

TRANSCRIPT OF PROCEEDINGS

Unclassified

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW

INQUIRY INTO THE DEATH OF PTE JACOB BRUCE KOVCO

PRESIDING:

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0838 WEDNESDAY 21 JUNE 2006

DAY 3

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(Open session – Retrospective order of Board)

<EXAMINATION OF SOLDIER 17 BY LTCOL BERKLEY [0905]

5

LTCOL BERKLEY: Soldier 17, I'm LTCOL Berkley and I represent Shelley Kovco?---Yes, sir.

10 Of course, I've got some questions for you as well. I know it's early in the morning there and I'll try not to take too long, okay?---Yes, sir.

Jake was like by everyone in the platoon; is that true?---Most definitely, sir.

15

He was a popular character, wasn't he?---Very much so, sir.

And he was a good mate of yours?---Yes, he was, sir.

20 You ended up sharing a small room with Jake as part of this deployment? ---Yes, sir, we did.

Soldier 19 shared that room with you. Was he a mate of Jake's as well? ---Yes, he was, sir.

25

You're an experienced weapons handler?---Yes, sir.

30 Do you know the sound that a pistol makes when the slide is pulled back and the slide is allowed to go forward without restraint? You know that sound, don't you?---Yes, I do, sir.

It's a distinctive sound on those 9 mm pistols, isn't it?---Yes, it is, sir.

35 You didn't hear it just before Jake died?---No, I didn't, sir.

If you would have heard that sound, would you have looked in the direction of where you thought the sound was coming from?---Yes, I would have, sir.

40 From your evidence it's clear that you were having a little bit of fun together in the room just prior to Jake's death. Is that a fair summation of what happened?---Yes, sir, it is.

45 I think you told us yesterday that Jake did his little trick with his running shorts when he was singing in falsetto, in the high voice?---Yes, sir.

5 This is important because lots of things were obviously said in Australia,
but this was just - sorry, how would you put it? Would you put it as just
good fun or anything more sinister than that? How do you put what was
happening in the room?---Sir, I put it as something that we did every
single day. We would come back, we'd get changed, turn our computers
on. We obviously both had girlfriends, or wife in Jake's case. Soldier 19
has got a wife as well. We would check emails, put music on, and we
would sing or do whatever because people back there, sir, they don't
10 understand. It is a stressful situation over here and that's the only time
that we can relax in our own room. For Shelley, sir, we did it every day
and Jake was happy. We were all happy.

15 Thank you for that, Soldier 17. That's really the only place you could
relax when you got back to your own room?---Yes, sir, it's the only
privacy that you could have and, being such a small room, we chose to be
in the same room with each other, us three, because we are all good mates
and we knew that we could get along with each other. As you know, sir,
people argue a lot, it's stressful, tight situations, but we've been friends
20 for a long time and we were happy to be in a room together, sir.

Do you know if Jake even likes that band The Cranberries?---No, sir, he
hates it.

25 So he didn't miss the opportunity to I should say parody them, take - - -?
---No, sir, we were - I don't actually know how it got on. I think it's one
of Soldier 19's favourite albums and we were just taking the piss out of it,
sir.

30 Yes, of course. You used the phrase yesterday, when you were, I think,
being disparaging or criticising something, you might use that phrase,
"It's so gay I'd rather be dead", or words to that effect. Do you remember
telling us about that yesterday?---Yes, sir, I do.

35 Was that a phrase commonly used by soldiers or just by Jake, or just your
roommates? What sort of currency did that phrase have?---Sir, people
used not exactly that phrase, or words to that effect all the time in a joking
manner because anyone who's been in the infantry would know how hard
things get and you say shit like that just to boost people's morale,
40 particularly if you're on a 40 k pack march, you'd say, "This is so fucked
I'd rather be dead", and that's the honest truth, sir, and people say it all the
time and they say it as a joke.

45 Yes (indistinct) - - -?---And (indistinct).

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I'm sorry there, I interrupted you then, Soldier 17. I'm sorry about that. I didn't hear the last part of your answer. Could you give it to us again?---I just said, sir, people back there will never understand.

5 All right. So there's nothing sinister in using a phrase like that, is there?---No, sir, there's not.

If you were going to criticise a song, particularly from a band that you didn't have any great affection for, you might say, "This is so gay I'd rather be dead", just to indicate your disapproval?---Yes, sir, you might.

10

And in fact that's what Jake did, didn't he? Did you see him do that?---No, sir, I didn't see him do that.

15 All right. So that was one of your, I suppose, getting down to it - but it's an assumption that you made whilst you were trying to work out how Jake could have got shot?---Yes, sir, that's exactly right. It was just an assumption. I have absolutely no evidence to back that up.

20 Now I'm going to ask you some questions because I have to ask them, and I don't want you to take any offence at them. You didn't shoot Jake, did you?---No, sir, I did not.

Soldier 19 didn't shoot Jake?---No, sir, he did not.

25 If Soldier 19, in these close confines, had have shot Jake, would you have sensed or detected that the shot came from Soldier 19?

LTCOL HOLLES: I object to the question, sir. It's hypothetical and invites speculation.

30

LTCOL BERKLEY: It's not a court of law, with the greatest respect, it's just - I'm just narrowing down the options. These are questions that everyone wants to ask.

35 PRESIDENT: I think given this environment I'm prepared to allow it.

LTCOL BERKLEY: Thank you, sir. You know what I'm talking about. If someone would have shot Jake, there's only two other person in the room, you would have detected where that shot came from?---Not necessarily, sir. Like, the room is very small. I didn't even know where it came from when it happened, sir.

40

45 And Jake was, I think you described him as in good spirits and happy prior to his death?---Yes, sir, he was.

And that must have left you scratching your head as to how this incident happened?---Yes, sir, and it still does.

5 I understand that, Soldier 17, and we'll move off that topic now. Just in relation to some of the - it might be horseplay with pistols that you told us about yesterday. You said you'd seen other soldiers point pistols at each other in a mocking fashion. Do you recall giving us that evidence?---Yes, sir, I do.

10 And I think you said that your reaction was to swear at them?---Yes, sir.

If you would have seen a breach of safety in your room, what would you have done about it?---To be honest, sir, I have to swear to you, but I'd probably just call the person a fuckwit and that would be the end of it.

15 If that person didn't correct that safety breach, would you have corrected it?---What do you mean by that, sir?

20 Well, say you saw a weapon lying on one of the bunks, say the F88 Styre, and you saw one of your roommates load the weapon and cock the weapon and take the safety catch off and just leave it on the bed, you wouldn't let that weapon stay in the *[blank]* position, would you?---No, sir, I wouldn't.

25 That's what I'm asking. If you would have seen something that was obviously unsafe, would you - - ?---I would have stopped it, sir.

30 Yes, exactly. Thank you, Soldier 17. In relation to this quick drawing that I think we heard about yesterday, I understand that the SLP, the self-loading pistol, the 9 mm, is given to you as a secondary personal weapon, is that your understanding?---Yes, sir.

35 Do you undergo any specific training in rapidly drawing that pistol and engaging a target say once the F88, you've run out of ammunition or you've got an incurable stoppage on the F88, do you go through any training like that?---Yes, sir, you do. We've done it a number of times. They've just introduced a course into the battalion. It's sort of urban operations and it's called a transition drill.

40 Yes?---An instructor would say stoppage even if you didn't have one. You'd obviously have your weapon firing, you'd drop it to one side, and draw your pistol, two rounds, pistol back in, correct the stoppage, and then continue firing with your Styre.

45

Have you ever noticed soldiers practising that with their pistols outside the range, in other words not on the range?---Yes, sir.

Yes?---It's just call dry firing.

5

Yes, indeed. Have you noticed it on your current deployment, soldiers doing that?---Yes, sir. Yes, sir, we do it as practice all the time.

All right. Something else that's caused some unintended excitement around here, or might, is what Jake was doing immediately before the shot was heard. I understand that your evidence was that he was talking about some emails from Shelley, something about a webcam. Do you recall that evidence?---Yes, sir, I do.

The music was playing at the time that Jake was talking about this webcam?---Yes, sir, it was.

What did you understand him to be saying about that webcam?---Sir, as far as I can remember he said he bought a webcam, this is - I never heard about it until he was talking about it that day, off the locals, and he said that he sent it back to Shelley but he didn't check the box before he sent it. He just bought it and sent it, and he said something like he obviously didn't check it and then Shelley's checked and it wasn't there, and then somehow either writing back to her or whatever, he said, no, it is actually in the box. It was actually there. She didn't look properly.

I think you told us in evidence yesterday that he was laughing about that. He wasn't annoyed at all?---Yes, sir, he was just having a joke about it because - yes, he was just saying, no offence to you Shelley, but he was just saying, "Fucking idiot didn't look in the box probably", having a joke.

Yes. And it would be just malicious gossip to suggest that he was reading a "Dear John" letter, wouldn't it?---That's exactly right, sir. Sir, being the close enough friends that he would tell us if something like that was happening and he never spoke anything bad of Shelley or the kids.

Thank you, Soldier 17. Another part of your evidence that is relevant to us is that this [blank] - do you know what I want to talk about?---Yes, sir, I know of (indistinct).

40

Is it the case that even if the weapon is in that state, you would still have to recock the weapon before it could fire?---No, sir, because when you strip the pistol to do a [blank] you put a round in the chamber. Obviously you put the weapon back together. When you release the working parts

forward there's already a round in the chamber which means the hammer is back.

5 Yes?---So you wouldn't need to recock it, sir.

But I understood you yesterday to be saying that the hammer could also be brought forward gently against the firing pin?---Yes, sir. Yes, sir, you can also bring it forward.

10 But that would be a silly thing to do because you'd have to recock the weapon before you could fire it, or pull the hammer back?---Yes, sir, that's correct.

15 And if you move the slide back you don't obviously eject the round that's in the spout?---Yes, sir.

So if it was in that *[blank]* position one could just pull the hammer back with the thumb and fire the round, is that what you're saying?---Yes, sir, that's correct.

20 As I understood your evidence, I don't think that you said that you saw Jake do that. Correct me if I'm wrong?---Yes, sir, correct.

25 You were just told when you were scratching your heads after it that he'd done that on one occasion?---Yes, sir.

Again, was it an unusual practice or something commonly employed by the soldiers on your detachment, or those that were issued pistols?---Sir, I - sorry, sir, what was that last bit?

30 Sorry, I'll withdraw that and I'll start again. Out of the soldiers - and this is only to your knowledge, and I only want you to tell me if you know yourself, but out of the soldiers that are issued pistols in your detachment, is it a common practice, this *[blank]*, or is it something unusual?---Sir, it's something that I'm not aware of. I've never actually *[blank]* a weapon myself, not even on a course, so I'm not aware that anyone else does it, sir.

40 One of the - and you've been asked questions whilst LTCOL Holles was - about the room that you were in, and as I understand it you had a - Jake had a shoulder holster that he would return the pistol to in the evenings when you - well, at the end of shift, when you came back to your room, is that your recollection?---Yes, sir.

UNCLASSIFIED

They're bought locally from a local business, are they, those shoulder holsters?---Yes, sir, they are.

5 How much do they cost?---I have no idea, sir.

You didn't buy one yourself?---No, sir.

10 Did Jake ever discuss with you why he bought the shoulder holster?---No, he didn't, sir, but from other blokes they just said it's easier to carry the weapon around you. It saves putting a leg holster on and off. You can just throw it over your shoulders and it's quick.

But I think Jake used a leg holster, didn't he?---Yes, he did, sir.

15 I know this is - things that are repetitive are often hard to remember later on, but can you remember on that afternoon, 21 April - can you remember Jake taking off his leg holster?---No, sir, I cannot.

20 There's another issue. I don't want to dwell for a long time on it but have you done any of that suicide prevention training?---Yes, sir, we have.

Or suicide awareness. I may have incorrectly labelled it there, suicide awareness training?---Yes, sir, we have. Yes, sir.

25 What did that involve?---To the best I can recall, sir, just - they just tell you about what to look out for, if someone comes to you obviously they want attention, they're not necessarily suicidal and that's about it, sir. That's all I can really remember about it.

