

**TRANSCRIPT OF PROCEEDINGS**  
**Unclassified**

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**AUSTRALIAN DEFENCE FORCE**

**AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW**

**INQUIRY INTO THE DEATH OF  
PTE JACOB BRUCE KOVCO**

**PRESIDING:**  
**GPCAPT W COOK, President**

**COL M CHARLES, Board Member**  
**MR J O'SULLIVAN, Board Member**

**COL M GRIFFIN, Senior Counsel Assisting**  
**MAJ E JOLLY, Counsel Assisting**  
**MAJ J HYDE, Counsel Assisting**  
**MAJ A BELKIN, Counsel Assisting**

**COL C McCONAGHY, representing Affected Persons**  
**LTCOL T BERKLEY, representing Next of Kin**  
**LTCOL F HOLLES, representing PTE Kovco's Parents**  
**COL L YOUNG, representing PTE Kovco**

**1009 MONDAY 19 JUNE 2006**  
**DAY 1**

**Disclaimer**

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PRESIDENT: I'm going to open the Board. I take it, Colonel, you're ready at your end.

COL GRIFFIN: We are, sir.

5

PRESIDENT: Madam Secretary, would you please read the Terms of Appointment and the Terms of Reference, please.

SECRETARY: Yes, sir.

10

Pursuant to the instrument of appointment of 17 June 2006, the Board is appointed to inquire into and report upon the circumstances surrounding the injury to and death of 8229393 PTE Jacob Kovco ("the deceased") in Baghdad, on 21 April 2006 ("the incident") and such related matters as are specified below.

15

In conducting its inquiry, the Board is to seek evidence and report upon the following matters:

20

**General:**

1. a. When, where and in what manner the injury to and death of the member occurred.
- 25 b. A chronological account of the circumstances of the incident.
- 30 c. The identity and particulars of all persons directly or indirectly involved in the occurrence of the incident.
- d. The cause or causes of the death of the member.
- e. Whether the deceased was on duty, and if so, the specific type of duty being performed at the time of the incident.
- 35 f. Whether the deceased was, at the time of the incident, employed on continuous full-time duty as a member of the ADF and was a contributor under the Defence Force Retirement and Death Benefits Act or the Military Superannuation and Benefits Act.
- 40 g. The medical history and emotional wellbeing of the member prior to his death.
- 45

- h. Any reasons why the Board is unable to, or it is not reasonably practicable to, obtain any relevant evidence.

5                   **Pre-Incident Issues:**

- 2. a. The qualifications and experience of the deceased and of any other person directly involved in the incident, to the extent that such matters are relevant to the occurrence of the incident.  
10
- b. The adequacy of all orders, instructions, procedures, documents and manuals governing the handling of weapons to the extent that they are relevant to the circumstances of the incident.  
15
- c. The form, content and adequacy of weapons handling briefings and briefing materials relevant to weapons in accommodation areas.  
20
- d. The extent to which there was compliance with the orders, instructions, procedures, documents, manuals and briefings described in sub-paragraphs b and c.

25                   **Post Injury**

- 3. The medical treatment provided to the deceased post injury.

30                   **The Incident:**

- 4. a. The primary and contributory causal factors in the incident.  
35
- b. The likely medical cause or causes of death of the deceased, noting that the final determination for the cause of death is a matter for State Coroner.
- c. The extent to which any recommendations made in previous ADF Boards of Inquiry and investigations regarding weapon handling incidents were not implemented at the time of the incident.  
40

**Post-Incident Issues:**

- 45                   5. a. The performance of and adequacy of all post-incident

procedures, including security of the scene of the incident, casualty notification, reporting procedures, and the repatriation of the deceased.

5                   **Other Issues**

6.   Whether the death of the deceased was caused or partly caused by:
- 10                   a.   The act, omission, neglect, carelessness or misconduct of any person.
- b.   The use of drugs or alcohol.
- 15                   c.   Non-compliance with orders, instructions or safety procedures.
- d.   Any inadequacy in the individual training of an ADF member or the collective training of ADF personnel as it relates directly to this incident or its post incident actions.
- 20                   e.   Any equipment limitation, malfunction or failure.
- f.   Any weakness in relevant systems or methods of control.
- 25                   7.   a.   Whether the next of kin of the deceased have been advised of their eligibility to submit claims for compensation in accordance with current guidelines.
- 30                             b.   Whether there is any outstanding action required of members or units to enable finalisation of any compensation issue or any other issue arising out of the incident.
- 35                   8.   Any inadequacy revealed in the course of the Inquiry of any equipment, resources, training, orders, instructions, procedures, or publications which, while not a causal factor of the incident, the Board considers should be brought to the attention of the Appointing Authority.
- 40                   9.   Any relevant issues raised by the next of kin of the deceased and other relevant authorities, relating to the incident and post incident procedures and inquiries.
- 45

### **Recommendations:**

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10. The Board is to make recommendations arising from its findings, including:
    - a. Whether the conduct of any person or the occurrence of any event in relation to the incident warrants further investigation by Service or civilian police or any other authority.
    - b. Whether any immediate action is required to prevent the occurrence of a similar incident.
    - c. Actions which should be taken to prevent the occurrence of a similar incident, or to reduce to an acceptable level of risk the probability of another incident occurring from the same causal factors.
    - d. Actions which should be taken to eliminate the inadequacies of any training, orders, instructions, procedures, or publications, revealed in the course of the inquiry which are not causal factors of the incident, but which the Board considers should be subject to action by the Appointing Authority.

### **Documentation**

- 30
- 35
- 40
11. The following documents are to be attached to your report:
    - a. Your Instrument of Appointment.
    - b. These Terms of Reference.
    - c. Any written legal advice which has been obtained.
    - d. A copy of the Quick Assessment Report.
    - e. Copies of all statements taken from witnesses.
    - f. Copies of all relevant orders.
    - g. Extracts from all relevant publications.

- 5
- h. Drawings, diagrams and photographs of the scene of the incident.
  - i. Lists of persons who were directly or indirectly involved in the incident.
  - j. Copies of all investigation reports associated with this incident.

10 **No Finding of Criminal/Disciplinary Offences**

- 15
12. The Board is not to make a finding that any person has committed a criminal offence or disciplinary offence. Should you at any time come to the conclusion that a criminal or disciplinary offence may have been committed, you are to suspend the Inquiry into that aspect of the matter and report the circumstances to me. To this end, the Board should have regard to DI(G) ADMIN 45-2 *Reporting and Investigation of Alleged Offences within the Australian Defence Organisation*.
- 20

**Reports**

- 25
13. You are to complete your report by 14 August 2006 or, if completion is delayed, you are to advise me in writing seven days before that date, at which time you are to submit to me a progress report on that date and be in a position to justify any request for an extension of time. If completion is further delayed you are to submit weekly reports until the report is completed.
- 30

35

A.G. HOUSTON, AO, AFC  
Air Chief Marshal  
Chief of the Defence Force  
APPOINTING AUTHORITY

17 June 2006

40 The Instrument of Appointment:

Pursuant to Regulation 23 of the Defence (Inquiry) Regulations, I, Air Chief Marshall Allan Grant Houston, AO, AFC Chief of the Defence Force hereby appoint a Board of Inquiry constituted by:

- a. GPCAPT Warren Cook,
- b. COL Michael Charles, and
- c. Mr James O’Sullivan

5 for the purpose of inquiring into the circumstances surrounding the death of PTE Jacob Kovco 8229393 at the Security Detachment accommodation in Baghdad on 21 April 2006.

10 And pursuant to Regulation 25 of those Regulations, I empower the Board of Inquiry to make recommendations arising out of its findings;

15 And pursuant to Regulation 27 of those Regulations, I appoint GPCAPT Warren Cook to be the President of the Board of Inquiry which will convene at Victoria Barracks, Sydney on Monday 19 June 2006;

20 And pursuant to Regulation 28 of those Regulations, I direct the Board of Inquiry to follow as closely as practicable the procedure set out in Annex B to Chapter 7 of Australian Defence Force Publication 06.1.4 – *Administrative Inquiries Manual*;

25 And pursuant to Regulation 31 of those Regulations, I direct that all evidence to be given before the Board of Inquiry shall be on oath or affirmation;

30 And pursuant to Regulation 29 of those Regulations I direct that the Board conduct its inquiry in respect of the taking of oral evidence and the making of oral submissions in public, subject to the direction below;

35 And pursuant to Regulation 29 of those regulations I direct that the Board conduct in private that part of its Inquiry that involves classified material. Only persons with a need to know and holding the appropriate security clearance are to be permitted to attend that part of its inquiry. The President may, at his discretion, direct that the Board conduct its Inquiry in closed session with respect to the medical history and emotional wellbeing of PTE Kovco prior to his death;

40 And pursuant to Regulation 29 of the Regulations I direct that the following persons may be present during the open and closed sessions of the Inquiry by the Board of Inquiry, namely:

- 5
- a. the next-of-kin, Mrs Michelle Kovco, her children Tyrie and Alana and her parents, Mr and Mrs Small;
  - b. the parents of the deceased, Mr and Mrs Kovco;
  - c. staff from Headquarters Joint Operations Command, Army Headquarters and Land Component Command as required; and
  - 10 d. Defence Community Organisation representative.

15 And pursuant to Regulation 51 of those Regulations, I appoint the legal practitioners, COL Michael Griffin, MAJ Edward Jolly, MAJ Jonathon Hyde and MAJ Asha Belkin to assist the Board of Inquiry.

20 And pursuant to Paragraph 7.9 of the Administrative Inquiries Manual, I appoint Mrs Kim Harrison as Secretary to the Board of Inquiry.

A.G. HOUSTON, AO, AFC  
Air Chief Marshal  
Chief of the Defence Force  
APPOINTING AUTHORITY

25  
17 June 2006

PRESIDENT: Thank you, Mrs Harrison. Thank you, COL Griffin.

30 COL GRIFFIN: Mr President, we had some difficulty following that audio, it was very faint. I monitored the reading and have those documents and I'll provide them to the affected persons present here and their counsel who is present here so that they can be satisfied of the content of the document. I propose now to tender, firstly, the Instrument  
35 of Appointment.

PRESIDENT: Yes, that will be marked as Exhibit 1.

40 **#EXHIBIT 1 - INSTRUMENT OF APPOINTMENT**

COL GRIFFIN: Secondly, the Terms of Reference, sir.

45 PRESIDENT: Marked as Exhibit 2.

**#EXHIBIT 2 - TERMS OF REFERENCE**

5

COL GRIFFIN: Thank you. Mr President, do you propose to outline the procedure for the Inquiry at this stage?

10

PRESIDENT: Not in any great depth, Colonel, except to say to the people sitting at the Bar table that we will follow the Purple Book, so to speak, and that I remind them of the rule in *Browne v Dunn* asking that they observe that. I would hope at a time not too distant we will be asking for leave to appear for leave from various people. Beyond that I don't propose to go.

15

COL GRIFFIN: Very well, sir. There are present in the room with me two persons who may be affected by the Inquiry. I understand they have counsel present with you in the hearing room and they also have a second counsel present with them in this hearing room. I understand that you have affected parties who are present in the hearing room with you and that they have counsel representing them.

