesitating because that particular bundle that you talk about, I thought had been revealed in pieces but not as a bundle through earlier releases.

Q. We certainly didn't know about the bundle and not all aspects of it. We certainly didn't get the cut and paste of the Rian McKinstry email, we'd never seen the edited versions of the ministerial briefings, we'd never seen the marked up documents showing the analysis between the ministerial briefings and the IAT report, all of which are highly important because of course as we've talked about, Mr Short, they show that somebody had made the connection.

A. Right.

Q. Between the erroneous ministerial briefings and the IAT report. It's an important matter.

A. That's very concerning that something of - one - the classification and the importance being put in the safe and recorded in the safe is not discovered because I'm not sure of the background but I'm assuming there were the proper registers of documents coming into the safe.

Q. Well, there were registers going to the safe. One reason I was shaking my head is the Inquiry never had disclosure of the registers until just recently.

A. Okay. I'm not surprised that the registers weren't disclosed. It would be, you know, the documents themselves that should be disclosed. But if the register revealed

this then, yeah, that's still of a concern to me in the way we handle classified information and the knowledge of what is contained in our safes.

Q. Looking back now at the errors that I'm going to suggest to you have been made by NZDF, and I'd like to put some to you and ask whether you accept them, that NZDF failed to verify the accuracy of Mr Parsons' 8 September 2010 email when it had abundant information indicating what he said was wrong within the intelligence reporting on other material. Do you accept that?

A. I'm again hesitating because I don't know what was in that other bundle or the intelligence that came through, but I can say that I do accept that the portion of information he provided to us was misleading.

Q. Yes. And I'm suggesting to you that NZDF failed to verify that. All of this followed a few lines from an email.

A. Yes.

Q. So you accept that there was no verification of that?

A. Well, again, I ...

Q. If you don't know, that's fine, just say no.

A. No. But I do know there were numerous requests and follow-ups for the report itself. Each time when it wasn't appearing I was told, and it is a little bit in passing, that it hadn't been provided and wasn't being provided.

Q. Just on that, do you know who provided the IAT report to Mr Blackwell on the 1st of September 2011?

A. No I do not.

Q. Have you made enquiries about that? Since he's come out and said that he got it on the 1st of September?

A. When did that come out sorry?

Q. Well he filed a Brief of Evidence in which ...

A. I'm sorry, I have not read his Brief of Evidence so that would be something I could follow up after this.

Q. Anyway, coming back to the second of what I'm going to suggest to you are a series of errors, the second one

being that Mr Parsons' email was used erroneously for two ministerial briefings in December 2010.

A. It was used because that was the best information we had at the time.

Q. And that's a matter for the Inquiry.

A. Yes.

Q. Of whether it was the best information at the time but it was nonetheless wrong.

A. Yes.

Q. And that led to the erroneous briefings.

A. Again, it was thought to be the best information out of theatre at the time and if that was used to brief the Ministers and has subsequently proven wrong, then I do accept it was erroneous.

Q. Right. In April 2011 reliance was placed on those erroneous, misleading ministerial briefings to make public statements that the ISAF investigation had found the allegations of civilian casualties unfounded when it hadn't. That was wrong. Correct?

A. Correct.

Q. And that somehow the IAT report found its way back to New Zealand, finds its way into the DSO Jim Blackwell's system and then goes to the Office of the Chief of Defence Force in September 2011 marked up in a way that suggests that someone has engaged, as I've said before, with the IAT report and the briefings to work out the inconsistency. And then it's just forgotten about for all that time. That's another error, isn't it?

A. Yes.

Q. Doesn't come to light, doesn't inform any other decisions made by NZDF after that time?

A. That is a significant oversight.

Q. No effort to correct the record once that's discovered by NZDF and we started off the session this afternoon with that comment and I think you accepted eventually that it

would have been a reasonable thing for NZDF to do to correct the record publicly?