30 Did Jake ever give you any reason to be concerned that he might do himself any harm?---No, sir, he didn't.

35 I've got to just move on a little bit from there. When you heard the shot and Jake fell, what's the first thing you did?---After I looked up, sir, I threw my computer off my lap and jumped straight down because I'd seen him bleeding and put my hand on the back of his head, sir.

40 I know this might be a bit tough for you so don't - it's not supposed to be an ordeal for you, there are some questions that just need to be asked, okay? That's what we're going to ask now?---Yes, sir.

Did you notice an entry wound?---No, sir, I didn't.

45 I think you said you put your hand under his head?---Yes, sir.

UNCLASSIFIED

5 Can you recall what Soldier 19 did at about that time?---I yelled out to him to grab a field dressing from a webbing, sir, and he ripped open a field dressing and chucked it to me. And that's when we yelled out to someone to get a medic in and about, I don't know, five or ten seconds later the door opened.

If you're going to mention any soldiers, try to remember to use the matrix? Have you got that in front of you?---Yes, sir, I do.

10 Again, you might think this is strange, I'm going back now just a little bit before that. Were other soldiers yelling out - this is before the shot - for you guys to turn the music down?---Yes, sir, there were.

15 Was that yelling angry, good-natured? How would you describe it?---I'm not sure, sir, I couldn't actually hear them properly because all I really heard was the banging and basically I think they were just saying "shut up", basically.

20 But no one had visited your room to ask you to turn the music down? ---No, sir.

25 Who was the first soldier in the room or at the door after the shot rang out?---Sir, the first person to open the door was Soldier 26 and the only other person to come into the room at any stage was - I just have to find it, sir - Soldier 4, sir.

And I think Soldier 4 was your combat first aider?---Yes, sir, that's correct.

30 You assisted Soldier 4 in CPR?---I don't - sir, Soldier 19 is also a CFA and once Jake was put onto the gator obviously the three of us put him on and I was told by Soldier 2 to jump off because I'm not a CFA and Soldier 19 and 4 started to do CPR on the way to hospital with American medics.

35 I appreciate that it's a very stressful time for you but I want you just to see if you can remember , from the time of the shot ringing out to the time Jake is on the gator, about how long?---I have no idea, sir. I just don't have a clue.

40 I suppose what I'm getting at is, to you mind, did people react quickly enough to your cries for help?---Yes, sir. Like I said, I think the door was opened probably in less than ten seconds, and at that stage Jake still had a pulse and - because I checked for a pulse.

UNCLASSIFIED

You found it yourself?---Yes, sir. He had a carotid pulse. It was weak and slow.

(Telephone ringing in hearing room)

5

It's all right, Soldier 17, we've just got a ringing phone over here. So you felt his neck for his carotid pulse?---Yes, sir, and he had a pulse. We applied bandages, shell dressings to his head to try to stop the blood flow and that's - I had the second bandage on and that's when Soldier 4 came and he said, "We need to get him basically to the hospital as quick as possible" and someone had a stretcher waiting, so we - all three of us - I swapped with Soldier 19. He grabbed Jake's head. I grabbed Jake's body and Soldier 4 grabbed his legs and we picked him up, put him on the stretcher. Soldier 2 assisted us in carrying him out to the gator which was no - probably 15 metres away from the room and then that's when Soldier 2 told me to jump off and Soldier 4 and 19 started driving out and I seen them doing CPR on him before he got out the gate.

20

That was the immediate evacuation away from the scene of the shot. Did you return to your room after that or did you go somewhere else, when you handed Jake to the medics?---I just stood outside, sir, for a bit because I was a bit - I don't know how to put it, sir. I just - I didn't really know what had happened. I wanted to go to hospital but we weren't allowed because - straight away because obviously they were doing whatever they were doing at the hospital to try to save him, so I think it was about ten minutes before we were allowed to go up there. So just before I went up I was allowed to I think get shoes and I had to get all my - at that time I was only allowed to get the shoes out because - and obviously the weapon because that's all I needed at the time. And then we went up - I think I went up with - Soldier 1 took us up there because I'm not sure where anyone else was. And that's when Soldier 30 had arrived from our other FOB and we went up there and I seen Jake and that's when we - I started talking to the padre and the neurosurgeons.

35

I'm just interested in the room, when you went back to the room, you had to get some gear out, had to get some shoes and socks?---Yes, sir.

40

What about your combat equipment - personal load carrying equipment, that sort of stuff?---No, sir, I didn't get that out. To be honest, I wasn't really thinking about that stuff, sir. I just wanted to go to the hospital.

45

This is important; if you can remember, we would appreciate it. Do you recall whether you physically moved anything in the room when you went back to get your shoes?---No, sir, I didn't move anything because Soldier 2 said, "Make sure you only grab your shoes and the rifle, don't touch

anything.” So he watched us and basically - - -

And - yes. Was Soldier 19 with you - - -?---(Indistinct) No, Soldier 19 was still at the hospital, sir.

5

So you went to the hospital?---Yes, sir, I did.

When was the next time you had access to your room?---Sir, I believe it was after they decided to turn the machines off.

10

What access were you given to that room then?---Soldier 2 escorted us - myself and 19 in again, and the only thing we were allowed to remove was a fresh set of cams, toiletries and combat body armour.

15

We’ve seen a video and there appeared to be photo paper and ADF wafer seal at the doorway. Do you remember those seals being put on the door? ---No, sir, I don’t.

Do you remember them being there at all?---No, sir.

20

Was the room piqueted at all after Jake was evacuated?---I’m not aware but I believe that Soldier 1 had a key and I’m pretty sure that he locked the door because they have locks on them.

25

Your access to the room after that was always by a person with a key; is that true?---Yes, sir.

I want to talk to you about - I know it’s early in the morning over there and I appreciate you’re assisting me here - the repatriation of Jake?---Yes, sir.

30

The Board has got your statement, or various statements that you’ve made, but I’m keenly interested in this: you were asked to be part of a party to repatriate Jake back to Australia; that’s correct?---Yes, sir, I was.

35

Who gave you that duty?---I wouldn’t call it a duty, sir, I’d call it an honour, and amongst the people at SECDET, we got together and we decided the people - the eight most people that were closest to him would give him the honour to send him home, sir. Obviously there’s a lot more than eight people that could have been chosen.

40

Sure. As you say, you were honoured with that task. Who was in charge - and using the matrix, if you will, if that soldier is on the matrix; if not, just say so - of the repatriation party?---The person who was - once we left Jake to take back to Australia, I believe it was Soldier 2. He was the most

45

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senior soldier and obviously - I can't say that bit because it's an OPSEC breach.

5 All right, but in any event, Soldier 2, he was the senior soldier there in that party?---Yes, sir, he was.

10 Were you given any instructions about dealing with this Kenyons, the civil contractor, when you got to Kuwait?---No, sir, not really. We just got told the Army goes through them and we didn't really have a choice about anything else.

15 When Jake was loaded on to the plane at Baghdad, was he accorded any military honours?---Yes, sir. The people from JTF Headquarters here, they provided an honour guard, and also the Americans, they also provided an honour guard for him as well.

From your statement you're very complimentary of the assistance the Americans gave you?---Yes, sir.

20 But when you got to Kuwait City, you said you were disgusted at what happened?---Yes, sir, that's correct.

You removed Jake from the aircraft in Kuwait?---Yes, sir.

25 Did the repatriation party do that personally, or did someone else do it? ---No, sir, we did that, and there was also another honour guard waiting there which was provided by the support unit for this operation at Kuwait.

30 Where did you accompany the body to, if anywhere?---We took him to - first of all, we took him to another American morgue - I'm just trying to remember, sir. Yes, sir, we took him there and I can't recall if it was that same day or the next day we had to take him to this Kenyon place.

35 When Jake was at the American morgue, was anyone with him at that time - I'm talking about the 24 hour, or did you go to accommodation; what happened there?---Yes, sir, we took him there on the day that we got there and we got told - obviously they were going to send him home as soon as possible. We left him there that night in the American morgue and we got told that the next morning we would come back and there would be new instructions of what we had to do. Everything was just - we didn't really know, sir, what was happening ahead. We would get told the same day
40 and then we would go and do what we needed to do.

45 You returned the next morning and collected Jake?---Yes, sir, we did.

UNCLASSIFIED

Was there anything about Jake's coffin that you could identify as being Jake's?---No, sir, nothing distinctive. All I can remember was it was the exact same coffin that we took him from Baghdad in. The one here that the cache here provided. It was still the same coffin.

5

Did it have any distinctive markings or was it a distinctive type?---No, sir, it was just big and silver.

Were there other big silver coffins around the place when you got to the American morgue?---No, sir.

10

You start to deal with Kenyons and you're told that Jake would be repatriated on a civilian flight; is that right?---Yes, sir, that's correct.

Did you have any communication difficulties with Kenyons; could they speak English?---I'm not aware of that, sir, because we were told from - this is being passed through Soldier 34, that 2 - this soldier passed it on to Soldier 2 that we weren't allowed in so to my knowledge Soldier 34 and 2 were dealing with the Kenyons. The only role we had, sir, was taking him from the American morgue to the Kuwaiti morgue. We took him out of the back of an ambulance, put him on to a trolley, they wheeled him in. From then, sir, we didn't see him until the next day, which we thought was still him in a new coffin, and we didn't get to talk to them, sir. We weren't allowed in; I'm not aware if they spoke English or not.

20

25

So just from what you observed, the next day you collected who you thought was Jake, it was a different coffin?---Yes, sir, it was a different coffin.

What was that coffin made out of: was it another metal one, was it wooden?---I think it was wood, sir, it had a - basically what I describe as pallet wraps, big silver things around to obviously keep the lid on. It was sealed with some sort of not glue but something similar to keep it airtight, obviously. On the top of the coffin it had Jake's full name, regimental number and I think it had "Australia" on it as well.

30

35

If I can just clarify something. Sorry to do this, you probably thought that you've given me a clear answer and you probably have. The silver metallic coffin that Jake left Baghdad in and that you unloaded from the plane in Kuwait, that's the one you took to the American morgue; is that right?---Yes, sir, that's correct.

40

From the American morgue, did you take that same silver coffin to Kenyons in Kuwait City?---Yes, sir, we did.

45

UNCLASSIFIED

From Kenyons to the aircraft for the return flight to Australia, that was a different coffin that had the wood with the gluing and the banding around it?---Yes, sir, it did.

5 Thank you for your time, Soldier 17, I've got no further questions.

PRESIDENT: Thank you. COL Young.

10 COL GRIFFIN: Mr President, before COL Young starts, the witness has been giving evidence for an hour and a quarter. He's accommodated in fairly basic facilities and it may be an appropriate for an adjournment just to allow him to refresh himself, if that's convenient to you, sir.

15 PRESIDENT: I'm comfortable with that, and it might be a time that we can try to do something about the videoing also. We'll take a quarter of an hour adjournment at this end.

(Open session)

<EXAMINATION BY COL YOUNG

[1051]

5

COL YOUNG: Soldier 17, my name is COL Young. I'm a legal officer and I represent the interests of Jake, PTE Kovco. I represent his interests and his reputation. Do you understand that?---Yes, sir, I do.

10

If I could firstly talk about what's known as the buddy system and if you could be shown Exhibit C8, which is the SOP, the SECDET prepared by the OC. Is that available, MAJ Hyde?

15

MAJ HYDE: Yes, it is, sir.

WITNESS: Yes, sir, I have that now.

20

COL YOUNG: Is that something you've seen before, or do you recall that you've seen it before?---Yes, sir.

You have seen it?---Yes, sir, I have.

25

Can you tell us how it was brought to your attention?---When we first got to the cove there - we were running off SECDET VIII SOPs until the OC could write up a set of his own and - and basically they said you got to go through them and have a look at them to see how things work and if you don't understand anything just ask someone.

30

All right. Did you read all of the orders?---No, I didn't, sir.

Can I refer you to paragraph 161.8, which is headed, "Weapon Safety," and that discusses the buddy system; towards the back of the document? ---Was that 161, sir?

35

161.8?---Yes, sir.

40

Could I just ask if you would read that to yourself and I'll just ask you a question?---Yes, sir.

Having read that, is that clear to you how the buddy system is to work? ---Yes, sir.

45

In answering "Yes," to that, is your answer based on previous experience of the buddy system?---Yes, sir, we have used it before.