20

PRESIDENT: Indeed, and perhaps I might invite those persons to apply for leave to appear at this point of time.

25

COL YOUNG: Mr President, my name COL Young. I seek leave to represent the interests of PTE Kovco .

PRESIDENT: Yes, thank you, Colonel.

30

LTCOL BERKLEY: Mr President, I am LTCOL Berkley and I seek leave to appear for Shelley Kovco, the widow of the deceased.

PRESIDENT: Yes, thank you.

35

COL HOLLES: Mr President, I am COL Holles. I seek leave to appear for the parents of the deceased, Mrs Judy Kovco and Mr Martin Kovco.

PRESIDENT: Yes, thank you.

40

LTCOL McCONAGHY: Mr President, my name is LTCOL McConaghy. I seek leave to appear on behalf of Soldiers 2 and 14. With me is FLTLT Michael Lowe. He is actually present with Counsel Assisting in Baghdad. FLTLT Lowe is to the extent of being my eyes and ears on the ground in Baghdad.

45

PRESIDENT: Yes, very well. Leave is granted to both of you to appear, Colonel.

5 LTCOL McCONAGHY: Thank you, sir.

PRESIDENT: Please, Colonels, I am grateful for the courtesy of you standing, but please remain seated in future. It's just not appropriate in this room. Yes, thank you, COL Griffin.

10 COL GRIFFIN: Thank you, sir. I propose now to address you in full by way of opening address. I will do so from the seated position, thank you, sir, as you have just indicated the appropriateness of remaining seated.

15 PRESIDENT: I am very comfortable with that.

COL GRIFFIN: Mr President, for the record, I am 8217084 COL Michael Griffin, Counsel Assisting the Board of Inquiry. With me is Counsel Assisting MAJ Jonathan Hyde and MAJ Asha Belkin. The fourth Counsel Assisting, MAJ Edward Jolly, is present with you in Victoria Barracks.

20 Mr President and Members of the Board, I speak to you from the briefing room of the Commander, Joint Task Force 633, BRIG Michael Moon, DSC, situated within Camp Victory at Baghdad International Airport, Iraq. It is a little after 0400 hours local time. To my knowledge, sir, this is the first that a Board of Inquiry has been conducted in an operational theatre of conflict since the Vietnam War.

25 The Commander, Joint Task Force 633 and his staff have made extraordinary efforts to facilitate the conduct of these hearings from this location. Nevertheless, we are, to a large degree, constrained by the operational imperatives that impact on a very busy headquarters such as this in a war-like environment. There are very heavy demands on the assets and resources upon which we must rely to conduct the hearings, and of course the personnel involved have equally, if not more, important duties to attend to.

30 Also, Mr President, this video conference satellite link is subject to the vagaries of weather and may drop out from time to time. We have put in place a parallel voice connection so that communications can continue if we lose the video link. However, the telephone lines too have been known to fail on occasion. We will do our best in the circumstances to place the relevant evidence before the Board but we ask for your indulgence in the event of periodic disruption.

45

I do not propose to go into technical evidence in this phase of the hearings, such as the post mortem, medical, ballistics and other reports. Those technical reports and other matters, including the repatriation of PTE Kovco's body, will be canvassed in detail during the second phase of hearings upon return to Australia. In the meantime, we will assemble the totality of relevant material, some of which is yet to be provided to us, including the evidence obtained by the BRIG Cosson investigation. We will also distribute relevant evidence to potentially affected persons so that they are accorded procedural fairness and have a reasonable amount of time and the opportunity to respond and be heard on matters contained in that evidence that may affect them.

What is important about this first phase of hearings from Baghdad is that Mrs Shelley Kovco, Mrs Judy Kovco and other family members, as well as you and the Board and, for that matter, the public in general, have the opportunity to hear and consider the evidence of those soldiers who were present with PTE Jacob Kovco when he sustained the gunshot injury that resulted in his death. Those soldiers are on operational deployment in Iraq and will be hear for several months. This video hearing will hopefully provide a suitable medium for them to tell you what happened and for any questions to be put to them so that their evidence can be heard without having to delay the Board until their return to Australia or without having to withdraw them to Australia, thereby causing major disruption to their unit's critical mission.

Mr President, Members, PTE Jacob Kovco was killed whilst serving his country on operational duty in Baghdad. It is important for me to emphasise that these proceedings are being conducted in a war-like environment and that not very far from here there are Australian servicemen and women doing a tough job in harm's way. However, the Chief of the Defence Force and the Commander, Joint Task Force 633, have gone to considerable lengths to allow these hearings to proceed and for the soldiers to give their evidence to you about what happened to PTE Jacob Kovco.

Mr President and Members, the Instrument of Appointment for the Board of Inquiry contains, among other things, an important stipulation about how this Inquiry is to be conducted. The Board is directed to:

*Conduct in private that part of its Inquiry that involves classified material. Only persons with a need to know and holding the appropriate security clearance are to be permitted to attend that part of its Inquiry.*

That direction necessarily constrains the extent of the relevant facts that I

can address in this open forum. As a consequence, I intend to make a relatively brief opening address in general terms only. There have already been two military investigations into the death of PTE Jacob Kovco and a third military investigation into the loss of his body. The two  
5 investigations into his death were done respectively by a staff officer from the headquarters of the Joint Task Force 633 and by the Military Police.

The New South Wales Police have also investigated the death and the New South Wales State Coroner, Mr John Abernethy, has caused a  
10 post-mortem and other inquiries to be made into the death. Mr Abernethy has been most helpful in making the results of those inquiries and investigations by his office and by the New South Wales Police available to the Board. The evidence and reports of those investigations, and also the evidence obtained in the military investigations, will be put into  
15 evidence before you in due course. They are extensive reports insofar as they relate to when and where PTE Jacob Kovco was killed and what was the medical cause of his death. However, they do not tell us how or why PTE Jacob Kovco, an experienced soldier, sustained a gunshot injury to the head.

20 Each of the military and police investigators spoke with relevant witnesses and reported the evidence of those persons. None of that evidence was given under oath or affirmation. Some of it is hearsay and none of it has been tested by cross-examination. In due course, the relevant witnesses  
25 named in those reports will give sworn evidence to this Board of Inquiry and, subject to operational availability, will be made available for examination by the Board and by Counsel Representing affected persons.

Mr President, I am required by the Instrument of Appointment, pursuant  
30 to paragraph 7.36 of Chapter 7 of the Australian Defence Force Publication 06.1.4, the Administrative Inquiries Manual, to make an opening statement comprising a concise, accurate and impartial outline of the known actual material.

35 From the various accounts given in the investigations, it seems probable, in broad compass, that the following outline of events will be the subject of agreement between the various witnesses.

PTE Jacob Bruce Kovco was 26 years of age. He was married to  
40 Mrs Shelley Kovco and they have two young children, Alana and Tyrie. PTE Kovco was a member of the 3rd Battalion of the Royal Australian Regiment, the Parachute Battalion, an elite formation of soldiers. PTE Kovco was a highly trained and experienced infantry soldier. He had been trained as a sniper, which is a highly specialised skill involving an acute  
45 appreciation of weapon handling techniques.

At the time of his death on 21 April 2006, PTE Kovco was serving as a member of the Security Detachment, known as SECDET, which provides protection for the Australian Embassy and its staff in Baghdad. During the afternoon of that day, PTE Kovco completed a particular duty in the company of another soldier. When relieved by two oncoming soldiers, he and his companion moved to another place within the grounds of the Australian Embassy.

You will hear evidence that during this changeover of duties, PTE Kovco did not participate in a buddy system clearance of his weapons with his companion. PTE Kovco made his way to his accommodation; a small room that he shared with two other soldiers. The room contained a double bunk, another single bed, some lockers and a small bar fridge. All three soldiers were in the room in various modes of dress and PTE Kovco's 9 mm pistol was hanging in its holster on the bedpost at the foot of the top bunk where he slept.

One of the roommates was playing loud music through his ipod and speakers and all three of them were singing along in high spirits. PTE Kovco performed some antics which made the others laugh. They were all intermittently talking, singing and reminiscing about past shared experiences. PTE Kovco and one of the others were using their laptop computers; the other soldier doing so from a seated position on his single bed and PTE Kovco from a standing position opposite him with his computer positioned centrally on the top bunk.

PTE Kovco was accessing email communications with his wife Mrs Shelley Kovco about a camera that he had sent to her. You will hear evidence that he was his usual happy self.

PTE Kovco's two roommates had agreed to go to the gym together shortly and the one who was not using a computer turned from his locker and moved around PTE Kovco to get a drink from the fridge. As he bent over and opened the fridge door, he heard PTE Kovco say something. He cannot recall what was said by PTE Kovco. Suddenly, a shot rang out. The soldier sitting opposite with the computer on his lap saw PTE Kovco fall straight down to the ground.

The soldier bending at the refrigerator turned and saw PTE Kovco fall. Neither of them at that point observed the weapon that fired the shot. Both of them realised immediately the extreme seriousness of the injury to his head and set about raising the alarm and trying to stem the blood flow.

You will receive evidence that the shot was fired from a point no more

than five centimetres away from the side of the head. The injury wound was slightly forward of the right ear. The exit wound was in the top of the head. PTE Kovco was taken almost immediately to the US military hospital located close by where valiant attempts were made to save his life. However, the injury was so severe that nothing could be done to save him and PTE Kovco passed away that evening in the presence of his mates.

You will receive medical evidence that the injury rendered him unconscious immediately and that he would have felt no pain.

Mr President and Members, you will receive evidence that exactly one calendar month before he died, PTE Jacob Kovco had a dream about his own death in almost precisely the same circumstances that I have just described to you.

PTE Kovco maintained a written journal during his deployment in Baghdad in which he recorded his love for his wife, for his children, for his mother and his pride in his job. He also recorded his experiences and his thoughts and, on 21 March 2006, he recorded in some detail the dream concerning his own death by his own hand using his issued 9 mm pistol. You will receive evidence that it was in fact his issued pistol that fired the shot that killed him. The safety mechanism on the weapon has been tested and found to be efficient.

Mr President, I do not propose to outline the facts relating to your other Terms of Reference, such as the repatriation of PTE Kovco's body, in this phase due to the operational constraints that we face, and we will canvass those matters when we open the next phase of hearings in Sydney.

Mr President and Members, much of the evidence that we will put before you about the activities, locations and procedures of the security detachment in Baghdad carries a national security classification. Your Instrument of Appointment expressly directs the Board to conduct in private that part of its Inquiry that involves classified material. The Instrument further directs the Board that only persons with a need to know and holding the appropriate security clearance and to be permitted to attend that part of its Inquiry.

The appointment authority, ACM Houston, the Chief of the Defence Force, has expressly authorised PTE Kovco's wife, Mrs Shelley Kovco and her parents, to be present during any closed sessions of the Inquiry. The same authorisation has been given for PTE Kovco's mother, Mrs Judy Kovco and her husband, Mr Martin Kovco, to be present during any closed sessions of the Inquiry.