A. It would be reasonable to do that. I know we took the statement from Dr Coleman as correcting the record.

Q. And despite the discovery of the IAT report somehow NZDF in 2014 managed to repeat the misleading statement it made about the ISAF report from the 2011 mistake. Again never corrected the record. Then in 2017 when *Hit & Run* comes out, again, somehow no-one manages to make the connection to *Collateral Damage* and the debacle with Minister Coleman in 2014 and again NZDF managed to reiterate the misleading statements from 2011 and 2014 and no-one again 'fesses up to that mistake and makes an apology. Correct?

A. Correct.

Q. I want to finish again with what I put to Mr Keating because I suggest to you, Mr Short, it's a matter of some importance and it's worth noting. Because I think it relates to the impact of all of this on your soldiers. I suggest that NZDF's conduct about this matter from 2011 through to 2017 has done a grave disservice to the men who put their lives on the line for New Zealand because I'd ask you whether you would agree that there'll be many members of the public left with a misunderstanding about the role they may have played in the possibility of any civilian casualties. Do you accept that?

A. Yes.

Q. Thank you.

SIR TERENCE: Mr Salmon.

MR SALMON: Thank you, Sir.

CROSS-EXAMINATION BY MR SALMON

I'll need to be very brief so please bear with me while we do that. As you might have heard I have a flight to catch.

Q. You approved, I assume, the public statement made on 11 April 2018 headed up "NZDF stands by account of Operation

Burnham" in which the party line on the location point was repeated.

A. Sorry, which can you repeat the date?

Q. 11 April 2018. Were you CDF then?

A. No.

Q. Oh, you weren't? Did you - once you were CDF do anything to retract the sustained position on location that had been run as in the way my friend put to you following *Hit & Run*?

A. No because the - I guess it's the process of going through this, I didn't think there was a time or place to put out anything on that record.

Q. All right. Let's fix that now. You're aware now that most media and most people have taken the military as saying that the book was wrong in the key way that my friend's put to you and not just picking issues with the names of places. Given that that's how everyone's taken it, do you confirm that there's in fact no confusion at all and you're both talking about the same place?

A. Yes.

Q. Do you apologise for any confusion that's been caused by saying things that suggested otherwise?

A. There are - again, I'd like to say that there are a number of facts which are quite different to what we say occurred and what is said in the book.

Q. But do you apologise? Or do you not want to? It's just a simple question.

A. No, I think it is - for the same location in the same village if we both agree that's where it is ...

Q. I'm sorry to cut you off, we are short of time. Do you apologise or not?

A. I apologise if there is confusion about the location and it was used to divert or confuse the public.

Q. All right. The IAT report, as you know, was done and completed four days after the Operation Burnham raid.

- A. Yes.
- Q. And was based merely on a review of gunship video footage. Do you think it is inappropriate or falling short by NZDF not to have done more to investigate the question of, or the extent of, civilian casualties given New Zealand's international obligations and, I guess, standards of NZDF? Should more have been done?
- A. We did take the IAT report and the team that was put together for that as being - one- independent and - two - very professionally done.
- Q. But you knew they'd just looked at a video that you could look at. Do you accept now that New Zealand should have done more to independently investigate? Yes or no?
- A. No.
- Q. So is your view that the principles that govern armed conflict do not require New Zealand to investigate civilian casualties even when they know - we know - they may exist?
- A. No, I ...
- Q. Is that your position?
- A. No it isn't. My position is that the IAT and that team had been put together and had access and resources far beyond what the New Zealand Defence Force could do.
- Q. But all they had done is review a video. And you can't be suggesting that's enough for New Zealand when we know the video suggests there may be civilian casualties. I'm wanting to know in the few minutes we have whether there has been a learning on this point by NZDF? With you now as CDF, do you accept that more should be done? Or not?
- A. We did ...
- Q. In simple words, do you accept more should be done?
- A. More should be done.
- Q. All right. Why aren't you doing it?
- A. Because at the time when this operation took place, what was considered international norms and acceptance of

investigations, we believed - we the NZDF - believe that the IAT report and the investigation team would do a better job than us.