UNCLASSIFIED

Have you ever found yourself in a situation coming off duty where there's no buddy with you, as it were, and you're on your own?---Yes, sir, I have.

5 What do you do in those circumstances?---I unload my own weapon, sir.

I take it that's not a preferred option, you would be more comfortable if a buddy was with you?---Not particularly, sir. It's my personal weapon and I unload it, it's my responsibility.

10 Do you think there's any need for a buddy system?---No, sir, I don't.

If we could just move on to another area. You might recall in the statement you made to the Military Police that you said you didn't recall
15 Jake having any tattoos. Do you recall making that statement?---Yes, sir.

Is that still your recollection that Jake had no tattoos, to your knowledge?
---At the time, sir, I didn't remember that he had some but I think he does.
I don't make it a habit of looking at other people's bodies, sir.

20 That's good to hear and very encouraging. I take it, though, living in close quarters with him you may well have seen him stripped to the waist, for example, when he was changing clothing?---Yes, sir.

25 You didn't happen to notice a tattoo on him that you can recall?---Sir, I think, I'm not entirely sure, but I think there's one on his back, around his shoulder region, but I can't be a hundred per cent sure.

30 Thank you, that's fine. You've already given us a description of Jake's personality and so on and I just use a few words and I'll just ask you if you agree with these descriptions. Jake was "funny, happy go lucky"?
---Yes, sir.

35 "An uplifting personality"?---Yes, sir, he had.

This one is just a little bit longer - "Known as a person who would try to lift the mood of those around him when things did not seem to be going well." Is that a reasonable description?---Yes, sir, most definitely.

40 Finally, "A larrikin who made people laugh"?---Yes, sir, he did.

You've told us you had a 9 mm pistol. Do you have a recollection of when that was issued to you?---Yes, sir, I believe it was in the first week that we got to Baghdad. We didn't have our own for Kuwait. I think we
45 used the ones that were provided at Kuwait. When we got here, after our

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training here at JTF Headquarters, as soon as SECDET VIII handed over to us, we were issued - everyone at the Cove was issued a pistol, because that was our first position.

5 I just draw to attention, and you might just listen to this, it might be more for Counsel Assisting or perhaps I've got it wrong. When evidence was given the other day, evidence was given that Soldier 19 was issued with a pistol but Soldier 17 was not issued with a pistol. That evidence was given based on Exhibit C10. On Exhibit C10 your name appears with
10 your PMKeyS number and indicates no pistol was issued to you. So it seems to me there might be another document which relates to your issue of the 9 mm pistol. I don't ask you to respond to that, Soldier 17, you've told us you have a pistol and we accept that you did have a pistol. That might be something for the Board to follow up. If I can move on from there. I only have one or two more questions for you. You've told the
15 Inquiry that you did the Suicide Awareness Course; that's correct?---Yes, sir.

20 You didn't have a great recollection of the course but you did recall you were told what to look for; is that right?---Yes, sir.

Nothing came to your attention, living with Jake for the time you did, that he had any difficulties or was depressed in any way?---No, sir.

25 Would it be your evidence that you had no reason to believe that he intentionally shot himself?---Yes, sir.

That's all the questions, I have for you. Thank you, Mr President.

30 LTCOL HOLLES: May I just ask one further question?

PRESIDENT: Yes, LTCOL Holles.

35 LTCOL HOLLES: LTCOL Holles again, Soldier 17. In the time that you lived in the room with Jake, did you ever see his pistol in the room with the magazine on it?---No, sir, I didn't.

Ever?---No, sir.

40 Thank you, sir, that's all the questions I wish to ask.

PRESIDENT: Soldier 17, you don't see the need, as I understand it, for the buddy system; is that a fair comment?---Yes, sir, I do.

45 Have you any idea what Jake's attitude was to the buddy system?---I have

no idea, sir.

Are you aware of any situations where he may have not used the buddy system?---No, sir, I'm not aware of that.

5

Thank you. Gentlemen, anything arising out of that?

COUNSEL REPRESENTING: No, sir.

10 PRESIDENT: MAJ Hyde?

MAJ HYDE: There's just two matters, Mr President and Members.

15 PRESIDENT: Before you go on, MAJ Hyde, LTCOL McConaghy needs to finish up.

LTCOL McCONAGHY: Thank you, sir.

20 <EXAMINATION BY LTCOL McCONAGHY 1102]

LTCOL McCONAGHY: Soldier 17, it's LTCOL McConaghy again. You'll recall from yesterday that I'm representing the interests of Soldiers 25 2 and 14?---Yes, sir.

There's one area that I wanted to ask you some further questions on. Do you have your statement that is Exhibit C14 in front of you?---Yes, sir, I do.

30

What I'm going to ask you about basically concerns the condition of weapons at the various callsigns within the complex. Firstly I want to take you to paragraph 9 of your statement. Can you just read paragraph 9 to yourself?---Yes, sir, I've read that.

35

It's the case, is it, so far as your position is concerned, that at callsign I the weapon would be in state Newport?---Yes, sir, that's correct.

40 I would just like you to go to paragraph 20, if you could, please?---Yes, sir.

At paragraph 20 you refer to that particular callsign and in paragraph 20 you make the comment that:

45 *It wasn't necessarily always the case at that callsign that a*

member would take either one of his weapons to the Newport condition.

?---Yes, sir, that's correct.

5

I would just like your comment, then, going back to paragraph 9, why do you make the comment:

There is always someone at Newport -

10

I'll just use the condition. So if you have a look at the third line of your paragraph 9 you'll see what I mean. Why do you make that statement?---Because that's how it's meant to be, sir, someone's always meant to be at Newport.

15

But the practical reality is that from time to time members of your brick would not be at Newport for whatever reasons?---Yes, sir.

20

So that requirement to be at Newport was not always complied with?---No, sir.

And why would that be the case?---I'm unsure of other people, sir, but my weapons - weapon are always at Newport, sir.

25

But are you able to shed any light on why other people's weapons wouldn't be at Newport at that particular callsign?---No, sir, I - like I said my weapon was at Newport, so I can't comment on someone else's weapon.

30

Sure, well you can comment on the fact that they weren't at Newport. What you're saying is you can't comment on why they were not at Newport?---Yes, sir, that's correct.

35

For reasons for not being at Newport. All right, if we could just stay with callsign I and this next series of questions only relate to callsign I?---Yes, sir.

40

At callsign I the requirement is to be at Newport and when a member dismounts from callsign I to move onto another callsign, he would go through the *[blank]* at Beach, is that correct?---Yes, sir, he would.

That Beach would be the Beach that's located next to that particular callsign I?---Sorry, sir, what - I missed the first bit.

45

That Beach would be near callsign I?---Yes, sir, it is.

5 When a member goes to Manly at Beach from that callsign, is there anyone present to act as a buddy?---Yes, sir, the ongoing person is usually the buddy that watches them go to the Manly and why it's there - that person watches them go Newport.

10 Do you recall on 21 April who you were following? In other words, which other member were you following around the various callsigns?---No idea, sir. I think I wrote it in my statement but I'm not sure.

15 I'm going to have a document shown to you in just a minute but could you think about this - could it be the fact that on that particular day you were following PTE Kovco?---No, sir, we already discussed and I thought I was too, sir, but because Soldier 2 was in the rotation it was mixed up, otherwise on that day I would have finished on D with Jake but because I wasn't - because Soldier 2 was in there, I didn't finish on D with him, otherwise I would have been following him around, sir.

20 Just dealing with Soldier 2, Soldier 2 during that period of duty was rotating between J and K - actually - I withdraw that - J and another - and one other callsign?---Yes, sir, that's correct and that was G which is the same as L at - where we were stationed.

25 So he was - so 2 was only rotating through two callsigns during that day?---Yes, sir, that's correct.

And neither of those callsigns was I?---Yes, sir, that's correct.

30 If Counsel Assisting could hand to the witness a document that's titled, *[blank]*. Have a look at that document and familiarise yourself with it and tell me whether or not you recognise it?---Yes, sir, I do.

35 Is that the roster for the period 19 April through 25 April involving your - - -?---Yes, sir, it is.

40 And you'll see there that under each of those dates there is a list of names of individual soldiers and including, for this period, Soldier 2, would you agree with that?---Yes, sir.

Now, you'll also agree with me that your name appears on that list for 21 April immediately before PTE Kovco's name, is that correct?---Yes, sir, it does.

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Does that help you in any way in recalling whether or not you were in fact following PTE Kovco from callsign to callsign that day?---Yes, sir, but I remember being on with callsign - I'm just finding it, sir. When I was on D, I was on with Soldier 20 and usually I'm with Soldier 19, sir.

5

So are you saying that the order that appears on this particular document is not in fact the order that you recall members moved from callsign to callsign 2 on that day?---Yes, sir. This is usually how you follow it but if things change, they change. These things aren't set in concrete, sir.

10

If I can take you then specifically to PTE Kovco and his dismounting for the last time from duty at I. Do you recall whether or not you were the person who relieved him from that place of duty?---No, sir, I don't.

15

Do you recall whether you were the person who was available to act as a buddy when he stepped down from the duty?---No, sir, I don't. Sir, I'm not sure if you're aware but there should be TV video of that day. I don't know if you have it or not but I'm sure that if we had that we'd be able to see who was there.

20

Well, certainly that would be of - - -?---Because I can't honestly recall, sir.

25

Thank you for that, Soldier 17. That would be a matter for Counsel Assisting and I'm sure if Counsel Assisting hasn't already made those enquiries he will. But my question to you, just to close this up, can you say with a degree of certainty that you were not the soldier who was relieving PTE Kovco at callsign I?---No, sir, I can't say that to be 100 per cent sure.

30

So it could have been you?---It could have been me, it could have been anyone of the people in our brick, sir.

35

That's the next question I have for you. One of the people in the brick would have been relieving PTE Kovco at callsign I?---Yes, sir.

40

Had the buddy system been employed at that time then at the very least, at that time, it would have been - I withdraw the last bit of my question. If the buddy system had been employed at that time then there would have been certainty as to whether or not PTE Kovco had reduced his state of - or gone to another state of weapon readiness. In other words - - -?---Yes, sir.

In other words left Newport and went somewhere else?---Yes, sir.

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Because from callsign I - could you just for the Board take us through using the callsign matrix where PTE Kovco then would have gone and approximately how long he would have spent at each place?---He would have gone to C for one hour, D for two hours, E for one hour, back to - - -

5

What about - - -?---Sorry, sir.

What about J?---No, sir, on that day Soldier 2 and Soldier 12 were rotating through those two positions as we didn't have enough blokes.

10

Yes?---For some reason they wanted to stay there, because it's obviously the most dangerous spot and for some reason they wanted to have command there.

15

That's fine. So we go I to C, D and then E?---Yes, sir.

Thank you, sir, I have no further questions. Thank you, Soldier 17.

PRESIDENT: MAJ Hyde, have you any questions of - - -

20

COL YOUNG: Mr President, if I might just ask one question I should have asked previously.

PRESIDENT: Certainly. COL Young is going to have a second dip.

25

COL YOUNG: Soldier 17, it's COL Young and I look after Jake's interest and reputation. There was one question I should have asked you and I do that now. Were you offered any counselling following this incident?---Yes, sir, I was.

30

Did you take up that offer and have some counselling?---Yes, sir.

Thank you, sir.

35

PRESIDENT: Anybody else at the Bar table?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: MAJ Hyde, have you any further questions of this witness?

40

<EXAMINATION BY MAJ HYDE

[1117]

45

MAJ HYDE: Yes, I do, just two very brief matters, if I may.

5 Soldier 17, I would like to ask you, if I may about degrees of weapon readiness. When you were first rotated to the Australian Embassy, do you recall who it was that explained to you the degrees of weapon readiness at each checkpoint?---That was Soldier 12.

Could I ask you, please, if you would, to turn to paragraph 18 of your statement?---Yes, sir.

10 In particular, if I may, I'll ask you some questions about some evidence that you gave yesterday. In particular, your comment, "They told Soldier 2 who told us." That was in reference to identification of Jake. Could you indicate to the President and Members of the Board who it was that you're referring to when you say, "we"? Do you see in that sentence it starts,
15 "We asked Soldier 2, et cetera? Who forms that - - -?---As a group we got Soldier 4 to ask Soldier 2 and Soldier 2 was told who I believed to be the locals, whoever run it, that we weren't allowed in there and he assured us that it was the right person.