Mr President, I propose to lead oral evidence from several witnesses over the next four scheduled hearing days. They include the Officer Commanding Security Detachment and the two soldiers who were in the room with PTE Kovco at the time of the incident. I do not anticipate you having to close any of the sessions in the first two days from the examinations of Counsel Assisting. However, the need may arise, depending upon the line of questioning taken by Counsel Representing affected persons.

I have asked that Counsel Representing, appreciating the operational constraints in which we must work, agree among themselves to one of them asking questions on topics of common interest where this is possible. I thank counsel for that accommodation if they are able to do so on certain matters.

I anticipate a need to close the Inquiry sessions on the Thursday for at least part of the proceedings and I will invite you to make an appropriate direction at that time pursuant to Defence Inquiry Regulation 29(3). However, Mr President, from the outset, I propose to refer to all Security Detachment members by a randomly chosen number in order to protect their identity.

This is a public Inquiry and, in the light of the unfortunate history of events following this tragic death, there is a substantial public interest in having a transparent hearing process. Nevertheless, there is an equal, indeed in my submission a greater public interest in protecting the security of the Joint Task Force mission and its personnel. To this end, I have arranged for the relevant security authorities at Headquarters Joint Task Force 633 to redact the statements of witnesses and various other documents to protect the security of their content. They can therefore be read on to the record in open session but will have certain material blacked. That material is quite substantial in volume and this will become obvious in the reading aloud by Counsel Assisting. Nevertheless, it was necessary for the security of the personnel.

Mr President, I propose that you give an alpha-numeric reference number to each exhibit with the classified material commencing with the letter C and the redacted material with the letter R. Other exhibits, such as the Instrument of Appointment which you have already received into evidence, will simply have the number that you have given to them where they are a neutral document.

Mr President, to assist you in your consideration of the security issues, I tender two documents of particular relevance. The first of these is Chief

of Army Directive 06/02 dated May 2002. It is entitled “Public Release of Information Relating to Personnel Associated with Sensitive Capabilities”. It was issued by the then Chief of Army LTGEN Cosgrove, as he then was. I read, Mr President, the relevant sections. In the introduction it states:

*Maintaining the confidentiality of sensitive capabilities within the Army and protecting the personnel associated with those capabilities is key to maintaining security and preserving combat power.*

The Chief goes on to say:

*In the current threat environment it is imperative that personnel who are associated with sensitive capabilities remain assured that they and their families are protected from possible threats due to public exposure.*

The Chief goes on to set out the unacceptable risk from foreign services and terrorist groups. At paragraph 5 under the heading, “Threat”, he states:

*The acts committed on 11 September 2001 have highlighted the asymmetric nature of the threat that exists. Importantly, it has demonstrated a willingness of terrorists and issue motivated groups to target anyone and anything in pursuit of their aims.*

As a consequence, there is a requirement for Army to respond by taking measures to counter the threat and protecting sensitive capabilities, the personnel associated with those capabilities and, for present purposes, Mr President, most importantly, their families.

The second document that I propose to tender in this particular sequence relating to security is an affidavit which reads as follows:

*Statement of Commander Joint Task Force 633.*

*I, Michael John Moon, make oath and say as follows.*

*I have read Annex F to Chapter 7 of ADFP 06.1.4, Administrative Inquiries Manual. I understand my rights and obligations as a witness before a Board of Inquiry.*

*I, 8272484, Michael John Moon, DSC, and appointed as Commander, Joint Task Force 633, and have national and*

*operational command of all soldiers of the Security Detachment designated as Task Unit 633.0.2 and commonly known as SECDET.*

5                    *PTE Jake Kovco was a member of the ninth rotation of SECDET soldiers or SECDET IX. The mission of these soldiers is to protect the lives of Australian Embassy officials and their visitors at the Australian Embassy compound in Baghdad. This is a high threat environment. The success of this rotation and of the eight*  
10                    *rotations before them -*

PRESIDENT: We need to attempt to establish communications.

**(Video link dropout)**

15                    PRESIDENT: While we're waiting for communications to be re-established, gentlemen, the tender of the document, "Public Release of Information Relating to Personnel Associated with Sensitive Capabilities", is there any objection to the tender of that document or any  
20                    discussion of it?

COUNSEL REPRESENTING: No, sir.

25                    PRESIDENT: Yes. Does that need to be marked C?

MAJ JOLLY: That's right, C, sir.

30                    PRESIDENT: That will be marked as C3.

**#EXHIBIT C3 - DOCUMENT ENTITLED "PUBLIC RELEASE OF INFORMATION RELATING TO PERSONNEL ASSOCIATED WITH SENSITIVE CAPABILITIES"**

35                    PRESIDENT: The statement which the Colonel is currently engaged in reading, the statement of Michael Moon, is there any objection to the tender of that document?

40                    COUNSEL REPRESENTING: No, sir.

PRESIDENT: Again, that will be marked as C4.

45                    **#EXHIBIT C4 - STATEMENT OF COMMANDER JOINT TASK**

**FORCE 633, BRIG MICHAEL MOON**

**(Telephone link only established)**

5 PRESIDENT: Colonel, in your absence we've marked those two exhibits as Exhibits C3 and 4. You might continue then.

COL GRIFFIN: Mr President, I'm having difficulty hearing you; could you repeat that, please?

10 PRESIDENT: Yes. Would you continue your opening address, please. I have marked the Exhibits C3 and C4.

**(Discussion re established comms)**

15 COL GRIFFIN: I can hear you now, I've had to pick the handset up so that unfortunately the other persons present can't hear. I was reading to you the statement of the Brigadier. For the sake of completeness, I will continue to read the document to the end of it, and I believe that I lost you  
20 at around about - I think the last words I said that you may have heard were:

*I am firmly of the view that the interests of the Australian public.*

25 PRESIDENT: Indeed, that's right.

COL GRIFFIN: I will complete the document from there, sir.

PRESIDENT: Thank you.

30 COL GRIFFIN:

*I am firmly of the view that the interests of the Australian public, the many people saddened by the death of PTE Kovco and the  
35 members of SECDDET IX are best served by these precautions.*

PRESIDENT: We may have lost you again, Colonel.

40 COL GRIFFIN: Hello.

PRESIDENT: Are you there?

**(Telephone link dropout)**

45 LTCOL BERKLEY: Mr President, I thought we only got down to which

is, "This is a high threat environment" in the third paragraph.

PRESIDENT: I must confess I was reading rather than listening.

5 LTCOL BERKLEY: I think the first (indistinct- establishing comms).

**(Telephone link established)**

10 COL GRIFFIN: Mr President, I'll just take the opportunity to complete this document and it would be an appropriate time then for an adjournment while the video link is established and before I call the first witness. Is that acceptable to you?

15 PRESIDENT: That's acceptable, although some mutterings from the Bar table, in particular LTCOL Berkley as you might expect, his memory of it is that the reading, you were on the third paragraph, "This is a high threat environment." Perhaps you can continue your reading from there.

20 COL GRIFFIN: Thank you, sir. I'm indebted to LTCOL Berkley, as always.

25 *This is a high threat environment. The success of this rotation and in the eight rotations before them is in no small part due to the rigorous force protection measures in place and the stringent operational security restrictions which apply. We continue to make every effort to exploit information we gain about the abundant threats which exist, while denying information to those who seek to harm our soldiers and Embassy officials.*

30 *As their Commander, I am ultimately responsible for their safety and aim to provide them with all of the required assistance for them to do their job. The command team of SECDET has sought to have the names of individual soldiers, the Detachment strength, disposition and its posture, including the degrees of weapon readiness it maintains in various locations protected. I support them strongly in this regard.*

40 *These protections would not diminish the ability of the Board of Inquiry or persons potentially affected by the Board's findings to comprehend the evidence given but are necessary to guard the operational security so vital to the successful completion of the SECDET IX mission.*

45 *I have agreed also for SECDET's clearly stated preference to have their soldiers referred to by reference to a randomly chosen*



PRESIDENT: Thank you, Colonel, we're back again.

5 COL GRIFFIN: Thank you, sir. I understand that we've been disrupted by two separate events: one of those that is a particular procedure that has to be done here was done at the appointed time - that will be shifted to another time so it doesn't have the affect it had on us - and, secondly, I'm told that there is some weather disturbance to the satellite link.

10 We've also made arrangements for the BLIS(?) communications should we lose the satellite link; there will be a 20-second delay while we establish the telephone link.

15 Sir, I'm advised - and I thank counsel - that it's likely that there will be the need for a closed session at a particular point in today's proceedings. We will advise you at the appropriate (dropout).

In the meantime, I now propose to call the first witness, the officer commanding the Security Detachment.

20 PRESIDENT: Before you do that, Colonel, I would like to make a few remarks, if you would bear with me.

COL GRIFFIN: Thank you, sir.

25 PRESIDENT: Ladies and gentlemen, this Board has been established by the Chief of the Defence Force to inquire into the circumstances surrounding the death of PTE Jacob Kovco in Baghdad on 21 April this year, the failure to properly repatriate his body and, most importantly, to recommend actions which will hopefully prevent that sort of thing  
30 happening again.

The Australian Defence Force values its people and the death of a member of the ADF whilst on war-like service is obviously a major concern for the ADF. Likewise, the failure to properly repatriate his body to his family  
35 following that death is a matter of deep concern.

This Inquiry will be thorough, complete and will seek out all relevant evidence. A through, complete Inquiry takes time. The hard questions will be asked and will be answered. Already as we have seen, COL  
40 Griffin will assist the Inquiry and his team have spent considerable time in the Middle East area of operations collecting evidence for the and hopefully will be returning shortly. Their presence in the MEAO today is of course the reason for the use of the video facility rather than the more traditional face-to-face format.

45

As the Colonel foreshadowed, for the most part this Inquiry will be open to the public and to the media. It is the wish of both the Chief of the Defence Force and the Board itself that this Inquiry be open and subject to public scrutiny. However, if evidence to be given will compromise the security or safety of our servicemen and servicewomen serving in the MEAO or anywhere else, their safety, their security must come first and parts of this Inquiry will be closed. Likewise, individual's privacy will be protected and parts of the Inquiry may be closed for that purpose.

5  
10 Hopefully the hearing phase of the Board of Inquiry can be completed by mid to the end of August.

Thank you, Colonel, you might call your first witness.

15 COL GRIFFIN: Sir, I call the officer commanding SECDDET IX. Sir, I will now vacate the position in which I'm seated so that you are able to observe the witness. He will come in and salute, the oath will be administered and then he will sit in this position and be at your disposal.

20 <SOLDIER 30, sworn [1116]

25 <EXAMINATION BY COL GRIFFIN

COL GRIFFIN: Mr President, I'm off camera, I will now take the witness through his evidence.

30 PRESIDENT: Yes, thank you, Colonel.

COL GRIFFIN: Are you the officer commanding SECDDET IX?---Yes, sir.

35 I'll show you a document; would you look at it. Does your name appear on that document?---Yes, it does, sir.

What number appears next to the entry for your name?---Soldier 30, sir.

40 Soldier 30, contained on that list is a series of names. Are you able to identify those names?---Yes, sir.

Are all of them but one members of your unit?---Yes, sir.

45 Is Soldier 34 identified on that list not a member of your unit?---That's

correct, sir, she is not a member of my unit.

But you know that person?---Yes, I do, sir.