Q. Why aren't you doing it now?

A. We also - we also ...

Q. Why aren't you doing it now is my question?

A. We also asked, subsequent to that, of our organisation if anybody had an allegation that needed to be investigated from civilian deaths or misbehaviours or anything and we never got anything further. So it's not that the issue was dropped completely. We actually followed up with requests that went out to the organisation specifically through the NZ SIS to look at allegations of any misconduct through this process. The fact that civilians die in war is not necessarily a crime, a war crime. I am saying that because if you are a member of an organised armed group and you behave as such, then you actually forfeit your protections that you have as a civilian. I say that because this was an armed group. They did have a cache ...

Q. Sorry, we're quite short on time, I'm sorry to cut you off.

SIR TERENCE: I think you've got to let him answer.

SIR SALMON: Yes, if it's an answer to the question.

A. But the reason I'm saying that is there is enough information to say that they were armed, that they were organised and that we had destroyed weapons there. So when you talk about civilian casualties, we only - only - when I say killed and injured are those who were members of an organised group.

Q. All right. Let me ask you this. Do you accept, as the former Minister of Defence appeared to, that a young girl called Fatima appears to have been killed in the raid?

A. Appears to, yes.

Q. Okay. She wasn't armed and she was clearly a civilian. She's an example of one?

A. Yes.

Q. There appear to be others who were injured. Do you accept nothing has been done to go and help the injured by NZDF?

A. I accept that.

Q. Do you accept it should have been?

A. I'm hesitating because I know we held everything on the ISAF's investigation and the results of that.

Q. I'm talking about since.

A. There were many, many - sorry?

Q. I'm talking about since. Do you accept that something should have been done since then?

A. Again I'm hesitating because there has been nothing that has come through that has proven that civilians were killed and injured.

Q. And nothing will if you never look, Sir. So the problem is you think that a girl was probably killed and that probably others were injured but you're not looking, to check, and while you continue to do that you will continue to be able to take that line.

A. Yes.

Q. And that means you're not meeting New Zealand's fundamental obligations to investigate and help casualties. That must be right. You're the CDF. That must be right. Yes?

A. We - again, not that this was not investigated. It was investigated. And under an ISAF organisation that had 130,000 people, it had 50 troop contributing nations.

Q. You're aware it said there should be further investigation, that report? You are, aren't you?

A. No.

Q. Really?

A. That in fact internally we did look at the evidence, but actually getting there, we went back there to that same place a week later. So I'm trying to work out where you're going with this.

- Q. What I'm trying to find out is whether we will see a different approach if it happened again and last question ...
- A. I think the answer - when you ask that question that way, the answer is yes.
- Q. All right. Well that's reassuring. Final questions - you were Head of Intelligence in Defence HQ during Operation Burnham?
- A. Yes.
- Q. It was a very significant operation. We've heard that from the then Minister of Defence at the time.
- A. Yes.
- Q. With significant fallout and from a number of more junior officers, suggestions of Taliban intel around casualties and so on. You must have been following it and involved as Head of Intelligence at the time, correct?
- A. No.
- Q. Not at all?
- A. No. Not in that operation. And in the compartmented way that the NZDF was running that mission.
- Q. All right. And as Head of Intel you must presumably be concerned to hear that individuals can keep documents on silos on their own desktops and delete them or not without any computer footprint? It sounds as if there isn't even a print log of when Colonel Blackwell would have printed this document out, let alone an email log or any backup tapes. Is that how our Defence Force is run?
- A. No, it shouldn't be the way a Defence Force is run.
- Q. And it's not the way it's run, is it? There will be print logs and there will be email logs and there will be backup tapes showing the truth of when Colonel Blackwell received that document. We just don't have them. That's correct, isn't it?

A. No. I don't believe the systems would give you the fidelity that you are talking about, however, they are in our secret environment now.