20 Whereabouts were you when that question was asked? That is, were you at the TMET(?) or the Kuwaiti morgue?---It was asked when we were first at - when we left from BIA, the first time, and the other time was at the Kuwaiti morgue.

25 The first time at BIA, who was part of the group or who were you referring to when you say, "We asked Soldier 2"? Who did the asking and who was - - -?---Soldier 4 and myself was present, Soldier - basically all of the people on the bearer party.

30 Can you identify them from the callsign matrix, please?---Yes, Soldier 14, myself, Soldier 19, Soldier 27, Soldier 35 and Soldier 38, and also Soldier 4, obviously.

35 Do you recall specifically at BIA standing around or being in a particular position when that question was put?---Yes, we were just standing around and Soldier 4 also said, "Stranger things have happened."

40 What did you understand that to mean?---He said, "Yes, it's the right person."

One last topic. You were interviewed by the New South Wales Police at some point and they conducted a record of interview. Do you recall that?
---Yes, sir.

45 If I could, I'll hand to you a redacted version of that interview and if you

could just identify whether you participated in the conversation? When I say "conversation," I mean the record of interview in its entirety?---Yes, sir.

5 I tender the record of interview.

PRESIDENT: Is everybody comfortable with the tender of that document?

10 LTCOL BERKLEY: Yes, I've read it, sir.

COL YOUNG: Yes.

LTCOL McCONAGHY: Yes.

15

PRESIDENT: It will be marked, then, as Exhibit R17.

20 **#EXHIBIT R17 - RECORD OF INTERVIEW OF SOLDIER 17
CONDUCTED BY NEW SOUTH WALES POLICE**

LTCOL McCONAGHY: Mr President, this might be a convenient, since the witness was shown the roster sequence by me and identified as being
25 for the period 19 to 25 to also have that document.

PRESIDENT: If the roster sequence is still available, MAJ Hyde, is there any opposition to the tender of the document at this time?

30 MAJ HYDE: No, sir.

PRESIDENT: It will be marked as C18 - I take it, gentlemen, everybody is comfortable with that?

35 COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: So be it.

40 **#EXHIBIT C18 - SEQUENCE ROSTER**

MAJ HYDE: Nothing further for this witness, Mr President and Members, and I asked that he be released.
45

PRESIDENT: Thank you, Soldier 17. The Board appreciates the difficulty under which you're operating and the trauma that you've just been put through, and we're grateful to you. You may now stand down and you're formally excused. You may go.

5

<WITNESS WITHDREW

[1123]

10 PRESIDENT: We have a firm maybe from LTCOL Holles - and you interpret that as you may - that he may need to speak to this witness again so please keep him in the surrounds or at least available at reasonably short notice.

15 LTCOL HOLLES: It will be during phase II.

PRESIDENT: It will be during phase II, I'm told, so he can leave us in the short term.

20 MAJ HYDE: We'll bear that in mind. Thank you, sir.

LTCOL HOLLES: It will depend on the outcome of some forensic evidence which - - -

25 PRESIDENT: You did flag that.

COL YOUNG: I have one matter. If I could make an application in similar terms to COL Berkley that my cross-examination be made public.

30 MAJ JOLLY: No opposition to that, sir.

PRESIDENT: Any other opposition or any comment from the Bar table?

LTCOL BERKLEY: I support it, sir.

35

LTCOL HOLLES: No objection to that course.

40 PRESIDENT: Yes, COL Young's cross-examination of Soldier 17 can be made available and treated as though it was in open session; subject to the same restraints, checks and balances as indicated before.

Any other applications before we move on to the next witness? COL Griffin, is the next witness now available to us?

45 COL GRIFFIN: We have a witness scheduled but I understand, at

LTCOL McConaghy's request, he wishes Soldier 14 to be interposed, and I'm happy to do that, sir, if that is still his wish at this point in time.

5 LTCOL McCONAGHY: Sir, Counsel Assisting indicated to me that the witness Soldier 14 would be needed to give evidence this week. Bearing in mind the time and the difficulties that we've had over the last couple of days, it's most convenient that, if it's to be this week, it be now. I would ask he be interposed.

10 PRESIDENT: Very well. I take it, COL Griffin, you're comfortable to call Soldier 14 as we speak?

COL GRIFFIN: Yes, I am, sir.

15 PRESIDENT: We'll hear from Soldier 14, then.

<SOLDIER 14, sworn [1126]

20

<EXAMINATION BY COL GRIFFIN

25 COL GRIFFIN: Sir, just bear with us for a moment, if you would, while we assemble documentation before the witness.

PRESIDENT: Yes, certainly.

30 COL GRIFFIN: Soldier 14, you have before you a matrix of soldier names and numbers. Do you see that document before you there?---Yes, sir.

35 Could you just identify your name on that list of names and tell the Board whether or not the number 14 appears next to your correct name and identity?---That's correct, sir.

PRESIDENT: Perhaps you could adjust the camera. We haven't got a picture of the witness at the moment.

40 COL GRIFFIN: Sir, it's being attended to.

45 During the course of your evidence, if you need to refer to any of your comrades by name, would you please ensure that you don't mention the name and that you refer to that list of callsign numbers for the soldiers, do you understand?---Yes, sir.

Do you recall giving a statement to the Special Investigation Branch?---That's correct, sir.

5 Is it the case that you have also made in the last 24 hours a statement with the assistance of your legal representatives for the purposes of your evidence to this Board today?---Yes, sir.

10 Have you had the opportunity to see those statements today?---Yes, sir.

Are you satisfied that they are true and correct?---Yes, sir.

15 Insofar as in the statement you've recently compiled, you've made some qualifications about the content of the SIB statement?---That's correct, sir.

With those qualifications, the documents are true and correct now?---That is correct, sir.

20 Sir, I tender the SIB statement and the recent statement dated 21st day of June 2006.

PRESIDENT: I take it they'll both be in the classified list?

25 COL GRIFFIN: Sir, they would both be and there is a redacted copy of each which will bear the same number with the prefix R.

#EXHIBIT C19 - SOLDIER 14'S SIB STATEMENT

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#EXHIBIT C20 - STATEMENT OF SOLDIER 14 DATED 21/06/06

35 **#EXHIBIT R19 - REDACTED VERSION OF SOLDIER 14'S SIB STATEMENT**

40 **#EXHIBIT R20 - REDACTED VERSION OF STATEMENT OF SOLDIER 14 DATED 21/06/06**

LTCOL MCCONAGHY: Mr President, it is Service Police statement to be more correct, rather than interview.

45 PRESIDENT: Very well. I understand it's your statement rather than an

interview. So be it.

COL GRIFFIN: Sir, I propose to read the redacted copy of each statement onto the record.

5

PRESIDENT: Perhaps before you do that, Colonel, can I ask does the Court need to be closed or otherwise?

COL GRIFFIN: These are redacted statements and that can be done in open.

10

PRESIDENT: Very well, for the purpose of the exercise the Board is now open. I note the press aren't here and at a later time these statements can be provided to them if they require them. Colonel, you might begin.

15

COL GRIFFIN: Sir, can I also indicate that my examination of this witness will be in open session if that is - - -

PRESIDENT: Yes, thank you.

20

(Continued in open session)

(Open session)

COL GRIFFIN: I read first the Service Police statement, excluding the first paragraph preamble.

5

My full name is (blank). I am currently 22 years of age. I am a Private in the Royal Australian Army Infantry Corps. I am posted to Support Company 3 Royal Australian Regiment (3 PARA) Holsworthy Barracks, Holsworthy, New South Wales where since October 2001 I was employed was a rifleman.

10

I have successfully completed Basic Rifleman's Course 2001, Basic Parachute Course 2003, deployed to East Timor 2002, Assault Pioneers Course 2003, deployed to Solomon Islands 2005, Sniper Course 2005.

15

I also completed by Force Preparation Deployment Training conducted in Holsworthy Barracks, Sydney, New South Wales, and Enoggera Barracks, Brisbane, Queensland, prior to deploying to Operation CATALYST, Baghdad, Iraq. As part of that training I was trained and was deemed qualified on all weapons during the deployment. Those weapons included the M79 grenade launcher, MAG 58 machine gun, F1 hand grenade, 66 mm short range anti-armour weapon, rocket launcher, F88 Austyre, F89 Minimi, 9 mm self-loading pistol, F88 grenade launcher, and was familiarised in the operation of the 0.5 calibre machine gun. I can recall that the 9 mm that I was trained and tested on during my force deployment training was a 9 mm pistol (blank). During my deployment my 9 mm pistol was issued through the Q Store located Anzac Cove, Baghdad, and at that stage the pistols were issued were at the (blank).

20

25

30

On (blank) deployed with 3RAR PARA on Operation CATALYST where I was posted to SECDET IX, Australian Security Forces, Baghdad, Iraq. I am currently being employed as (blank). I am currently accommodated at SECDET IX, Australian Embassy, (blank), Accommodation Buildings, Australian Embassy, Baghdad, Iraq, where I share that room with (blank), who is a member of my section.

35

40

Whilst in Baghdad on deployment we have been working in groups (blank). During my deployment it is a requirement task dependent that we are required to complete test of efficiency training (TOET) on all weapons, however, specifically on the weapons each soldier carries. I (blank) complete TOET would be

45

conducted on all weapons systems. I have personally conducted TOET training (blank) since being deployed to the Embassy detachment. I myself have been to a live fire range whilst in Baghdad (blank).

5

I am currently employed at the SECDET IX Detachment, Australian Embassy, Iraq, and the current manning is (blank). The protection of the Embassy is achieved by maintaining (blank). All security positions have been allocated a name and a position or station in and around those grounds. Those positions are called (blank) promulgated through Standing Operating Procedures (SOPs) (blank).

10

The degree of weapon readiness employed within the Embassy is that all members are NB (blank). Within the Embassy grounds there are weapon clearance points at the weapon cleaning station (blank). At all times when clearing weapons the (blank) is to be employed. At all times when a weapon clearance is conducted all weapons held by the soldier are to be cleared which includes side arms (pistol). The buddy system has been employed since the start of Operation CATALYST including the predeployment training and on every other operation that I have been on (blank).

15

20

About 1330 hours on 30 April '06 I had a conversation with (blank) of the Special Investigation Branch. As a result of that conversation (blank) showed me a computer generated topographical representation of the Australian Embassy grounds and buildings contained within. Whilst viewing this document I indicated with a panned cross the location of my accommodation. Attached to and forming part of this statement is that topographical representation of the Australian Embassy.

25

30

On 21 April '06 I was employed as a rifleman within (blank), Australian Embassy Detachment, SECDET IX and I was located at the (blank). I can recall seeing a person I know to be Jacob Bruce Kovco on several occasions throughout the day. The first time I saw him was about (blank). We were both on piquet at the (blank). I can recall that he was in good spirits and we talked and joked with the (blank) on the same security point (blank) and Kovco went to his, being the (blank). From (blank) hours I was on at the (blank) and PTE Kovco joined me about (blank) as this point is a double staggered position. Whilst there PTE Kovco and I talked freely and he seemed to be his normal self. At one time we talked about our respective partners. At 1500 hours on 21 April '06 (blank), we both walked towards the doorway to exit

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40

45

5 *that area. I can recall that PTE Kovco walked ahead of me and at that time we were having a verbal joke. I can recall that PTE Kovco walked ahead of me (about 10 metres) and entered the door to (blank). I did not see PTE Kovco clear his weapons at the clearance point and I am sure that he could not have done as he entered the doorway as I walked around the corner and began to clear my weapons.*

10 *The clearance of weapons when done properly takes at least 10 to 15 seconds and I was only between 5 to 7 seconds behind him. I know I did not check his weapons using the buddy system and he did not check mine. After clearing my weapons I tried to enter door but PTE Kovco was holding the door closed and wouldn't let me through. After a short time, PTE Kovco let me through and we continued walking through the Embassy to the main entrance and then onto our accommodation block. I did not speak to him about the weapon clearance.*

20 *I have known PTE Jacob Kovco for approximately three years after first meeting him on the sniper preselection in 2004. I joined Support Company in 2004 and PTE Kovco joined in 2004. I can describe PTE Kovco as being about 180 cm tall, with medium brown-coloured hair and of medium build. I believe he has a tattoo of a dragon on his back.*

25 *Since that time I have known him, I would consider our friendship to be really good friends. I would describe him as being a good-humoured, jovial, professional soldier and that he has a family with a wife and two kids and he was a devoted and happily married man. I can recall that when PTE Kovco ever spoke about his wife and kids, he always spoke very highly of them.*

30 *I have never witnessed or known him to partake in the use of any drug, nor have I had any reason to suspect such activity. However, I am aware from social platoon functions that he does enjoy a social drink of alcohol. In saying that, I am not aware if he ever drinks to excess on regular occasions.*

40 *He was an extremely active person who enjoyed maintaining his physical fitness. I can confirm that at no time have I ever heard PTE Kovco ever mention anything in relation to conducting any form of self-harm.*

45 *I can state that since I have known PTE Kovco, he always handled his weapons in an experienced way. However, on one*

occasion a few days before 21 April '06 I saw PTE Kovco had his pistol and was trying to [blank] the weapon. I can recall that he brought his weapon to the [blank] condition. I asked him what he was doing and I cannot recall what (if he did at all) reply. However, he then unloaded his pistol.