5 Do you confirm that all of those persons other than that Soldier 34 are members of your unit?---Yes, sir, I do.

Sir, I tender that document as the callsign matrix to identify the various members of the detachment who will come before you.

10 PRESIDENT: Any opposition to that, gentlemen?

COUNSEL REPRESENTING: No, sir.

15 PRESIDENT: Yes, that will be marked as Exhibit C5.

### **#EXHIBIT C5 - CALLSIGN MATRIX**

20 COL GRIFFIN: Soldier 30, I show you a document, it's to your right in the plastic folder. Would you remove it, please, from the folder. You will see that there are two documents there - one is your statement to the service police and the other is a redacted copy of that. Would you identify those to us?---Yes, sir.

25 Have you had the opportunity to read through your service police statement?---Yes, sir.

30 Is there anything in it that you wish to amend or correct?---Sir, there is one thing that I would like to clarify.

Would you refer to the paragraph number of the item that you wish to clarify or amend?---Yes, sir.

35 Would you do so from the redacted statement, please?---Yes, sir.

Has the matter you wish to deal with been redacted?---Yes, I think it has, sir.

40 We'll take the opportunity to cover that issue perhaps in closed session then and, if I forget, you may remind me to do so?---Yes, sir.

45 Would you tell the Board your service history, please?---Yes, sir. In 1987 I attended, by way of scholarship, the Australian Defence Force Academy.

I spent 12 months at the Australian Defence Force Academy and then was transferred to the Royal Military College, Duntroon, where I graduated in June 1989 from the Royal Australian Infantry Corps. Upon graduation, I was posted to the 6th Battalion, the Royal Australian Regiment where I performed the duties of Rifle Platoon Commander, followed by Assault Pioneer Platoon Commander, and then Assistant Adjutant. I was then promoted at the end of 1992, posted to an Army Reserve battalion in Victoria as the Adjutant and then the Operations Officer. At the end of that posting, I was then posted to the first battalion, the Royal Australian Regiment; that was in 1995, as the Mortar Platoon Commander. At the end of 1995 I was then posted to the 2nd Battalion of the Royal Australian Regiment, once again as the Mortar Platoon Officer. About halfway through 1996 I left the Australian Regular Army and took up civilian occupation, but I maintained service with the -

15

**(Video link dropout)**

PRESIDENT: "Redacted," ladies and gentlemen, is a new word to myself and to COL Charles. COL Charles has had a mere 40 years in the security industry and it means, effectively, "censored." So if you've got a document that's got a number of pages on it and there are security considerations in it, they are removed from the document, I presume by the traditional black texta pen, and the document is then clarified, sterilised, whatever the word be. This particular witness, for instance, we've got two versions of his statement: the statement which is the complete document with the security implications; and the redacted, or censored, document which is going to be the one we'll talk about first.

The redacting, I'm reminded, has actually been done in Baghdad before the document arrives here.

Any other questions along those lines, gentlemen? There have been a couple of acronyms I've had to ask about. It's probably the colour of the uniform.

35

COL GRIFFIN: Mr President, we have re-established the link. Mr President, are you ready for the witness to proceed?

PRESIDENT: Yes, thank you, Colonel.

40

COL GRIFFIN: Thank you, Soldier 30, please continue?---Sir, I'm not too sure where I was up to when I saw the screen disappear. I was at 2003.

45 MAJ HYDE: You'd just left the Regular Army.

PRESIDENT: You had gone into the Reserve.

5 WITNESS: Okay, sir. When I transferred to the Reserve I served with a  
number of units between 1996 and 2002. Those units were 2 Commando  
Company as a Captain Platoon Commander of a special platoon and then I  
served as a Company Commander in the 8/7th Battalion and the 5th/6th  
10 Battalion. I then transferred back to the Regular Army in 2002 and was  
posted to the Combat Training Centre in Townsville where I served as an  
Observer Trainer and then as the Officer Commanding Exercise Control.  
In 2004 I was posted as a Company Commander to the 3rd Battalion,  
Royal Australian Regiment, and that's where I serve currently today. For  
the two and a half years that I have been in 3RAR I've served as a  
Company Commander.

15 COL GRIFFIN: Thank you. Mr President, I will now read on to the  
record the redacted statement.

20 PRESIDENT: Yes, thank you, Colonel.

COL GRIFFIN: I will leave out the initial paragraph which is the  
standard preamble attached to all documents and go straight to the  
relevant material.

25 PRESIDENT: Thank you.

COL GRIFFIN:

30 *My full name is (blank). I am 37 years of age. I am a Major in  
the Royal Infantry Corps. I am posted to C Company, 3  
Battalion, Royal Australian Regiment, Holsworthy Barracks,  
Holsworthy in New South Wales where I hold the appointment of  
Officer Commanding. I have held this appointment since October  
'05. I graduated from Royal Military College, Duntroon in June  
35 '89. I successfully completed Regimental Officers Basic Course  
during '89 and on completion I was posted to 6RAR, Gallipoli  
Barracks, Enoggera, Queensland. Whilst there I successfully  
completed an Assault Pioneer Course. In 2004 I was posted to  
3RAR where I did my basic parachute -*

40 **(Video link dropout)**

**(Video link established)**

45 COL GRIFFIN: Mr President, I ask for your indulgence to persist in the

attempts with the bridge link. I'm informed that it's not normally disrupted as much as this and I propose to continue - I will now read the remainder of the redacted statement.

5 PRESIDENT: Yes, thank you.

COL GRIFFIN:

10 *On deploying on Operation Catalyst all members deployed with their personal issued weapons. On arrival at SECDET, 9 mm Browning pistols were issued from a pool of pistols (blank). The advance party under my command arrived en route to Iraq (blank). On 6 March 2006 the advance party deployed to Iraq. On 7 March the main body of the combat team deployed to*  
15 *complete preparation training and arrived in Baghdad on 13 March 2006. My command post is located at Anzac Cove, Baghdad and I am also accommodated there. Part of my combat team is deployed at the Australian Embassy.*

20 *Whilst on deployment, depending on specific tasks, members are required to attend TOETs and a live fire range practice which includes firing 9 mm pistol if issued to the member. The Australian Embassy Baghdad has a security (blank). The security protects the Embassy and this is achieved by maintaining a*  
25 *(blank). Within the Embassy grounds there (blank) located (blank).*

30 *I know PTE Jacob Bruce Kovco. He was under my command and I have known him since November 2004 when he was posted to 3RAR, at which time I was the OC. Since that time I have come to know him well and would describe his disposition as being happy go lucky, robust sort of a fellow, easy to talk to and not put off by rank. His soldier skills were very good. His physical fitness was high as he had been selected to do a Sniper Course which is*  
35 *physically very demanding and whilst he failed the course, he was selected to continue with snipers on on-the-job training with the view to doing the course again at the end of this year. I know that he is married to Shelley and has two children, Tyrie and Alana. However, I have not personally met his family. He was a social*  
40 *drinker and whilst under my command at no time did he come to my attention for any alcohol abuse, illegal drug taking or administrative issues.*

45 *He was a well-disciplined soldier who had a clean conduct record and was one of the more mature members. He was well*

*respected by others in the Company, not just because of his technical skills but as a bloke in general. He had no medical and psych issues and he appeared to me to be a fit and well-balanced soldier.*

5

*When the deployment was first announced, PTE Kovco was nominated as a reserve due to him being on a course. One of the members had to drop out due to medical reasons and PTE Kovco replaced him. I recall that on knowing he was replacing another member he couldn't have been happier.*

10

*Prior to leaving Australia I conducted with my senior staff a personnel review board of all members deploying to ensure that each member had no outstanding medical, psych, admin or welfare issues. PTE Kovco had none. PTE Kovco was very proficient with his personal weapon, including weapon handling.*

15

*About a month ago, (blank), with PTE Kovco, (blank), on top and we spoke about our wives and kids. He indicated to me that his wife was very supportive of him being here, which was a relief to him. He couldn't stop telling me all about his family, about hanging around with his son, Tyrie, and he gave me the impression he was a very happy family man.*

20

*On 21 April 2006 at about 1620 hours I was having a briefing with some of my junior officers in the briefing room at Anzac Cove. The briefing was interrupted by my (blank), who informed me that notification had just come through of a "no duff", that a member at the Embassy had sustained a gunshot wound to the head whilst in his accommodation room. He also informed me that the member was PTE Kovco.*

25

30

*(blank) departed the briefing to return to the Embassy. In informed my (blank) to have a vehicle and driver tasked to convey us to the Embassy. I obtained my combat body armour and weapon and in the company of (blank) we departed for the Embassy. About 1640 hours we arrived and turned in the Embassy compound and parked the vehicle at which time I was informed that PTE Kovco had been transported to the US Hospital which is about (blank) from the Embassy. I recall that whilst moving to the hospital I came across (blank) and told him to ensure that PTE Kovco's accommodation room had been secured.*

35

40

*The Company Sergeant Major and myself then attended the US*

45

5 *Hospital and on arrival I saw (blank) in the waiting area with (blank) informed me that it appeared that they might be flying PTE Kovco to Al-Ad which has neurosurgery capability. At the same time a US nurse approached us and informed us to prepare for the worst as PTE Kovco was severely ill and shortly after the US Medical Officer spoke with me and said it was very grim.*

10 *The (blank) and I were taken into theatre to see him at which time there was a US padre present. I put my hand on PTE Kovco's chest and spoke to him and with the padre said The Lord's Prayer and the padre administered last rites. I remained for a few minutes holding him and then left the room. (Blank) went into the theatre to spend some time with him. When (blank) came back out I had a conversation with him during which I told him that*  
15 *PTE Kovco would probably not survive. He then went to get the other (blank) members. Whilst at the hospital I received a telephone call from (blank) and whilst he spoke to me I cannot recall that conversation now. I know I would have had other conversations with other persons present but I cannot now recall*  
20 *specifically.*

25 *My (blank) organised with hospital staff to have PTE Kovco placed in a more private room, which they did, to bring an Australian flag and his beret to be placed on PTE Kovco. (Blank) returned with other platoon members and I encouraged all members to move into the room together to be with PTE Kovco in his last minutes. I believe PTE Kovco passed away at 1852 hours at which time I said a few words to the lads present and everyone, after they had their private moment with PTE Kovco, then*  
30 *gradually filed out.*

35 *Outside the hospital I again had a few words with the lads and spoke to them about keeping in focus and being there for each other. I then returned to the Embassy compound and with the (blank) returned to Anzac Cove where, on arrival, I gathered the remaining members of SECDET IX and gave them a briefing about what had happened.*

40 *Later that evening I returned with the (blank) to the Embassy for the conveyance of PTE Kovco from there by helicopter. I returned to Anzac Cove about 0300 hours, 22 April '06. I did not attend and view PTE Kovco's accommodation room until 26 April 2006 after Military Police had completed their examination of the*  
45 *room.*