Q. And you don't believe that but we don't know?

A. No, the reason I say that is that it was a surprise to me when our IT people can delete some of those logs based on what they said would save them storage space and cost and it was against our policies. That was a surprise to me and if you wonder why I went into that detail, because I had been told that some of our secret documents weren't available and wanted an explanation. That was the explanation if they saved it on what I call a personal drive, working drive.

Q. They won't have deleted backup tapes that are held offsite, presumably as a backup in case your computers crash. You must have those. We can't be that at risk as a country can we?

A. No, but I do know that our Inquiry office has gone out to find anywhere that there is a storage of the secret data. It has not been revealed at this stage. And you've got to think of the age of the systems that were working then in 2010 through to 2013, they were fairly basic systems.

MR SALMON: Sir Terence, Sir Geoffrey, I do need to dash if that's ...

SIR TERENCE: Thank you very much.

MR SALMON: Sorry to race [inaudible].

SIR TERENCE: No, that's fine. Thank you. Mr Radich.

MR RADICH: Thank you, Sir Terence.

RE-EXAMINATION BY MR RADICH

Q. Air Marshal Short, just one or two matters just to join a few final dots if I may. You were taken by my learned friend, Ms McDonald, to a letter - I needn't take you to it again - it was on page 53 of the supplementary brief and it was the date that the IAT report was found. You

were confirming it to be 7 September in that letter and my learned friend was asking you whether that was in fact correct. Are you aware, or perhaps you're not, that there was a follow-up letter to the Inquiry to clarify matters? Do you have any personal knowledge of that?

A. Yes.

Q. And what do you understand the follow-up letter to have done if you can recall?

A. I understood there was a second document that had a contrary date to it, but I can't remember the dates for that discovery.

Q. We can deal with it in submissions but, yes, thank you.

KRISTY McDONALD: [inaudible]

Q. Yes, it was the 4th of October. From the SIO. All right. Now you were asked some questions about the briefing of the Minister, of Minister Coleman, and there were some questions about who might have done that prepping and did you know who might have briefed him? This was before the then CDF Tim Keating went to Australia.

A. Yes.

Q. And there was some discussion about that. Can I just take you to - just to help, because I think you asked if you knew anything about that. In General Keating's evidence, in Keating's evidence - sorry, let me just find - yes, at paragraph 9. I'll just read this to you and ask for your comment. What he says is this of that briefing: "It is possible that I'd briefed him, then Minister Coleman, as I had not yet departed for Australia but I'm unsure. Sometimes I'd send a subject matter expert to undertake briefings in the first instance but I simply cannot remember if I did so on this occasion". Does that cause you to have any further information?

A. No. I'd only be speculating on who that might be.

Q. No, that's fine. Thank you very much. Now the next matter was the day that CDF came back because what you were

saying was, I think, as soon as CDF - General Keating - came back then there was an effective, immediate and complete handover. And can I ask you please what I will do because probably - you might have difficulty finding it - is to go to the Brief of Evidence of Ross Smith and it's at paragraph 34, just for the record, but I'll just read it to you, Vice Marshal. He sees this in that paragraph: "My notes indicated the CDF" - that's Tim Keating - "arrived back in New Zealand in time to attend a private briefing with Minister Coleman and the Secretary of Defence ahead of the scheduled Defence weekly meeting at 4pm on 1 July 2014" and can you confirm, please, the day on which your meeting with the Minister, when the Minister was expressing himself openly, what the date of that meeting was.

- A. It was the 1st of July, yes, at 8:30 in the morning.
- Q. Yes, and so just coming back again to Mr Smith's comment that the CDF was back at 4pm that day, does that help join any dots as to when the handover occurred effectively.
- A. What we normally do is have an actual handover as soon as we're both available.
- Q. Yes.
- A. At the earliest opportunity for what's gone on before and what issues there are. So that was normally set up - in this case because of the, I'm going to say the voracity of Minister Coleman's comments, that I made sure I passed those on at the earliest opportunity. I believe it was that day.
- Q. Yes. All right. Thank you very much. Now you in response to a question, we're talking about the locational issues, and you were asked some questions to which you responded that CDF of the time was laying out all the facts in relation to the operation. Can I ask you please to pick up the bundle to the left-hand side, the spiral bound one -

yes that's the very one - and please go to page 289, in the bottom of the pages. 289.