In the seven days prior to 21 April '06, I had seen PTE Kovco on at least two separate occasions have his pistol out of the holster in the (blank). On 21 April '06, after we completed our piquets and returned to our accommodation block, I returned to my room and started to use my computer. I can recall at one stage I could hear music and singing come from room (blank). Asked me to tell the guys next door to shut up as he was trying to sleep. I believe I yelled out, "Shut the fuck up," or words to that effect.

A very short time later, I heard a sound which I knew was a 9 mm round being fired. I immediately thought that someone had an unlawful discharge. I immediately ran next door and, as I turned and looked inside, (blank) I saw a body (dressed in shorts and T-shirt) on the floor (although I didn't recognise him) lying on his back and (blank) was kneeling over PTE Kovco and supporting his head, "Stay with me, Jake." (Blank) was yelling for a medic.

I knew that the injury was bad from looking at PTE Kovco. I then yelled out for someone to get a combat first aid (CFA) kit. I saw that they were trying to do first aid and (blank), who had also come to the room, then ran off to get help from 10 Combat Support Hospital (10CSH).

A short time later PTE Kovco was carried out of the room on a stretcher and placed on a gator and then taken to 10CSH. From there I returned to the accommodation area and asked someone, "Was it a head wound or a chest wound?" and I was informed that it was a head wound. I knew then that it was pretty bad.

After a short time (blank) returned and spoke to everybody and informed us that PTE Kovco was going to die and, if we wanted the opportunity to say goodbye, we could. We then started to make our way to the hospital. (Blank) mentioned that we should get a flag and a unit beret.

Once at the hospital we went into the ER and I said my goodbyes. At that time the Australian national flag and unit beret had been placed on PTE Kovco. I then went outside for a while. I believe that the other guys slowly filed through the ER and did similar

actions.

5 *A short time later the (blank) came outside and informed us that PTE Kovco wasn't breathing on his own and needed a machine to help him. The (blank) further stated that they are going to turn the machine off, that PTE Kovco has been moved to a separate room so we can say our goodbyes.*

10 *We then all moved into that room and stood around PTE Kovco. An American padre was also present and he led us in The Lord's Prayer. It was decided that the machine was going to be switched off. We all stood around PTE Kovco. The (blank) said some words, followed by a few other members of the (blank). I am unaware who started it but someone started the unit song and*
 15 *everyone joined in and sang along. We then slowly moved out and returned to the Embassy.*

20 *I have heard the term, "Allah Akbar" before, and that was during our intelligence brief prior to being deployed. I am under the belief that it means, "God is the greatest" and is said before terrorists kill themselves. I have never heard anyone from the platoon using this phrase in a joking fashion whilst we have been deployed.*

25 *About 1435 hours on 30 April '06 I had a further conversation with (blank) of the Special Investigation Branch. As a result of that conversation, (blank) asked me to sketch a drawing of the condition of the room when I first got there and of the location of*
 30 *the people in that room. Attached to and forming part of this statement is that sketch.*

Statement recorded and signature witnessed on 30 April '06.

35 I now read the redacted version of the 21st day of June statement marked Exhibit:

40 *I have read Annex F to Chapter 7 of ADFP06.1.04, Administrative Inquiries Manual. I understand my rights and obligations as a witness before a Board of Inquiry.*

45 *I am a (blank) in the Royal Australian Infantry Corps. I am currently posted to Support Company, 3rd Battalion Royal Australian Regiment (3RAR) and am currently serving with the Security Detachment (SECDET) in Baghdad, Iraq.*

5 *On 30 April 2006 I provided the 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 sets out in main what I told the SIB, although this statement clarifies several points that appear to have been dialogued by the SIB. I have set out my service history in some detail in that first statement.*

10 *The Buddy System*
15 *The buddy system is not a new concept to me. I was first introduced to it during recruit training at Kapooka. In relation to weapon handling, the buddy system is a procedure that is used to ensure that a weapon is properly unloaded. The buddy takes no part in the physical clearing of the weapon but is present to visually ensure that the magazine is removed from a weapon that is being cleared as failure to remove a magazine is the most common cause of UD/ND.*

20 *My SIB statement reads that the buddy system has been employed on every operation that I have been on. This is not correct. When I deployed to the Solomon Islands, we went to [blank] on every patrol and we were responsible for clearing our own weapon when we finished each patrol.*

25 *The buddy system does not only relate to weapon handling but, rather, a range of practices that are used during soldier duties for safety and security. For example, if a soldier was to place a claymore in front of his fighting position whilst on patrol, he would take a buddy who would ensure his mates' security while he set up the claymore.*

30 *The intent and spirit of the buddy system is that, where possible, soldier drills are completed in pairs as this provides an additional cover of safety.*

35 *Paragraph 11 of my SIB statement reads:*

40 *“At all times when clearing weapons, the buddy system is to be employed.”*

45 *This does not accurately reflect what I told the SIB. Although the buddy system is commonly referred to, in practice it is only employed where it is practical to do so. If it is not practical to do so, I do not use the buddy system as I am a professional soldier. I am trained the safe handling of weapons (including unloading*

alone) and ultimately it is my responsibility to ensure that my individual weapons are cleared properly.

5 *When at the Embassy I have a buddy watch me clear my weapon when I finish piquet at the (blank). At this location I change degree of weapon readiness (DOWR) from (blank) to (blank). Prior to the incident involving Jake, when finishing a (blank) piquet at the (blank), I would not use a buddy when clearing my weapon because of the location of the Beach. If I was to unload*
10 *with a buddy, this would have required me to wait. (Blank). It is normal for the soldier coming on to the piquet to (blank) and, because there are (blank), there is no need to wait for the relief.*

15 *We normally left (blank) and cleared our own weapon at the Beach.*

20 *Prior to the incident, it was not possible for the soldier already on duty to act as the buddy because the Beach was not within sight of the (blank). If they came to the Beach to watch the clearance, this would have left the (blank).*

Weapon clearance on day of incident
25 *On the day of the incident, Jake and I finished duty together at the (blank). I cleared my person weapon (I did not have a pistol) at the Beach after finishing piquet. However, did not have a buddy present as Jake had already proceeded through (blank). I did not call him back to clear me because I am trained to clear my weapon safely alone.*

30 *On leaving the (blank) with Jake, I did not buddy his weapon clearance, nor did I see him clear his weapons at the Beach. He could have done so, however, in my opinion, he didn't have time to clear his weapons at the Beach without me seeing.*

35 *We had been joking together as we finished duty and I suspect that he was hurrying to get through (blank) so he could hold the door closed on me. There is a possibility that Jake could have unloaded his weapons from the other side of the door which was out of my view. After he let me through (blank), we walked*
40 *(blank) together and I, although I do not remember looking at his F88, I believe that, had the magazine still been on the F88, I would have noticed it.*

45 *I have worked with Jake for three years and he has always been competent with weapon handling. Even when Jake let me through*

5 *(blank), I did not ask him if he needed a buddy because I was not concerned about his ability to clear his weapons safely. Had I noticed a magazine on his F88, I almost certainly would have said something to him about clearing his weapons. As I did not see a magazine on the F88, it did not occur to me to question the degree of weapon readiness of his 9 mm. If Jake did not unload his 9 mm when he finished duty on the (blank), it should have only been (blank) as this is the degree of weapon readiness for the (blank).*

10 *TOET Training*
In relation to paragraph 7 of the SIB statement, this does not accurately reflect my understanding of TOET training on this operation. The paragraph reads that prior to completing tasks within (blank), a TOET would be conducted on all weapons system. The paragraph also reads that I have conducted TOET once since being deployed on OPERATION CATALYST, which implies that I have only been in (blank) once. This is not correct. I have been tasked in (blank) on approximately 15 to 20 occasions since being deployed on this operation.

20 *Witnessed at Baghdad, this 21st day of June before me, Michael Colin Lowe, Junior Counsel Representing.*

25 Soldier 14, do you confirm the accuracy of those documents that I've read as the truth of your evidence to this Inquiry?---Yes, sir.

30 Is it your understanding that, while you're on duty as part of SECDET, you are positively required to clear your buddy's weapon?---(No audible response)

Why is that?---Due to certain situations, sir, it's impossible and unpractical to do so.

35 Is it your evidence that you did observe PTE Kovco altering the degrees of weapon readiness while on duty with you?---Yes, sir.

Did that consist of his use of the pistol?---Yes, sir.

40 Did it involve him placing a round in the chamber of the pistol?---Yes, sir.

Did the weapon remain in that position when he left the duty?---No, sir.

45 PRESIDENT: I'm afraid we're going to have to ask the witness to speak up, we're only just receiving him hear. Feel free to yell at us.

COL GRIFFIN: Did you discuss the practice that he was doing with him at the time or did he tell you what he was doing and why?---I discussed it with him, sir.

5

Would you tell the Board about that conversation, please?---Him simply - what he was doing and I can't recall the comment, if any, he made one back. However, I could tell from his body language that he agreed with the statement that I'd made and he promptly unloaded his weapon.

10

How many times did this occur?---[blank] of the weapon occurred once, sir.

Did you observe him do anything else that was out of the ordinary in the handling of that particular weapon, the 9 mm pistol during your time on duty with him at the Australian Embassy?---Other than that, the [blank] of the weapon, sir, the two other times he simply had his pistol out and was not playing with it in any way, just simply had it out of his holster.

15

Was he handling it or just took it out of the holster and placed it somewhere?---Just took it out of his holster and placed it on his leg, sir.

20

Did he tell you why he went through the activity of what you've described as [blank]?---No, he did not, sir.

25

Are you aware of any purpose for that activity?---No, sir.

Have you observed anyone else in the unit do that practice?---No, sir.

When you left the duty with him, where this [blank] occurred, are you able to say with reference to the matrix before you where it took place?---Callsign D, sir.

30

And when?---I'm not sure - - -

35

Which day; are you able to say?---Yes, on the 21st - no, sorry, sir. A couple of days before the incident, I'm unsure of the date.

One or two days before?---I'd say three or four.

40

Three or four days before?---Sir.

He placed a round in the chamber and released the working parts forward? ---He first stripped the weapon. When the barrel was - once the weapon was apart and the barrel was separate, he then placed the round inside the

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barrel, proceeded to put the weapon back together.

Did you observe him remove the round that he had placed in the chamber?
---Yes, sir, after I made the comment, he promptly unloaded his weapon
5 and I observed the round come out of the weapon.

What was the nature of your comment to him?---I said, "What the hell are
you doing, sir?"

10 You were troubled by that action, were you?---I'd say yes, sir.

Why?---It's an uncommon thing, I'd say I've never seen it before. I guess
I was just uncomfortable with that activity, sir.

15 On 21 April you and he were together at a particular place. Would you
refer to the matrix again, please, and identify the place where you were on
duty together?---(No audible response)

Again, at D where you would observe this practice some days before?
20 ---Yes, sir.

Was that the conclusion of your particular subunit's duty for the day?
---On the day of the incident, yes, sir.

25 You were finishing work and he was finishing work, is that right?---That
is correct, sir.

Is it correct that that was a staggered position?---Yes, sir.