5                    *On 22 April 2006 whilst at the Embassy I came across (blank), both of whom were in the accommodation room with PTE Kovco at the time of the incident. I saw them in the (blank) at the Embassy and at no time had I or did I ask them anything directly about what had occurred. They both then stated to me at the same time, "How did it happen? We don't understand. How did it happen?" One of them said, whom, I cannot recall, "Didn't hear the weapon cock nor did I see the weapon in his hand", or words to that effect. (Blank) said, "I was on the internet and (blank) was bending down at the fridge and Jake was standing using his computer when a shot rang out", or words to that effect. They both mentioned how shocked they were that they were so physically close about, one metre away, and didn't see what happened.*

15                    *After the incident I became aware that PTE Kovco might have written a letter to his family for forwarding to them in case of his death. This is a common thing amongst soldiers on operations in a war-like environment. Due to his accommodation room being secured until the arrival of the Military Police, the letter had not been located within his other equipment which had not been secured in his room.*

20                    *On 25 April 2006 Military Police arrived from Australia and I informed them that if the letter could be located as soon as possible that permission had been granted by Mrs Kovco for it to be opened and the contents faxed back. On 26 April '06 about lunchtime (blank) attended my office and handed to me a journal. I was aware that the journal had been removed from the room together with a teddy bear belonging to PTE Kovco, by the (blank) shortly after the incident, and on learning this I ensured that it was secured for handing to the Military Police.*

25                    *I was informed by (blank) had located a passage which he believed may have been what was thought to be the letter. I read the passage in the journal and since no letter had been located by the Military Police in the room and due to the words in the passage, I was of the belief that in fact was what was believed to have been the letter, and photocopied the pages in order to fax to my CO in Australia for him to forward to Mrs Kovco.*

30                    *I had been informed that the letter contained PTE Kovco's wishes for his funeral. The letter in the journal did not contain any mention about funeral arrangements so I skimmed the remainder of the journal to ensure that there were no other passages*

5 *pertaining to his wishes that Mrs Kovco would want. In doing so, I came across an entry in the journal dated 21 March 2006 which I brought to the attention of (blank) who was in my location. I then handed the journal to (blank) who placed it into a clear plastic bag to which was attached a service police identification label marked JW/7. I signed and dated the label as did (blank).*

10 *As his (blank) and as stated earlier in my statement, at no time had I been made aware of any personal issues that may have been affecting PTE Kovco. At no time did he come before me due to any behavioural problems associated with alcohol or drugs. I never cause to suspect that he may self harm and none of my staff ever brought that to my attention. I found him to be a very conscientious, professional soldier who loved his family and life in general.*

15 *On 29 April 2006, at 1535 hours, I caused to be printed from my personal computer file a copy of (blank) which was conducted at (blank) to our deployment into Iraq. I certified that document and handed it to (blank), who placed it into a clear plastic bag to which he attached a service police identification label marked SMS/01. I signed and dated the label as did (blank) after me. (blank) retained the document in his possession.*

20 *I then caused to be printed from my computer a copy of (blank). I certified that document and then handed it to (blank) who placed it into a clear plastic bag to which he attached a service police identification label marked SMS/02. I signed and dated that label as did (blank) after me. (Blank) retained that document in his possession.*

25 *On 26 April at 1550 hours I had a conversation with (blank) at my office, Anzac Cove, at which time I handed to him a computer generated document. (Blank) placed that document into a clear plastic bag to which he attached a service police identification label marked JW/6. I signed and dated that label as did (blank). He retained the document in his possession.*

30 *Statement recorded and signature witnessed at Anzac Cove, Baghdad, Iraq, on 29 April 2006.*

35 *Soldier 30, is that an accurate statement of your redacted statement?---Yes, sir.*

40 *Is the full copy also an accurate record of your evidence?---Yes, sir.*

Mr President, I tender firstly the full copy as a classified exhibit.

PRESIDENT: Any opposition to the reception of that, gentlemen?

5

COUNSEL REPRESENTING: No, thank you, sir.

PRESIDENT: Marked as Exhibit C6.

10

**#EXHIBIT C6 - FULL COPY OF STATEMENT OF SOLDIER 30**

COL GRIFFIN: Mr President, I tender the redacted copy .

15

PRESIDENT: Do you propose to give that a different number or just make it R6?

20

COL GRIFFIN: I propose that the first one be C6 and the second one be R6.

PRESIDENT: Yes, make it so.

25

**#EXHIBIT R6 - REDACTED STATEMENT OF SOLDIER 30**

PRESIDENT: Yes, thank you, Colonel.

30

COL GRIFFIN: Thank you, sir. Now, there are some documents that were blacked out in the redacted statement. I'm now going to put them to the witness and tender them as classified documents. He will be able to refer to the general title of the documents.

35

PRESIDENT: Thank you.

40

COL GRIFFIN: I show you a document, Soldier 30. Would you tell the Board what that is, please, if you recognise it?---Yes, sir, this is the SECDet IX OPOrd 01-06, SECDet IX Operations. It's my operational order that I wrote for the deployment of SECDet IX.

I tender the document, sir, a classified document so it will have the C prefix.

45

PRESIDENT: Thank you. Is there any opposition to the tender of that

document, Colonel?

COUNSEL REPRESENTING: No, sir.

5 PRESIDENT: It will be marked as C7.

**#EXHIBIT C7 - SECDet IX OPORD 01-06**

10

LTCOL McCONAGHY: Mr President, could you just clarify the title of that document we have just taken in?

PRESIDENT: SECDet IX OP Order 01-06.

15

LTCOL McCONAGHY: Thank you.

COL GRIFFIN: The next document, do you recognise that, Soldier 30?---Yes, sir, I do.

20

Could you tell the Board what it is, please?---Sir, this is a copy of SECDet X Standard Operating Procedures dated 20 January 2006, which are the standard operating procedures for my combat team which I wrote before we deployed on this operation.

25

Now, are they referred to by the acronym SOP -

**(Video link dropout)**

30

**(Establishing comms)**

COL GRIFFIN: Soldier 30, I want to take you to parts of your SOP or in one part in particular, and it's 161.8. Would you turn to that, please. It carries the heading, "Weapons Safety," do you see that?---Yes, sir, I've got that.

35

Are you able to tell the Board what it deals with, please?---Sir, that particular SOP deals with a number of aspects of weapons safety. The first one is what we call the buddy system.

40

If you would just limit your evidence to the buddy system, then, please, and tell the Board what you mean by that?---Yes, sir. The buddy system is a procedure that I decided that we would implement as a standing procedure within the combat team that assists members to have the correct degree of weapon readiness and to avoid a negligent discharge of the

45



Thank you, Colonel, you might - - -

5 COL GRIFFIN: We'll do the best we can in the circumstances, sir.  
Soldier 30, I show you another document.

PRESIDENT: We haven't got him on camera as we speak. Thank you.

10 COL GRIFFIN: I'll show you this document; do you recognise it?---Yes, I do, sir.

15 Would you tell the Board what it is, please?---Sir, it's a training program for training I conducted after we had left Australia. It was conducted in another country, not the country that we're currently in.

How long was it for?---It was for approximately five days, sir.

20 Are you able to tell from that document and from your own knowledge whether or not the training involved training on the 9 mm pistol?---Yes, it did, sir.

25 Are you able to say how much training on the 9 mm pistol?---Sir, from memory, it was about half a day altogether throughout.

Before that particular training program, was there build-up training in Australia?---Yes, there was, sir.

30 Did that training consist of training with the 9 mm pistol?---Yes, sir, on several occasions.

35 Are you able to say what the training was?---Yes, sir, it was - the training involved the basic tests of elementary training, involved live fire shooting of the weapon on a range, then it involved more advanced type shooting, drawing the pistol from a holster and using the pistol whilst carrying a primary firearm, that being a rifle.

Sir, I tender that document.

40 PRESIDENT: Any opposition, gentlemen, to that tender?

COUNSEL REPRESENTING: No, sir.

45 PRESIDENT: That will be marked as C9.

**#EXHIBIT C9 - WEAPONS TRAINING PROGRAM**

5 COL GRIFFIN: I show you two further documents. Would you tell the  
Board what they are, please?---Sir, these two documents are two sheets  
that are known as temporary issues of weapon records. These are two  
sheets that are of a series of five. These sheets contain the names, rank  
and numbers of some of the members of my combat team and they detail  
10 the weapons and controlled stores that were issued to each of those  
members and they have a corresponding signature from each of the  
members that were issued.

15 Can you identify an entry for PTE Kovco on either of these sheets?---Yes,  
sir, I've identified it on sheet one about two-thirds of the way down the  
page.

20 Is there an entry in respect of a pistol?---Yes, there is, sir, he was issued a  
pistol and signed for it in (indistinct) of the sheet.

Are you able to make out the serial number of the pistol recorded on the  
issues sheet as being issued to PTE Kovco?---Yes, sir.

25 Would you tell the Board what it is, please?---Yes, sir, it's 245MY06578.

Would you look at the list of names before you and indicate whether or  
not Soldier 17 was issued with a pistol from the list?---According to the  
sheet, Soldier 17 was not issued a pistol.

30 Would you look and see if Soldier 19 was issued with a pistol?---Sir,  
Soldier 19 appears at the top of page 2 and it appears that he was issued  
with a pistol.

35 Are you able to make out the serial number of the pistol with which he  
was issued?---This is a small copy, sir, but I think I can. It looks to be  
serial number 245MY0468 - I think it's a 7, sir.

Thank you. I tender the two sheets as the one document, sir.

40 PRESIDENT: Yes, thank you. Any opposition to that, gentlemen?

COUNSEL REPRESENTING: No, sir.

45 PRESIDENT: That will be marked as C10.

**#EXHIBIT C10 - TWO SHEETS KNOWN AS TEMPORARY ISSUES OF WEAPON RECORDS**

5

COL GRIFFIN: Soldier 30, are you able to say what rationale there was for the issue of 9 mm pistols and why on that sheet some members were issued with them and others were not?---Yes, I can, sir, I can be general about it but I can't be specific. Generally speaking, the issue of a secondary firearm, in this instance a pistol, depended on what job or task the soldier was allocated within my unit.

10

I show you a document which is PTE Kovco's PMKeyS printout. Would you please explain for the Board what the document reveals about the level of training and experience that PTE Kovco had as an Infantry soldier?---Yes, sir. It tells me that PTE Kovco had served just over four years in the Army at the time of his death. It also tells me that he conducted training at the School of Infantry, firstly at Kapooka and then at the School of Infantry, and then was posted to the 3rd Battalion of the Royal Australian Regiment where he held a number of different postings in that unit. It tells me that he was upgraded to a Private P, which is a 343-2 Advanced Soldier, which soldiers receive around about 12 months after arriving into the unit. It tells me that he was reasonably highly qualified for a fourth-year private. He had a number of courses that he had participated in and passed. Those courses included a basic parachute course, direct fire support weapons basic course. He was qualified in a number of specialist weapons, including the 84 mm L14A1 short range anti armour weapon, the general support machine gun MAG58, the 9 mm L9A1 Mk1 and Mk3 Browning pistol. He was qualified in the javelin direct fire support weapons course. He was qualified to conduct RAN air parachute static line jumps. He had attended the basic sniper course but did not record a result as being passed because he failed one of the modules. It also tells me that he had undergone mandatory training within 3RAR in November 2005 which covered equity and diversity awareness training, occupational health and safety awareness, (indistinct) and suicide awareness. It also tells me that he had passed a Subject 2 for Corporal Infantry Course. So in general, sir, it tells me that PTE Kovco was a senior soldier, having served four years, and that he was highly qualified in that four years.