A. Yes. I have that open.

Q. And can you describe what you're seeing there and can you refer please to what's in it in terms of your comment about laying out the facts.

A. Sorry, I mean I remember some of the detail of this.

Q. Yes. Perhaps if I can put it this way. Can you explain please what it is that this document is doing.

A. It's laying out the operation that our NZSAS undertook in - what they undertook on that particular day. It just lays out here's where it was, here's what we did.

Q. Yes. All right. Thank you. There were some questions about the approval by you and by the CDF of the time, General Keating, of the initial 2017 press release.

A. Yes.

Q. And I'm just going to take you - again, for the record, this is General Keating's evidence at paragraph 2, and I'll just read it to you. What he said of that exchange and you probably haven't heard this before is this: "I was in Iraq with the Minister of then Minister of Defence, the Honourable Gerry Brownlee on 21 March 2017, the day of the launch of Hit & Run. That night I spoke briefly to the then VCDF, Kevin Short. I do not recall exactly what we discussed. I would imagine that he provided an overview of the allegations made against the NZDF in that he explained the proposed response". Could I ask you just to comment on that evidence?

A. Yes. I mean I can't remember all the detail of that conversation either, but I made sure that - and it didn't go to him, it went to his personal staff officer, the actual copy of the draft press release before it was released.

Q. All right. Thank you. My learned friend, Ms McDonald, put to you and you answered very fairly a range of

propositions as to possible errors. This hearing sometimes is referred to informally as the "Cover-up allegations hearing". Could I ask you to comment on those words please?

A. Um.

KRISTY McDONALD: I didn't ask the question.

MR RADICH: No.

SIR TERENCE: I want to hear the answer.

A. I just can't believe that it is thought of as a cover-up. There's two pieces that come to mind when I think of that. One is the professionalism and honesty of the cadre of very senior people in the New Zealand Defence Force and the values that we actually not just take out of a book but actually live by and have to demonstrate and - two - the fact that the effort to try and cover up this information, to me it's a mass of information, control and flow that has caused this and I think of a number of things that occur and if I put it into the sort of context when we look at health and safety issues, there's a model called REAs which is a Swiss cheese model, when a series of issues line up to cause a problem you normally have checks and balances along the way. The cheese being when all those holes line up you do get the result, I think, that we're seeing here and I put that down to just a series of wrong pieces of information, the change of staff, the time that's gone, our record keeping has ended up with us in a situation where we're at this Inquiry. And I do not see any of that as being part of a cover-up.

Q. Thank you very much. I have no further questions, Sir Terence, Sir Geoffrey, thank you.

SIR TERENCE: Well we won't ask any questions at this stage. We do have some issues that we'd like to talk to you about and they really relate to what you've just said and wherever we get to on that, one thing that we are thinking about and we do want to talk to you about is how do we

avoid anything like this in the future. And you've talked in your evidence about some of the restructuring and the things that have happened and other witnesses have raised other issues along those lines so at some point we would like to talk to you about that. But it's not - now is not the time.

So that brings our public hearing to an end. Could I thank counsel for their hard work. Could I thank also the members of the Inquiry staff who have worked very hard to get everything together and to get it to work, and could I thank also the public for your attendance. Now in terms of Minute 21, if any of the core participants wish to make submissions on what's been heard at the September hearing and this hearing, they have two weeks to do so, 5pm, Friday 1 November. Now in relation to transcripts, the core participants have the transcripts of the evidence at the September hearing. Those transcripts will be published on our website this evening and they'll be publicly available. In terms of the transcripts for this week, the transcript for Tuesday will be available on Monday and publicly available Wednesday and Friday, that is Wednesday and today, will be published by Thursday, the 24th of October. So they'll be publicly available then.

So thank you very much. We'll now adjourn.

(The hearing concludes)