30 Which of the staggers had you just completed, that is had you been there
for the extended period or the shorter period?---Extended period, sir.

Would you tell the Board how you were relieved that day? What I'm
asking you is did someone come and relieve you? You don't need to say
35 who they were, but was there a process where other members came and
relieved you for you to go off shift?---Yes, sir, other members came and
relieved us, sir.

Do they appear on the list of soldiers present there?---I'm unsure of who
40 relieved us that day, sir.

They were from another subunit of your platoon?---That's correct, sir.

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When you were relieved did you go together? Was there a staggered relief or was it at the same time? Did the two individuals appear at the same time to relieve you?---Same time, sir.

5 Is it the case that at that time the Beach for that callsign was some distance away from the callsign position?---That's correct, sir.

When the relief came up to relieve you did they relieve you in place or did it happen at the Beach?---Inside callsign D, sir.

10 At the position itself?---Yes, sir.

The first you were aware of your relief is that they appear at your callsign position, is that correct?---That is correct, sir.

15 What happened then?---I proceeded to pack up my individual gear. I had a day pack with me with certain contents in it. I proceeded to pack them up, which maybe took approximately 10 to 15 seconds, and I threw my backpack on my back and then left callsign D.

20 During that particular period at that particular callsign position, had PTE Kovco done anything out of the ordinary with his 9 mm pistol while you were with him?---The day of the incident, sir, no, he did not.

25 Did you observe the pistol and are you able to say what degree of weapon readiness it was at?---Can I answer that question, sir?

You've assembled your day pack, put the contents back into it, and you are now to leave with the relief in place having taken over from you.
30 What happened then?---We were having a verbal joke at the time, sir. Jake then was ahead of me. I've stated in my statement how far. At this time I can't quite remember. I then followed him around from callsign D to the Beach and once I reached the Beach he was already inside. I tried opening the door. He was holding it closed. I knew that he was holding it closed rather than (dropout). I proceeded to clear my own weapon. Once
35 I'd cleared my weapon I then tried the door again and he had - he wasn't holding the door any more so I proceeded to move inside too.

40 What was the joke?---We were referring that - we had a certain member - certain amount or certain numbers within our callsign. We were - I was having the joke that rather than the full amount of soldiers we had one less. Jake replied, "Don't you mean half less?" And I said, "No, one less because they were both half soldiers", which he had another smartass reply, and that's when he obviously decided that he had a little trick to
45 play on me, sir.

What weapons were you carrying?---I was carrying the F88, sir.

5 It follows from that that's the only weapon you cleared at the Beach while he was on the other side of the door?---That is correct, sir.

10 Are you able to say whether or not the time you took for your clearance would have provided sufficient time for him to clear both the F88 and the 9 mm pistol that he was carrying?---Considering he was holding the door closed, I'd say no, sir.

Did you report the *[blank]* of his weapon to anyone after you observed him do that at the callsign the previous day?---No, sir.

15 Did you report his non-participation with you in a buddy clearance at the Beach on 21 April to anyone?---No, I did not, sir.

20 Did you draw to his attention the fact that he had not cleared your weapon?---No, sir.

Did you draw to his attention the fact that you had not cleared his weapon?---No, sir.

25 Did you follow him up on the non-clearance of your weapon, that is did you pursue him as he moved through after you were able to come through the door and take the matter up with him?---No, I did not pursue the matter any further, sir.

30 Did you report to anyone?---No, sir.

Soldier 17 has given some evidence - you've been present for that evidence - that's correct, isn't it?---Yes, sir.

35 Part of his evidence is that you and he were part of an escort group and an honour guard for PTE Kovco's body, is that right?---That is correct, sir.

His evidence is that the group was concerned to ensure the correct identification of the body, is that right?---Yes, that is correct, sir.

40 Why were you concerned about it?---(No audible response).

Yes?---Could you repeat the question.

45 PRESIDENT: What was the answer?

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COL GRIFFIN: I beg your pardon, sir.

PRESIDENT: We didn't hear the answer to the question as to why you were concerned, et cetera.

5

COL GRIFFIN: We'll go back one. The first question that I put is that the substance of Soldier 17's evidence is that the group that you were part of as the escort was concerned to ensure they had the right body, is that right?---Yes. Yes, sir.

10

Why were you concerned about that?---As stated by Soldier 17, we were looking after Jake and we wanted to make sure the job was done which our job was to make sure he got home and I guess we wanted to make sure that it is - was him that went home and that's why, as a group, we had talked about that and one member then put forward that statement to Soldier 2 to make sure that it was him because stranger things have happened.

15

Soldier 17 in his evidence referred to several conversations to that effect, that is to ensure the concern about having the right body. He referred to one at the facility at the Baghdad International Airport, that is nearby where we are today, where this matter was raised and, as I understand it, he referred to the - what you've just said about Soldier 4 saying "stranger things have happened". Were you present for that?---Yes, it was Soldier 4 and yes, I was present, sir.

20

25

He referred to a second conversation from the group or from individuals at the United States Army Military Morgue facilities at Kuwait Airport. Were you present for that conversation?---Yes, sir.

30

Do you recall - again, it was about ensuring the correct identity of the body?---Yes, sir. Once again Soldier 4 made the same comment, sir.

And in the third conversation that Soldier 17 referred to he indicated took place at the civilian facilities in Kuwait. Were you present for that conversation?---I'm unsure of the amount of time to that conversation took place, sir. However, I know that it did and was the group - as a group we had come to that - in a word, sir, we agreed on that, that that was a valid point and Soldier 4 did on numerous occasions that I remember being two, make that statement to Soldier 2.

35

40

To Soldier 2. And your participation in those conversations was as a member of the group, either yourself speaking or being part of the group while those concerns were expressed to Soldier 2?---Yes, sir.

45

So there were several occasions?---Yes, several occasions, sir.

Thank you, sir, that completes my examination-in-chief of this witness.

5 PRESIDENT: Thank you, Colonel, would you bear with us for a moment. Bearing in mind the point we have reached in this soldier's evidence, Colonel, it might be a convenient time for us to take the break, if it's convenient at your end.

10 COL GRIFFIN: That would be very suitable for us, sir. Thank you.

PRESIDENT: Very well. We will very shortly take an adjournment and we'll come back Australian time at quarter past 1.

15 Ladies and gentlemen of the press, I notice you've returned to us, or some of you have. There was some evidence taken in the closed part of the exercise this morning which, at the request of various members at the Bar table, I've ordered that they be released to you because what was discussed during cross-examination by LTCOL Berkley and by COL
20 Young was certainly not secret and it was the sort of thing that I thought, frankly, you ought to be hearing. So that will be released to you as soon as we can make the logistical arrangements. We will return at quarter past 1.

25 <WITNESS WITHDREW [1215]

30 LUNCHEON ADJOURNMENT [1215]

RESUMED [1415]

35 LTCOL McCONAGHY: Mr President, if you will, I have a statement to make and then I'll ask your permission to do something.

PRESIDENT: Yes, thank you.

40 LTCOL McCONAGHY: Thank you, Mr President. Due to unforeseen circumstances beyond our control, both myself FLTLT Lowe have no alternative but to withdraw from this Board of Inquiry. So, sir, I seek your permission to so withdraw on behalf of myself and FLTLT Lowe.

45 PRESIDENT: Very well. Does anybody at the Bar table want to make

any comment about that?

COUNSEL REPRESENTING: No, sir.

5 PRESIDENT: That leave is granted and you may withdraw.

LTCOL McCONAGHY: Thank you, sir.

10 PRESIDENT: That, of course, Counsel Assisting, leaves his clients unrepresented and I don't think we should proceed with the evidence of the current witness. Are there any other witnesses we can call?

15 COL GRIFFIN: Sir, my proposition is that read on to the record the evidence-in-chief that is in documentary form of the intended next witness, Soldier 19, and that that at least allows us to make use of the remaining transmission time. I propose that that evidence be led by the form of reading it. That material can be provided, of course, to any subsequent counsel appointed by the two affected persons here in country to represent them. There is no prejudice, in my submission to you, in that
20 documentary material being led, but I would respectfully advise that that would be the conclusion of the proceedings and that there be no further examination of that witness or indeed of any other witness at this point in time and that we would then be required to adjourn until suitable arrangements are made for the assistance of those affected persons and so
25 that I can advise you of the satisfactory arrangements being made with a view to resuming at some future time.

PRESIDENT: Yes, COL Griffin. We'll adopt that course.

30 COL GRIFFIN: Thank you, sir, I now hand over to MAJ Hyde.

MAJ HYDE: Mr President and Members, if it's convenient we'll have Soldier 19 sworn and I'll then lead his evidence-in-chief.

35 PRESIDENT: Thank you.

<SOLDIER 19, sworn [1420]

40

<EXAMINATION-IN-CHIEF BY MAJ HYDE

45 MAJ HYDE: Soldier 19, I now show you an affidavit: one is an original version; the second is a redacted version of the same affidavit. I ask you

to look at the first affidavit placed before you and identify whether your signature appears on that document?---Yes, it does.

Is that the evidence that you propose to give to this Inquiry?---Yes, it is.

5

I tender the statement of Soldier 19.

PRESIDENT: Is there any opposition to that course?

10

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit C21 and the restricted version likewise.

15

#EXHIBIT C21 - ORIGINAL STATEMENT OF SOLDIER 19

#EXHIBIT R21 - REDACTED STATEMENT OF SOLDIER 19

20

MAJ HYDE:

I, Soldier 19, make oath and say as follows.

25

I am a Private in the Royal Australian Infantry Corps. I am currently posted to Support Company, 3rd Battalion, Royal Australian Regiment (3RAR) and am currently serving with the Security Detachment (SECDET) in Baghdad, Iraq.

30

On 1 May 2006 I provided a statement to a member of 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. In that statement I have set out in some detail my service history.

35

PTE Jake Kovco

40

When we got back from Timor in late 2002, I went to C Company at 3RAR and Jake was posted there. This is where I first got to know him. We shared a pit together on exercise in Tully and so I go to know him really well. We also did the Direct Fire Support Weapons Course together at the end of 2003. I then went to Support Company, 3RAR and Jake followed the next year.

45

Jake was very family oriented. He was always happy and always

talked about his kids. He liked hunting deer and was safety conscious.

Predeployment training and deployment

5 *Predeployment training went for (blank) weeks in Brisbane. Jake was the more senior of the reserve. He was on the reserves because he was doing sniper training. One of the blokes broke a collarbone whilst on leave. I cannot specifically recall the date this occurred. Jake told me that he was very happy about being*
10 *deployed.*

The reserves were up there for the whole (blank) week. If we did something, the reserves would help out. They would not do things with us but maybe after it.

15 *We flew out of Australia on (blank) and spent a few days in (blank). We first got to Baghdad on or about (blank). We went to (blank) first. The job there ranged from escorting tasks to maintaining security of (blank) itself, doing (blank) tasks using*
20 *the (blank) and other driving tasks around the area. I was there for about (blank) weeks.*

We then rotated to the (blank). I do not recall the exact date we started there. Jake was in a different section from me at (blank). When I got to the Embassy I was in (blank), then Jake came into our section. Room allocation was done on a first-in best-dressed basis. We, being me, Jake and Soldier 17, decided we would share.