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Can you tell the Board more about the sniper course for which he was identified and participated but did not complete or pass, as I understand it? ---Yes, sir. PTE Kovco was under my command at the time that he was put on the course; in fact, I placed him on the course. He conducted the course. The course is quite rigorous and it is one of the few courses in the

5 Australian Army where, if one module is not passed, the whole course needs to be re-attempted. You can't just do a retest of the module that you failed. I'm not 100 per cent sure but I believe that PTE Kovco only failed one module of the course and the reason why that I'm reasonably sure of that is because I made the decision to place him in the sniper cell despite the fact that he had failed the course, to conduct one year of on-the-job training so that he could re-attempt the course at the end of this year.

10 Did you select him for that course and then continue to place him in the on-the-job training aspect because of your confidence in his weapon-handling skills?--It wasn't solely because of weapon-handling skills, sir, it was because of his general soldier skills. There's a misconception that snipers are chosen because they're good at handling weapons and good shots. A much more important aspect of being a sniper is their ability to get into a position to take a shot, and that requires very high soldier skills. At the time that I made the decision to panel PTE Kovco on the sniper course he had proven to me that he had high soldier skills and that he had the potential to be a good sniper.

20 I tender the PMKeyS printout, Mr President.

PRESIDENT: Thank you. Any opposition, gentlemen, to that?

25 COUNSEL REPRESENTING: No, sir.

LTCOL McCONAGHY: Mr President, can you just confirm that document is an eight-page document?

30 COL GRIFFIN: We're just checking our copy of the document, sir.

PRESIDENT: The page 8 that I've got has got the words on it, "Staff-in-Confidence," so page 8 isn't highly critical.

35 LTCOL McCONAGHY: And the date is 26 April '06 on the bottom right.

PRESIDENT: Indeed.

40 LTCOL McCONAGHY: Thank you, sir, no objection.

PRESIDENT: Marked, then, as C11.

45 **#EXHIBIT C11 - PTE KOVCO'S PMKeyS PRINTOUT**

COL GRIFFIN: Soldier 30, I take you back to your redacted statement; could you just look at that please, it's paragraph 18?---Yes, sir.

5 You say there:

*After the incident I became aware that PTE Kovco might have written a letter.*

10 Would you tell the Board how you became aware of the letter?---Yes, sir, it was in a conversation with Soldier 1. I had a conversation with Soldier 1 where he indicated to me that Soldier 11 had been made aware by PTE Kovco that Jake had written a letter to Shelley and Tyrie and Alana in case something happened to him while he was on operations. I believe that  
15 that was pointed out to Soldier 11 some considerable time before the incident occurred when PTE Kovco was still positioned at the post. PTE Kovco apparently pointed out to Soldier 11 at that stage:

20 *There's a letter in the top of my locker. If anything should happen to me while I'm out on particular operations that are about to occur or at any time in the future, can you make sure that Shelley gets it.*

25 Soldier 11 then, after the incident, told Soldier 1 about this and that's how I became aware of the letter, sir.

Over the page you say that you looked through the document looking for the letter. Would you tell the Board about those circumstances, please? ---Yes, sir. I was under some considerable pressure to find the letter  
30 because it was believed in Australia that the letter may have contained PTE Kovco's wishes for his funeral and the funeral arrangements were being made so the letter was - it was imperative that the letter get to Australia as quickly as possible so that his wishes could be undertaken. I didn't have access to his room because we had sealed it awaiting the SIB  
35 investigation. When we were talking there was some confusion because we were talking about a letter and all of us had assumed that it was a stand-alone letter written on paper and put in an envelope. Soldier 11 had never actually physically seen the letter so we were looking for something like that. As it turned out, it was actually a letter written into the pages of  
40 his diary and that was identified by one of the Military Police investigators when he was looking through the diary, he found what looked to be the right letter. Once he did that, the MPs, I told them about my requirement to get the letter as quickly as possible without impeding their investigation. Once that MP investigator had found what he thought  
45 to be the letter in the diary, he gave the diary to one of my soldiers,

5 Soldier 13, who conveyed the diary intact from the Embassy to my location at the PO and told me that the MP investigator had told him that the letter I was looking for was on a particular page, I think he said page 11 of the diary; I can't be sure. So I opened the diary up to that page, I read the letter, I read it in its entirety and I found that the letter actually didn't contain any instructions about his wishes for a funeral. So I was presented with the dilemma in that I certainly had a letter that was required for his wife in these circumstances but I didn't have the letter that everyone thought contained the details that they wanted. So I had a think about it for some time, a matter of an hour or so. I was reluctant to read his diary because it was his personal diary and I believed to have been written for his family. I then decided to go to the front page to his first entry and skim through the diary because the actual letter that I was looking at looked different than other diary entries. It was an actual letter, it didn't have a date and - it didn't look like a diary entry so I thought if I skim through the pages I would be able to identify something that wasn't actually a diary entry but was another letter. I did that and I didn't find another letter that contained any wishes for his funeral.

20 I'm going to read an entry to you.

25 LTCOL HOLLES: Sir, I object to this. There are a number of bases for the objection. I don't object to the tender ultimately of the document to the Board in closed session but it's a matter which I believe would cause immense distress to the family. Sir, you have the power under the Instrument of Appointment to exclude material which would go to this particular issue and I would ask that it be excluded. It contains material which appears selectively would provide both embarrassment and hurt to the family and has the potential for being sensationalised.

30 PRESIDENT: I take it, Colonel Griffin, you've heard the objection from LTCOL Holles?

35 COL GRIFFIN: Yes, I did, sir, and I'll respond if I may.

PRESIDENT: Before you do, I might just ask the other members at the Bar table whether they've got any contribution to make?

40 COL YOUNG: Yes, Mr President, I do - COL Young on behalf of PTE Kovco. This document, I suspect in due course, should properly be tendered in its entirety. It contains very personal and private matters. It also, in my submission, contains entries relating to operational matters so it would need to be sanitised - if I can use that word. I think that's an issue as well. I appreciate Colonel Griffin may not be going to read the whole of it now, and it's not his intention.

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5 Mr President, what you and the Members of the Board have to do is balance this Inquiry, being a public an open Inquiry, but you have to balance it with not only operational issues but privacy issues. The very first page of the Instrument of Appointment, the bottom paragraph says:

10 *The President may, at his discretion, direct that the Board conduct its Inquiry in closed session with respect to the medical history and emotional wellbeing of PTE Kovco prior to his death.*

15 What you're about to hear now goes to the emotional wellbeing of PTE Kovco. That emotional wellbeing has got to be put in context. There is a lot of other information that goes to his emotional wellbeing and that groundwork should be laid before this Board or anybody else hears the content of what's about to be put to you. So it's a matter of - firstly, in accordance with the appointment you have power to do it and it's my submission that the emotional wellbeing of PTE Kovco needs to be laid before this is put, otherwise it will be taken out of context and, in my submission, be quite dangerous. Thank you, Mr President.

20 PRESIDENT: LTCOL Berkley?

25 LTCOL BERKLEY: My instructions are that Shelley Kovco is concerned of course as to Jake's reputation as a soldier and as a husband and as a father, and she is concerned that an individual entry may be taken out of context. However, I have specific instructions on this matter, and having considered it, her position is to offer no objection to the matter, to the letter being read. However, of course I join in with my friends in that they say it is very much a matter of context and weight for the Board in the end but she offers no objection. She doesn't support the application, nor does she wish to defeat the application.

30 PRESIDENT: LTCOL McConaghy?

35 LTCOL McCONAGHY: Sir, I have no submission on this point.

PRESIDENT: COL Griffin, thank you. Any comments that you would care to make?

40 COL GRIFFIN: Yes, sir, if I might detail those comments. Firstly, the Instrument of Appointment directs that you and the Board decide to receive your evidence in public. The matter that I'm proposing to read is not classified. There are no operational security issues attaching to it. There is no unfairness in natural justice terms in the receipt of this material, as all counsel have just indicated to you, significant evidence

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that will be tendered in due course. There is no unfairness in terms of procedural (dropout) natural justice being pursued now.

5 I agree that there is a public interest issue here as put by COL Young to you and, in my submission, the public interest in this significant piece of evidence outweighs any private considerations for the following reasons. There have been media reports continually about this tragic set of circumstances, even to the extent of sensational coverage alleging exactly that, cover up allegations in the history of the matter. It's in the public  
10 interest that there be transparency where possible without jeopardising security; and again, security does not arise in this particular matter that I propose to read to you. Finally, personal matters are revealed in civilian legal proceedings every day, as you are well aware in every Court in the country. It's a fact that personal matters will come to light and be dealt  
15 with in legal proceedings.

In respect of the medical history and emotional wellbeing of PTE Kovco, I propose that specialist evidence in respect of his medical history and other psychiatric and human factors issues based on the journal will be put  
20 before you in due course. This particular item is an item of physical evidence from the incident scene, like any other piece of evidence, like the weapon. It's highly relevant and significant and is there to inform you as you go about your deliberations. The document is a statement of the deceased himself. It is not third hand. It comes to you directly from his  
25 own hand. It goes to an understanding of the circumstances in which he was positioned at the time.

This particular entry is relevant for the following reasons. It's relevant to the matter of death. It's relevant to the position of the weapon at the point  
30 of firing. It's relevant to the state of mind. It's relevant to the position of the wounds. The emotional wellbeing and medical history matters can be dealt with properly with specialist evidence upon return. What I'm about to detail to you in the item does not refer in any way to the state of mind of the deceased about any family or other aspects; it simply relates to a  
35 dream that he had and then concluding remarks on that day.

Finally, in respect of the closing of the Board your power and your discretionary power in closed sessions with respect to medical history and emotional wellbeing on a technical legal point, I make the point that  
40 medical history and emotional wellbeing are conjunctively there in that item in the Instrument of Appointment. It says "medical history and emotional wellbeing", not "medical history or emotional wellbeing".

45 For all those reasons, sir, in my respectful submission, this item that deals with the dream is of such significance and relevance that it can be

properly be put before you now. Those are my submissions, sir.

5 PRESIDENT: The only question before me is not whether the Board sees this document but whether the Board sees the document whilst the Board is open to the public and indeed the media. It's a question always of balance but given the lack of opposition by the widow I feel I can only make one decision, and that decision is to deal with it in open forum with the Board open. Colonel, would you continue to then proceed to read the -

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**(Video link dropout)**

**(Video link established)**

15 COL GRIFFIN: Sir, we have resumed transmission at this end.

PRESIDENT: We are getting a picture. I don't know how much of my ruling you heard, Colonel, but it was to the effect that I was inviting you to read the document onto the record.

20

COL GRIFFIN: I will proceed to do so now, sir, thank you. I'll just stand closer to the witness.