30 *Duties at the (blank) focussed on the security of the (blank) to keeping an eye on vehicles entering. There are about (blank) positions and, the way we ran it, everyone rotates through them. You take a starting point, you go to the (blank). At (blank) you move to the (blank) bay where the offcoming soldier will go to*
35 *(blank) and you will check him while he goes to (blank). The order of this does not matter. The degree of weapon readiness at the (blank) is therefore (blank). This applies to the (blank) if you had one. You do one hour at the (blank), from there you move up to (blank). From there (blank) you walk through the glass doors at the entrance, get buzzed in, exit the other door, then go (blank)*
40 *to (blank).*

At (blank) is a (blank). It always remains (blank) except when the gun is replaced for cleaning. It is then unloaded. At (blank) you have your Styre and pistol if issued. You would not have to go

45

5 *(blank) on the F88 because the (blank) is at (blank). I did not have to worry about a pistol because I did not carry one at the (blank). From there you go to (blank) along the footpath that leads to the (blank) building itself and enter through the glass doors into (blank).*

10 *You spend an hour in the (blank) room. (Blank). At the (blank) room your job is to keep your eye on the (blank). There is a (blank) there to. After an hour you go to the (blank) by taking the stairs inside the (blank) building (blank) to the (blank). There is an unload by (blank).*

15 *Prior to the incident you would go through the door that opens on to (blank) and the soldier coming off the (blank) would (blank) on his way down. You might leave a position before you were relieved. Depending on how many people you have, the soldier on the (blank) had to come (blank) to replace the soldier on the (blank). He would therefore leave the (blank) minutes early to get (blank) to get to the (blank) on time.*

20 *The soldier coming on to the (blank) may therefore only see the person at the (blank). You are at (blank) for the (blank). The soldier there the longest leaves first. When you are leaving, you get up, say you were leaving, go to the Beach, the other bloke checks that you unload both weapons. From the (blank) you walk off to the (blank). That involves walking through the line, going back to the box, asking the (blank) there if he wanted a brew of if there was a job. From (blank) you go to (blank). Any (blank) period you would sometimes do positions more than once so you could do (blank) on the (blank). (Blank) on (blank), (blank) in the (blank) and the first (blank) that you started on you would do again.*

35 *After (blank), everyone would return to the line, rest for the next (blank) hours, then your section would spend (blank) hours on (blank). Sections would split up having (blank) hours on and (blank) hours off. (Blank). Then your shift starts again.*

40 *Day of the incident*
On 21 April 2006 my section started at (blank). I cannot recall what my first position was. I was at the (blank) for (blank) hours and was in there with Soldier 20 for the (blank), and Soldier 17 for the (blank). Then I went to (blank). The degree of weapon readiness for the (blank) that I went to (blank) after the (blank).
 45 *So I came down from the (blank), changed degrees of weapon*

readiness, may or may not have done (blank) but certainly did (blank) and went to (blank) at that position.

5 I did a (blank), relieving Soldier 20. I made sure his weapon was cleared, then I (blank) at the front, (blank) I relieved Soldier 20 again who was always in front of me. Soldier 17 was always after me. I saw Jake around during the day. I came off the (blank) and saw him on his way to the (blank), for example. I saw him more in passing but did not stop and have a conversation as you do not want to leave guys out in the sun. I relieved Soldier 20 10 then moved down to the (blank) room, did my (blank) there and was at unload to do that. After the (blank) I moved up to the (blank) again. I relieved someone else back at the [blank] but I cannot remember who. I did (blank) more hours on the (blank). I do not recall where I finished but I think it was the (blank). 15 Soldier 12 should have the roster.

20 After we finished our shift Jake was on an email conversation with Shelley, his wife, in our room. He was talking about some camera that he had bought and sent to her. He said, "I've been ripped off, she couldn't find the camera in the box". He then said she found it and he jokingly remarked that she had not looked hard enough. It was a joke. Nothing made me think he was upset. I remember everything we were talking about. We were 25 speaking about our boss in (blank) pack marches we had done and we were laughing pretty hard. We only had just over an hour in the room before it happened and spirits were high as the working day was over. To any suggestion of suicide I say no way, absolutely not. Jake loves his kids. We were mucking around, 30 then 20 minutes later he was shot.

35 Several minutes after mucking around was the gunshot. The music was still going. During that time we were generally talking. Soldier 17 and I had planned to go to the gym at 1600 hours then we said 1615 hours because we were not ready. I had just taken my boots off, my cam plants were still on, we were still generally talking and I knew he was there but could not see him as I went to look into the fridge.

40 Jake was using his computer. I did not even see him pull his pistol out of its holster. He could have had it out already. I do not remember. I cleaned my weapon in my room. Jake was not cleaning his pistol nor had he cleaned it that hour. He may or may not have been pulling the pistol out to be cleaned. You do it 45 any time you want. After he passed away at 10 Combat Support

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(10 CSH) we left the treatment room. I came back to (blank) and talked to people. My clothes were dirty so I went into Soldier 12's room, who gave me physical training (PT) gear to put on.

5 *Soldier 2 came with me to get a weapon out of my room. At that stage we then got cams and toiletries also. We then had no requirement to go back in. People went in to get things to send to Jake's wife. The next thing I had to do with the aftermath was when the Blackhawk came in and Soldier 17 and two others and*
10 *me picked up his body and loaded it.*

Repatriation of the body

I stayed here in Baghdad until I go to (blank). I went by helicopter from landing zone LZ (blank) Headquarters Joint Task Force (HQJTF). As to the exact date I cannot recall. Then I went to Baghdad International Airport (BIA) to put Jake on the plane and then it went to Kuwait. At BIA I went out to a US morgue. Soldier 4 said to Soldier 2 at the US morgue at BIA to check that it was actually Jake "because stranger things have happened". Soldier 2 checked and said it was okay. This was the only time I am aware of definite checks being carried out to confirm that the body was Jake's. He was put into a white Army Land Cruiser and we followed it out to the runway. We put him on a plane, then we got on the plane. With me were Soldier 17, Soldier 4, Soldier 26, Soldier 27, Soldier 35, Soldier 38 and Soldier 2. I cannot recall who else was with us. We were on the same flight as Jake and went to Kuwait.

When we got off the plane Jake was put into an ambulance. We got on buses and went to Fourth Level Logistic Asset Kuwait (FLLA-K). Jake went to another US Military morgue in Kuwait but I did not go there. He then went to a civilian morgue in Kuwait. I went to the civilian Kuwait morgue which was a shitty back alley place. It was substandard and crappy. I followed the ambulance there with some others. We were told that we could not come past the back of the ambulance. I believe a Kuwaiti said it to the female Captain who was there whose name I do not know. One of the guys did not hear it so tried to enter and they told him to get back. We were upset by this because we had come all this way and were not allowed to take him off the ambulance and put him in the morgue. They told us we could pick up his coffin and put him in the ambulance that was going to take Jake to KCIA.

5 *So we went back, an ambulance came and reversed up to the door. We said we would put him in. We walked in and I saw a wooden casket riveted shut with metal strips with wax seals on them. You could not open it. I thought it was him. I thought they had opened the metal one that he was in at the US facility and put him straight into the wooden one. We picked it up and slid it into the back of the ambulance. They made us buy civilian clothes to go to the morgue because we could not go in uniform. They told us we would also need them for the airport but when we got there we were not allowed to go in anyway. We have not been reimbursed.*

15 *There, the exact day I cannot recall, there was some drama as we could not go inside the Kuwaiti City International Airport (KCIA). This drama lasted a day or two. We could not physically put him on the plane and were told we could go back to Baghdad now. We said, "No, we want to put him on the plane". We found out that we could not do this because it was a commercial flight. I was very (dropout) by this. We were told there was no point us being here then. We said, "That is crap". We were then told we would watch the flight depart but we were not allowed into KCIA and had to be in civilian clothes.*

25 *The ambulance went into KCIA and I followed in another car with some others but we could not follow it the whole way as we were not allowed. We drove for 15 minutes to a spot where we could see the aircraft take off. This was really upsetting as they said we could go back to Baghdad but we had not even put him on the plane. We said, "No, we will stay and make sure he got on the plane". We had previously just assumed it would be a military aircraft and did not think for a second that it would be an Emirates with passengers on it. It was only at KCIA when they said we could not put him on the aircraft that we realised this was the case. No one actually told us.*

35 *At KCIA we stood behind a fence. A Captain and a Corporal drove us out there and knew where we had to go. We waited for about an hour until it took off. Then we drove back to FLLA-K. We stayed there that night then went to a service in Kuwait for Anzac Day, I think. The next day we flew back to Baghdad. We were at the Fourth Logistic Level Asset Baghdad, FLLA-B when we saw Soldier 33, who told us it was the wrong body and that he was on his way to go and fix it. I was very angry, fuming and said, "This is what happens when you hand responsibility to*

foreigners who cannot even look after themselves". This was the end of my involvement.

5 *I remember that we were at the FLLA-K for Kapyon Day so Jake must have left by then. We also had Anzac Day in Kuwait. If this contractor is meant to be the best they should not use such a shitty place like that civilian morgue. It was not military. I would not be happy if it were me. I would rather be in the hands of the US military as their setup is better. I would not want to be left in*
 10 *the hands of foreigner civilians. Back in Baghdad Soldier 33 told us it was the wrong body. I would not care about the standard of the coffin if I were being looked after by Australians or the military. I cannot understand why we used a contractor but it must be because it is cheaper.*

15

Other matters

When we were in room 8, being my room, they said there were a couple of things like a bear and other items, I do not recall what, that should go back to Shelley. He was trying to write a book or
 20 *something. I did not see a diary and I did not know that he was keeping one. This was no secret. I just do not recall knowing about it. I do not recall how Jake used to wear his pistol, he did not have a shoulder holster so it was either (blank) for fire. I know carry a 9 mm. The difference between stage 2 and 3*
 25 *modifications is that stage 3 has a safety catch on either side. So if you are left-handed like me, it is easiest to operate the safety catch (blank) with a (blank). A big advantage for me was having the safety catch on both sides (blank).*

30

Since before coming into country we fired the pistol in Brisbane so people should have been comfortable by the end of Brisbane and they should have said something if they were not. Everyone has a pistol at (blank), but there are not enough so I handed mine in and was not reissued it (blank).

35

I have to sling my Styre to search a vehicle. I am more worried about that than the pistol as I am left-handed. I am more confident on the pistol. If you are right-handed on the Styre, there is no problem. I am more comfortable with the safety catch being on both sides of the pistol.

40

I take rounds out of my magazine in order to ease tension on the spring, but not often. I do not do it religiously, but I have done it a few times since being in country. Jake could have been going to clean his weapon, he could have been going to tie his shoelaces,

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but I do not know. I can only tell you what I saw. Sworn at Baghdad Iraq this 14th day of June 2006.

5 Mr President, that is the end of one statement. I now propose to read annexure A which is the Service Police statement.

PRESIDENT: Yes, thank you.

MAJ HYDE:

10

My full name is (blank), I am currently 24 years of age. I am a Private in the Royal Australian Army Infantry Corps. I am posted to Support Company 3rd Battalion, Royal Australian Regiment, 3RAR (PARA) Holsworthy Barracks, Holsworthy New South Wales where since October 2001 I have been employed (blank).

15

I have successfully completed the basic Rifleman Course 2001, basic Parachute Course 2003, deployed to East Timor 2002, Direct Fire Support Weapons Course 2003. I also completed my Force Preparation Predeployment Training conducted in Holsworthy Barracks, Sydney, New South Wales and Enoggera Barracks, Brisbane, Queensland prior to deploying to OP CATALYST Baghdad Iraq.

20

As part of that training, I was trained and was deemed qualified on all weapons used during deployment. Those weapons included the M79 grenade launcher, MAG 58 machinegun, F1 hand grenade, 66 mm short-range anti-armour weapon (SRAAW) rocket launcher, F88 Austyre, F89 Minimi, 9 mm self loading pistol (SLP), F88 grenade launcher attachment (GLA) and was familiarised in the operation of the 50 calibre machinegun. I can recall that the 9 mm pistol that I was trained and tested on during my predeployment training was a 9 mm pistol (blank).

25

30

During my deployment, my 9 mm pistol was issued through the Q store located at ANZAC Cove Camp (blank) Baghdad and at that stage the pistols were issued (blank). On 14 March '06 I deployed with 3RAR (PARA) on OP CATALYST where I was posted to SECDET IV Australian Security Forces, Baghdad Iraq.

35

40

I am currently being employed as (blank). I occupied (blank) within the SECDET IV accommodation area, Australian Embassy, Baghdad Iraq until 21 April '06 where I shared that room with PTE (blank) and PTE Kovco where were members of my (blank).