25 Soldier 30, I'm going to read an item to you. It's headed, "Day 14, Date 21 March '06 (Tuesday)":

30 *Two weeks have gone by now. It's gone pretty quick so hopefully the rest of the trip goes quick. Not too quick, just fast enough so it doesn't drag. It doesn't fly so I can savour it. I had a bad dream last night, not a nightmare but an unnerving one. I dreamt that I was sitting in our room (here) by myself and for some unknown reason I pulled out my 9 mm pistol and shot myself in the head!? I have no idea why. But it seemed I wanted to see what it felt like. I didn't die but it felt like I did but didn't (if that makes sense?). I heard the click of the hammer hitting the firing pin and then, instead of a loud crack, the sound went dull as the bullet entered my skull. It was like I could hear the bullet from the inside. Then I went all tense and made some weird noises as the shock to my brain and nerves tensed my whole body up. A few seconds later I went limp and started gushing blood from my wounds, nose, ears and mouth. I then seemed to die and then wake up and said aloud, "Fuck, that hurt". I felt the top of my head and there was an entry and exit wound from the bullet and it was still bleeding. I looked at my hand and it was covered in*

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45 *blood and that's when I woke bolt upright. Very weird. Now,*

5                    *don't get me wrong, I have no intention in shooting myself. I'm  
very happy with my life. It just shook me up a bit because I  
haven't dreamed or felt like that since I went through rough patch  
(very bloody rough) about four years or so ago. I know it wasn't  
10                    about killing myself so I'm a bit worried it might be a  
premonition of a bullet hitting me in the head but not killing me  
(fuck, I hope not). Don't know? Then tonight we got told an  
American soldier got shot in the head today but didn't die until he  
got to the hospital. Poor prick. Someone lost a son, husband or  
15                    father. Poor pricks. That made me shiver though (after what I  
dreamt about). Anyway, that's all that happened today. Going  
on an AE task tomorrow. Hope all goes well. PS I love you,  
Shelley, Tyrie and Alana. You're all my world. My heart will  
always be with you. Your loving husband and father, Jake.*

20                    Soldier 30, is that the entry that you read on the day?---Yes, sir. As I was  
skimming through looking for the letter with funeral details, the words  
that my eyes just lighted on, that I started to read from that point in time,  
sir.

25                    I have two further documents for you which are two matrices that have  
been prepared for operational security reasons. I don't want you to detail  
the content of them, but the first one is an OPSEC matrix and the second  
one is a second OPSEC matrix. Are you satisfied that you understand the  
content of those two documents?---Yes, I am, sir.

                         Do they relate to the duties of the Security Detachment at the Embassy in  
Baghdad?---Yes, they do, sir.

30                    I tender the documents, sir. I ask that you accord the relevant exhibit  
numbers to them and we'll catch up with them in due course in closed  
session.

35                    PRESIDENT: Very well then. Any opposition to that, gentlemen?

COUNSEL REPRESENTING: No.

40                    PRESIDENT: The document with the more letters on it will be Exhibit  
C12 and the shorter document will be Exhibit C13.

**#EXHIBIT C12 - OPSEC MATRIX**

45                    **#EXHIBIT C13 - SECOND OPSEC MATRIX**

5 COL GRIFFIN: Thank you, Mr President. Mr President, I'm informed that our satellite link for operational reasons will be finished in one hour and 17 minutes. I understand that LTCOL McConaghy has some matters that has kindly foreshadowed with me outside the hearing, with this particular witness that will necessarily involve a closed session because it's directly related to operational security matters and he needs to canvass this material before the next witness is called.

10 As a consequence of that, sir, I ask that you now close this session to the public pursuant to your powers under Defence Inquiry Regulation 29.

15 PRESIDENT: Any comment from the Bar table?

COUNSEL REPRESENTING: No, sir.

20 PRESIDENT: Thank you, ladies and gentlemen, the hearing is now closed and those members of the press and the public would they please leave us. It don't envisage that we'll be returning to an open forum this afternoon, Colonel?

25 COL GRIFFIN: We may, sir, if this particular phase takes no longer than the half an hour which has been foreshadowed so that we could at least start the second witness before we close for the day, in open session.

LTCOL McCONAGHY: Sir, I indicated that I thought it would take no more than 30 minutes and I hold the - - -

30 PRESIDENT: Gentlemen of the press might like to take that on board and we'll try and accommodate you in half an hour's time.

**(Continued in closed session)**

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**(Open session)**

PRESIDENT: We'll be a few more moments.

5 COL GRIFFIN: Can I indicate that there are some exhibits that relate to the evidence of the next witness, but it's not proposed to introduce them at this stage, we will save that for tomorrow's proceedings. Those exhibits relate to some imagery and we won't take the risk of the time factor at the moment. That will be dealt with tomorrow.

10

PRESIDENT: Very good. Thank you, we might then proceed.

COL GRIFFIN: I'll just invite Soldier 30 to detail the matters that he wanted to express in open session.

15

PRESIDENT: Thank you, Soldier 30?---Thank you, sir. Mr President and Members of the Board and members of the family of Jake. During this Inquiry you may identify causal factors that contributed to the incident that occurred on 21 April this year. I wanted to be quick to point out and emphatic that as the officer commanding the Security Detachment, Baghdad, that I am fully responsible for everything that happens within this unit. That includes the death of Jake Kovco. I believe that I'm also responsible for any of the causal factors that you may determine during the Inquiry, and that's whether they - including any that may have been undertaken by any of my soldiers; any of their acts or omissions, I accept full responsibility for. As the commander here on the ground on this operation, I re-emphasise that I am responsible for everything that happens within my combat team.

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30 Notwithstanding that and notwithstanding the tragic death of Jake, I'd like to point out that the soldiers that I have the honour to command are, without doubt in my 19 years of experience in the Army, the best conventional soldiers that the world has to offer. Throughout this incident there have been times in the media where I believe and they believe that their professionalism has been called into question. I want to be quite clear that these are fine young Australians and every member of the public back there back at home has every reason to be very proud of them and what they do.

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40 Jake himself was one of these professional soldiers. He was a staunch and loyal mate. He was a lovable larrikin and a dedicated husband and father. Jake and I had what I would consider to be a special relationship. As the OC - he was a private soldier but there wouldn't be a time that we would walk past each other without stopping, having a chat, having a laugh. I had the privilege of spending some time in an observation post with Jake

45

only a week or so before his death. I spent about two and a half hours with him there and we shared our own thoughts and that's a time that I will cherish.

5 I wish to express my deepest and sincerest apologies to Shelley, Tyrie and Alana and Mr and Mrs Kovco. Before we deployed on this operation I spoke to the families and the soldiers; I don't think Shelley was present or Mr and Mrs Kovco. But what I did say was I promised that I would do my very best to bring every soldier home alive. I apologise that in this case I was unable to do it for you, Shelley.

10  
15 Finally, I would like to say to Shelley that it was a difficult thing to read the journal entry and to not tell you about it, and I hope that you understand why I couldn't, that it wasn't a betrayal of your trust in me.

Mr President, thanks for the opportunity to address the Board.

20 PRESIDENT: Thank you, Soldier 30. I appreciate your comments, and indeed the Board does. I'm pleased to hear the concept of command responsibility is alive and well in the Australian Army. Thank you? ---Thank you, sir.

25 COL GRIFFIN: Thank you, Mr President. Can I ask that Soldier 30 be excused now, to be recalled at a later time for further examination on operational security matters in closed session.

PRESIDENT: Yes, thank you. Thank you, Soldier 30, you may stand down.

30 <WITNESS WITHDREW [1453]

35 COL GRIFFIN: Sir, I now hand over to MAJ Hyde who will take the next witness.

MAJ HYDE: Good afternoon, Mr President, MAJ Hyde here. If I may, I'll call Soldier 17.

40 PRESIDENT: Yes, thank you, MAJ Hyde.

<SOLDIER 17, sworn [1454]

45

**<EXAMINATION BY MAJ HYDE**

5 MAJ HYDE: If Soldier 17 could have placed before him his sworn statement and a redacted version of that statement.

LTCOL HOLLES: Sorry, I can't hear that.

10 PRESIDENT: We're losing the volume, Major.

MAJ HYDE: If Soldier 17 could have placed before him his sworn statement and a redacted version of his statement. Soldier 17, could I ask you, please, to identify - - -

15 PRESIDENT: Before we go on, MAJ Hyde, we've lost the picture of Soldier 17. All we're getting here is the badge. Perhaps the cameras - that's better, excellent, thank you.

20 MAJ HYDE: Soldier 17, you have before you two statements: one is a blacked-out version dealing with OPSEC matters; the other is the original copy of your statement provided to Counsel Assisting. Could I ask you to look at the original document, please, and identify whether you have signed that document?---Yes, sir.

25 Is that the evidence that you propose to give to this Inquiry?---Yes, sir.

Is that content accurate?---Yes, sir.

30 Are there any changes that you would like to make to it?---No, sir.

Soldier 17, if I could ask you now to put the original document to one side and if you can take up the blacked-out version. Mr President, I propose to tender the redacted version and also the original; the original will obviously be used for the Board version, the redacted for the public.

35 PRESIDENT: Yes, very well. The original version will be marked as C14 and the blacked-out version will be marked as R14.

40 **#EXHIBIT C14 - ORIGINAL VERSION OF SOLDIER 17's STATEMENT**

45 **#EXHIBIT R14 - REDACTED VERSION OF SOLDIER 17's STATEMENT**

MAJ HYDE: I now propose to read on to the record the redacted version  
of Soldier 17's statement. You will gather that some of it won't make  
5 sense and that is because of the redaction process.

PRESIDENT: Yes.

MAJ HYDE: I'll make over and say as follows:

10  
*I am a Private in the Royal Australian Infantry Corps, I am  
currently posted 4 Company 3rd Battalion Royal Australian  
Regiment (3RAR), am currently serving with the Security  
Detachment (SECDET) in Baghdad, Iraq. On 30 April 2006, I  
15 provide a statement to the Military Police, Special Investigations  
Branch (SIB) in relation to various matters. Annexed hereto and  
marked with the letter A is a copy of that statement which is  
unsigned. That statement accurately reflects what I told the SIB.*

20 *In that statement I have set out in some detail my service history.*

#### *PTE JAKE KOVCO*

25 *I have known Jake Kovco for four years, he loved his family and  
he was always talking about his kids. He liked shooting and went  
spotlighting. We did a night course together last year. He used  
to work in a knackery. He was always cheery. He got on with  
everyone and there was no one with whom he did not get along.  
Pre-deployment training went for about (blank) in Brisbane. He  
was not going to deploy but was the first Reserve on the list in  
30 case something happened to one of the other soldiers.*

35 *One of the other guys was injured during the long weekend at the  
end of the fourth week, so Jake came in. He observed, watched  
more than participated during that pre-deployment training, but  
they did participate in some activity. Two Reserves were attached  
to each section and watched what the section did. Jake was with  
us for the full period of training. As previously stated, we did not  
participate to the extent that we did in activity.*

#### 40 *DEPLOYMENT*

45 *Jake (blank) was originally (blank). My (blank) change all the  
time but some bricks have (blank) soldiers, some have (blank) and  
some soldiers are on leave, always need to move people around  
to make up numbers. My first period with SECDET was (blank)  
where we spent roughly (blank). We then came here to the*

*Embassy and Jake came with us at the time.*

5 *Each section is allocated a number of rooms for accommodation, but the rest is up to us. That is, we pick who we are going to share rooms with and usually go with your brick. In my brick (blank) there are three of us, being me, Jake and Soldier 19, being good mates got in a room. (Blank) some reason.*

10 *(Blank) it is manned, (blank). If you start there, you would then go to (blank), then (blank) or (blank) then (blank) or (blank), then come down and (blank), then back to the (blank). You rotate through some positions more than once depending on numbers in your (blank). Each day you rotate back one position so you do not start on the same position.*

15 *Your weapons are (blank) and (blank). When you go to relieve someone at the (blank), you go to (blank) at the (inaudible). Then the off coming soldier goes to (blank) so there is always someone at (blank). This is for both weapons being the F88 and pistols if you had both.*

20 *The procedure for clearing the pistol is to take the magazine off, cock it while your mate captures the round, then he inspects the magazine housing and chamber. Once these are deemed clear, you release the working parts forward and fire the action. The same - - -*

30 PRESIDENT: If I could get you, Major, to talk into the microphone more directly please, we're not getting a good signal from you at all. Thank you, you might carry on.

MAJ HYDE: I'll move this. Can you hear me now, Mr President?

35 PRESIDENT: Much better, thank you.

MAJ HYDE:

40 *Once these are deemed clear, you release the working parts forward and fire the action. The same applies to the F88. To proceed to the next position, you go through the (blank). The process there is to go through the doors (blank). There is (blank) which is at (blank). Personal weapons are (blank). The (blank) only goes to [blank] on changeover (blank) for cleaning. From (blank) you go straight to (blank). For the (blank) you need to be*

45 *(blank) which you are already at from (blank).*

5 Usually the equipment located at the (blank) does not work, so  
you are therefore normally doing nothing at that position. From  
the (blank) your weapons are still at (blank) and you go to the  
(blank) where your weapons are (blank). There are (blank)  
soldiers there. You go out through a (blank). There used to be an  
Beach at the door, but it is now at the (blank) itself. This is so  
when you leave the (blank) the soldiers still there can check that  
you have conducted the [blank] properly. This changed after the  
10 incident.

15 Prior to the Beach being moved, you would just go to [blank] by  
yourself around at the door. No one normally takes the pistol to  
(blank), the (blank) because they only shoot (blank). It is the job  
of the soldier staying to be the buddy. No one is every on time for  
their shift as it takes a few minutes to go through (blank) and  
walk to the next position. You leave (blank) and (blank) as there  
would be a flow-on effect while the last person arriving up to  
(blank) to take up his position because of the lag of a few minutes  
20 between positions.

25 When the shift finishes, people do not necessarily literally change  
seats at the (blank). Everyone wants to sit next to the air  
conditioning on the left. At the (blank) there is (blank). You  
speak to the person in the (blank) as you go (blank). That person  
can tell you if there is anything to be checked out. You go  
through the (blank), look at the (blank), we all have radios on. At  
end of the (blank) you go straight to (blank) again and keep on  
going until your (blank) is finished.

30 If something is going on, you can spend longer at one spot. Once  
you've finished your (blank) you go to your rest period unless  
there is a job on. You are at rest for the next (blank), then you go  
to (blank) where you spend the next (blank).

#### 35 THE DAY OF THE INCIDENT

On 21 April 2006, Jake was working on my shift. I cannot  
remember where I started on that day, but I think I went from  
(blank) to (blank). There's a (blank) to the (blank) then back to  
40 the (blank). PTE Kovco started on the (blank), so his sequence  
would have been (blank) and back to the (blank).

45 He started on the (blank) because he finished on the (blank). If  
you start on the (blank) you do (blank) day as he did that day. I  
saw him on occasion when we wondered past each other from

5 point to point. He seemed fine. The only time you really talk is when you are on the (blank) with someone and when you swap over. You have to move along as people get annoyed if you do not keep moving. I think Soldier 14 was with him in the last OP shift.

10 The end of a shift is the only occasion both soldiers at the (blank) leave together. I finished my shift at 1500 hours and returns to my room where Jake and Soldier 19 were also present. Jake changed into physical training (PT) gear whilst Soldier 19 and I were getting ready to go to the gym. I was in the room for an hour before the weapon discharged which happened at about 1605 or 1610 hours. Jake was on his laptop for about 45 minutes. We usually take our gear off after piquet, put music on, turn laptops on, check emails, then get changed.

15 We had a wireless facility so we could access emails like this. Jake's 9 mm usually hung on his shoulder holster, the same with Soldier 19, on the end of his bed. We buy them from the local. Jake's pistol was in its usual location on this day as best I can recall. A Cranberries was playing and we were joking about the female singer's voice. I had camouflage pants (CAM) and an undershirt on at the time of the incident. I was not wearing shoes. Five to ten minutes after the incident Soldier 2 told me to go back into the room to get some CAM, toiletries, PT gear and my combat body armour. I left my rifle because it had stuff on it. I then did not go back into the room as we left for Kuwait straight away. When we got back the investigators were here.

20 *Repatriation of the body*  
After they turned the machine off at 10 Combat Support Hospital (10CSH) Jake was put on a helicopter to Baghdad International Airport (via that night). Soldier 33 told us who would accompany Jake. We being Soldier 19 and Soldier 14 left that night by helicopter from (blank) and flew to BIA where we were picked up by members from Headquarters Joint Task Force (HQJTF). We stayed at the HQ that night. Everyone else met us at JTF the next day, being 22 April 2006. I went out to the US Military Morgue at BIA with some others on 22 April and sorted out flags and what was going to happen.

40 We then moved Jake from Baghdad to a US Military Morgue at the Kuwait City International Airport (KCIA). We conducted a small parade to load him on to the aircraft. Someone from Kenyan, a contractor, told us we had to take Jake to a civilian

*morgue in Kuwait. At the US Military facility we asked US staff if we could have some time by ourselves to speak with him. They gave us as long as we wanted, they then put him into an ambulance and he went to the civilian morgue.*

5

*We followed in another car where they put him on a trolley. They would not let us in, I think for cultural reasons. They told Soldier 2 who told us. Soldier 34 was there with a driver and Soldier 2. We left Jake there, then the next day they brought the coffin out. We asked Soldier 2 to make sure it was the right person. We were not allowed past the doors of the morgue.*

10

*We accompanied a body from there to KCIA. At the airport, we were not allowed very far on to the tarmac. They said we could not take him all the way to the aircraft. We had to drive around to the back of the airfield to watch the aircraft take off.*

15

*Jake's repatriation was handled well here in Baghdad and at the US Military morgue in Kuwait, they were good. However, I am absolutely disgusted about what happened in Kuwait with us having to hand Jake over to locals to take care of him and then having to put him on a civilian flight. If any dignitary died, Kenyon and civilian aircraft would not be used.*

20

*Jake was serving his country and I blame the Army for being cheap. The Americans were fantastic to us, they even provided their own honour guard for him. You serve your country, but for what? Why would any mother want her son to join the Army?*

25

#### *9 mm PISTOLS*

*Some people do not like taking the pistol to load. Just because we are (blank) does not mean we use them all the time, so some people are not as confident on them. Even at the (blank), some people just leave the pistol at (blank), it is the same with the (blank) in that some just stay at load.*

30

35

*Another way to make a pistol safe is to take it to (blank), then you release the hammer forward and then apply the safety catch. This way the safety catch slips off and you press the trigger, it will still not fire because the hammer is already forward. People are banging their thigh holster all the time and it is easy to bump the safety catch. You would have to be at [blank] in order to make the pistol discharge.*

40

5 *It is my understanding the pistol had been modified (blank). A pistol modified to stage (blank), I still use my (blank) and people ask me why which is why I then gave it to the armourer. My (blank) second-in-charge (2IC) told me and showed me about (blank).*

#### *OTHER MATTERS*

10 *Jake was talking about writing a book. I knew he kept a diary. I have heard about a letter to Shelley, Jake's wife. Shelley wrote a letter to the (blank) about a teddy bear that she wanted to make sure she got back. I think they were going to send some other things back to her as well.*

15 *Soldier 2 had a few things like photos, his laptop and a diary that someone took to make sure there was no operation and security issues. I do not know about a letter.*

20 *It does not matter how many Beachs you have, bad things happen. You are meant to be a professional soldier and clean your own weapon and look after your own gear. You can make recommendation, but it is a stressful and dangerous environment. You can get fatigued and lazy which is human nature. You might just forget. Bad things happen.*

25 *We do not use pistols all the time, so may be Jake forgot that his was at [blank]. Everyone at (blank) has a pistol, but only certain people have pistols at the Embassy. Out of my section, only (blank) had one. We are not as familiar with pistols as we do not have them all the time. It depends on the job as to where people wear them.*

30 *I think Jake had a leg holster when we went out on jobs. He brought his pistol with him when he joined my section. I had not noticed any particular problems with pistols, although in Australia during pre-deployment training some people had stoppages every three rounds or so just because they are so old.*

35 *Resources for us as an overall issue are poor and this can play on people's minds. We baby-sit three or four people who work at the Embassy because of the threat here and we are given soft-skinned vehicles and an insufficient number of old pistols to do it. It is a matter of time before someone else dies here because of these things. We are exposed and insufficiently resourced.*

5                    *One civilian staff member who we are tasked to protect goes out regularly simply to socialise. Why should we risk our lives for that? My rifle did not work for the first three weeks of the deployment. I did not have body armour to train with before I got here. Prior to leave, we were sitting in a soft-skinned vehicle, being a standard GMC near the Ministry of Defence and a rocket barely missed us killing 17 people. Sworn at Baghdad Iraq this 14th day of June 2006 -*

10            et cetera.

Mr President, I now propose to read on to the record the annexure.

15            PRESIDENT: Yes, thank you Major. Or are we going to run out of time for that?

MAJ HYDE: Yes. I don't think we will Mr President, it seems that we have five minutes, so if that's a convenient time perhaps we should leave it there.

20            PRESIDENT: Carry on please.

MAJ HYDE: Service Police Statement - - -

25            PRESIDENT: Look, in five minutes, you're not going to read that entire document, are you?

MAJ HYDE: No I won't sir.

30            PRESIDENT: No, we might leave it here then and we'll resume with this witness tomorrow morning at 9 o'clock Australian time.

MAJ HYDE: Thank you sir.

35            PRESIDENT: Any matters gentlemen that we need to discuss or preliminary matters, housekeeping matters before we take the adjournment?

40            LTCOL BERKLEY: Yes, on the timing, it affects the way we get to see our clients. I think yesterday afternoon when we meet you were talking about a 10 to 4.30 day.

PRESIDENT: Yes and that was my understanding also. I understand it from information that I was given that we're being caught by what I'll call

the vagrancies of the machinery and also some operational requirements we need to operate around. People are running a war at the same time.

5 Yes, thank you Colonel, thank you Major and we'll see everybody again tomorrow morning at 9 o'clock Australian time, thank you.

COL GRIFFIN: Thank you Mr President, we will see you in the morning.

10 <WITNESS WITHDREW [1516]

15 **MATTER ADJOURNED AT 1516 UNTIL  
0900 TUESDAY 20 JUNE 2006**