45

5 *Since that time I have been accommodated in the Adelaide suite and I share that room with PTE (blank). Whilst in Baghdad on deployment we have been working in (blank). During my deployment it is a requirement task dependent that we are required to complete tests of efficiency training (TOET) on all weapons. However, specifically on the weapons each soldier carries. I myself conduct (blank).*

10 *Whilst in the green zone more emphasis is placed on the F88, 9 mm pistol and F89. However, if we are going to or tasked to complete tasks within the [blank], a complete TOET would be conducted on all weapon systems. I have personally conducted TOET training (blank) and that training is conducted by myself as ongoing training. I myself have been to a live fire range whilst in Baghdad on (blank).*

15 *I am currently employed at the SECDET IV Detachment Australian Embassy Baghdad Iraq and the current (blank) of the Embassy (blank) Australian Embassy. All security positions have been allocated a name and a position or station in and around those grounds. Those positions are called (blank). Within the Embassy grounds there are weapon clearance points (blank). At all times when clearing weapons the buddy system is to be employed. At all times when a weapon clearance is conducted all weapons held by the soldier are to be cleared with side-arms (pistol).*

20 *The buddy system has been employed since the start of OP CATALYST, including the predeployment training and on every other operation that I have been on. All rosters in relation to the duties and piquet timings for (blank) are done by my (blank) being CPL (blank) and are promulgated by a (blank) whereby he reads the timings out and we copy them down.*

25 *At about 1100 hours on 1 May '06, I had a conversation with SGT (blank) of the Special Investigation Branch. As a result of that conversation, SGT (blank) showed me a computer generated topographical representation of the Australian Embassy grounds and buildings contained within. Whilst viewing this document I indicated with a penned X the location of my accommodation. Attached to and forming part of this statement is that topographical representation of the Australian Embassy.*

30 *On 21 April '06, I was employed as a (blank) Australian Embassy*

5 *Detachment SECDET IV and I was located at the Embassy for the day. I can recall seeing a person I know to be PTE Jacob Bruce Kovco on several occasions throughout the day. I awoke about 0630 hours and I believe that PTE Kovco woke about the same time. PTE (blank) was already up and dressed.*

10 *We then conducted our morning routine. I can recall that PTE Kovco was his normal self throughout this process. We (blank) and remained there for a (blank). The person I know to be PTE (blank) was the member who was there for (blank). I believe that PTE Kovco started on (blank). I can recall seeing PTE Kovco several times throughout the day, generally that was met respective security positions.*

15 *On those occasions we only would have been passing each other on our way to the (blank) and would have only shared a brief hello and goodbye. I have known PTE Jake Kovco for approximately four years after first meeting him in 2002 when he first came to the Battalion. I joined (blank) in 2004 and PTE*
20 *Kovco joined in 2005. I can describe Kovco as being about 180 centimetres tall with light brown coloured hair and of medium build. I believe he had one tattoo, however I cannot recall what it is. Since that time I have known him I would consider us to be really good friends. I would describe him as being a good-*
25 *humoured, jovial, a bit of a larrikin, professional soldier and that he has a family with a wife and two kids and he was a devoted and happily married man.*

30 *I can recall that when PTE Kovco ever spoke about his wife and kids, he always spoke very highly of them. I have never witnessed or known him to partake in the use of any drug, nor have I had any reason to suspect such activity. However, I am aware from social (blank) functions that he does enjoy a social drink of alcohol.*

35 *In saying that, I am not aware if he ever drinks to excess on regular occasions. He was an active person who enjoyed maintaining his physical fitness. I can confirm that at no time have I ever heard PTE Kovco ever mention anything in relation to*
40 *conducting any form of self harm. I can state that since I have known PTE Kovco, he always handled his weapon in a professional way and never displayed any form of behaviour that I would consider to be unsafe.*

45 *I can describe the layout of the room as follows: the room*

5 (blank). From the doorway facing north, wooden door opening inwards, to your immediate right is a small bar fridge, next to the bar fridge is a set of bunk beds which are flush against the eastern wall and we occupied by PTE Kovco on top and myself on the bottom. The head of the bunk bed was on the southern wall and at the end of the bunk was a locker that faced the window (north).

10 Next to that locker was another locker on the eastern wall and open towards the west. On the northern wall was a window and air conditioner unit and under the window was a small desk. Next to the desk was PTE (blank) single bed with the head of the bed against the northern wall. At the foot of the single bed there were two lockers on the western wall which opened to the east.
15 The overall size of the room was fairly small.

20 On 21 April '06 after we completed our piquets and returned to our accommodation block, I returned to my room and removed my uniform, shirt and boots. I had a brief conversation with PTE Kovco whilst having a cigarette during which we discussed old (blank), previous exercise and pattern arches completed.

25 This conversation was in a joking manner and we shared laughter over the conversation. I believe that PTE Kovco had changed into t-shirt and short by this time. PTE (blank) also had taken off his uniform, shirt and boots and joined in the conversation. During which we returned to our room and I laid down on my bed which was the bottom bunk.

30 I believe that PTE Kovco was using his laptop which was on the top bunk and he was standing about halfway down the length of the bed to my position. PTE (blank) was sitting on his bed with his feet over the side on the floor with his laptop on his lap. PTE (blank) was about 2 metres from PTE Kovco and I was within 1
35 metre of him.

40 About 1555 hours PTE (blank) started to play music from his iPod (with speakers attached) making it pretty loud and I believe the band was the Cranberries. I can recall that we (all three) were singing along with the songs being played and I was still on my bed. I can recall that whilst singing one particular song, I had gotten up off my bed and moved to my locker area and we all three started to sing in a joking fashion and pretending to sing in
45 the highest possible voice.

5 *I can recall that PTE Kovco was pulling his shorts up really far to the extent that his testicles were protruding each side of the trouser leg during the high part of the song as if he was trying to enhance the high pitch. We all thought this was funny and had a good laugh over it. PTE Kovco repeated this action every time the high part of the song came around. We were all in good spirits and having a laugh.*

10 *At the end of that particular song, I believe that PTE Kovco said something and although I couldn't hear the exact words, the tone of the words suggested in was a comment made in jest. At this stage I was kneeling in front of the fridge with the fridge door open. I can recall that as soon as PTE Kovco saying that half joking comment, I heard a sound similar to a cap gun going off and I knew that the sound had come from behind me.*

20 *The sound gave me a bit of a fright and I turned around and saw PTE Kovco in the process of falling down to the ground. I can recall that his arms were in the process of falling by his side and I recall that when PTE Kovco fell, he seemed to collapse rather than fall and when he landed on the floor, his legs were in a strange twisted position. I cannot recall seeing the pistol. I yelled out "Fuck" and tried to understand what I was seeing.*

25 *I then heard PTE (blank) yell the word "Medic, get a medic" and then I yelled out "Get someone". As I was yelling this I straightened up PTE Kovco's body. I cannot recall if I opened the door or if someone else did, but I can recall that the doorway to the room was open and I could see a person I know to be CPL (blank) and PTE (blank), nickname (blank) standing in the doorway. I then yelled out "Get someone, get field dressings". PTE (blank) was kneeling by PTE Kovco's head and appeared to be holding PTE Kovco's head.*

35 *I then knelt down beside PTE (blank) and using my hand I tried to open PTE Kovco's mouth and I can recall that I couldn't as his tongue had swollen up and was coloured blue/black. At that stage, the person I know to be LCPL (blank) entered the room. LCPL (blank) is a trained combat first-aider (CFA) as I am.*

40 *LCPL (blank) assisted PTE (blank) and me in treating PTE Kovco. There was a lot of movement at the doorway, however I cannot recall who it was. I can recall a lot of voices and a lot of yelling, but again I cannot remember exactly what was said or by whom. All through this PTE Kovco lay motionless and did not*

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respond to either the spoken word or touch.

5 *At some stage, someone produced a stretcher and under the command of LCPL (blank) we lifted PTE Kovco on to the stretcher and began to move him outside. I can recall that we carried him out of the doorway, then turned right and walked down the passageway that separates the accommodation huts and exited that area by the gap in the concrete barriers.*

10 *When we exited the concrete barriers there was a medical gator waiting for us and we placed the stretcher onto the space provided. PTE Kovco was then driven to the 10th Combat Support Hospital (10CSH) which is about (blank). I had hopped on the back of the gator and assisted LCPL (blank) giving CPR to*
15 *PTE Kovco as we drove to the 10CSH.*

A short time later we arrived at the hospital and I assisted in carrying the stretcher inside and was directed into the emergency room. At that stage I went outside and LCPL (blank) came
20 *outside after a short time after LCPL (blank) told me to come with him to the toilet area to wash myself off. We both were upset and LCPL (blank) informed me that PTE Kovco might not survive the injury.*

25 *LCPL (blank) asked "What fuck happened?". I said "I don't know, we were in the room laughing and carrying on, I didn't even see his pistol and bank, it went off". He said "Okay, let's clean up". After cleaning up, we returned to the foyer of the ER*
30 *and inquired with the medical staff as to the condition. One of the doctors said that they needed someone in command. I then ran back to the Embassy and found SGT (blank) and told him that LT (blank) and himself were needed at the hospital. I then went to CPL (blank) room and he gave me a change of clothes.*

35 *From there I returned to the accommodation area, can recall that SGT (blank) had secured the room door. SGT (blank) then allowed me to collect some personal equipment from the room. I was allowed to remove limited equipment and personal gear*
40 *before the room was secured. I can further recall that it was only when I returned to the room that I saw the 9 mm pistol lying on the floor next to PTE Kovco's bed.*

I can recall that the pistol was lying with the barrel facing south and the ejection port was face down and appeared to be half
45 *cocked as there appeared to be a double feed or an obstruction in*

the breach. At no time did I touch the pistol lying on the ground. I can also recall that PTE Kovco always hung his holster and 9 mm pistol on the bed frame of the bunk.

5 *I can honestly state that I did not see PTE Kovco remove his
pistol from his holster within the room and I am unaware of how
he shot himself. The only way I could think he could have done it
was as a result of the type of song, in particular the voice of the
10 female singer being so high pitched, he made a comment in a
joking manner and then in a joking gesture pulled his pistol from
his holster, placed it against his head in a manner to almost say
her voice is fuck (joking) and without realising his pistol was in
the [balnk] condition and carrying live rounds, he has pulled the
15 trigger.*

15 *As I did not see this, I am only guessing and I have no evidence to
support this theory. I have never seen PTE Kovco do this sort of
action before (placing a 9 mm pistol against his head), but I have
seen some of the guys in the platoon playing with their pistols in
20 the past. By playing I mean quick-draw, alternate cocking and a
carefree attitude when pulling the trigger on the pistol when they
know it is unloaded.*

25 *After a short time, LT (blank) returned and informed the platoon
as a whole that PTE Kovco might not make it and if we wanted
we could go to the hospital to say our goodbyes. I then went to
the hospital to see him. When I arrived at the hospital LEUT
(blank) handed me a unit beret and an ANF and asked if I would
30 like to place them on PTE Kovco. I then went in to see PTE (who
was still in the emergency room (ER)) and placed the ANF over
him and then placed the beret on his chest. I then went outside. I
returned a short time later and was then informed that he was
going to be moved to another room. PTE Kovco was then moved
35 to another room. Shortly afterwards the rest of the SECDET IX
Embassy Detachment entered the same room and we stood
around PTE Kovco. An American padre was also present and he
led us in The Lord's Prayer.*

40 *It was decided that the machine was going to be switched off. We
all stood around PTE Kovco, (blank) said some words followed
by a few other members of the (blank). The doctor then turned
the machine off (blank). I am unaware who started it but
someone started the unit song and everyone joined in and sang
45 along. We then slowly moved out and returned to the Embassy.*

5 *I have heard the term "Allah Akbar" before and that was during our intelligence brief/training prior to being deployed. I am under the belief that it means "praise to God" and is said before terrorists kill themselves. I have never heard anyone from the (blank) using this phrase in a joking fashion whilst we have been deployed.*

10 *At about 1315 hours on 1 May '06 I had a further conversation with SGT (blank) of the Special Investigation Branch. As a result of that conversation SGT (blank) asked me to sketch a drawing of the room and the locations of myself, PTE Kovco and PTE (blank), just before the incident and another sketch of the room just after the incident. Attached to and forming part of this statement are those sketches.*

15 *About 1325 hours on 1 May '06, I had a conversation with SGT (blank) of the Special Investigation Branch. As a result of that conversation I handed to him one TDK compact disc, one (sealed) message notebook with a list of song names. SGT (blank) took possession of that item and placed it in a clear plastic bag and attached a Service Police identification label marked FDH-20. I signed and dated that label as did SGT (blank) after me. I can state that the compact disc contains songs by the band, the Cranberries that we were singing along with at the time of the incident on 21 April '06.*

20 *Statement recorded and signature witnessed by me at SECDET IX, Australia Embassy, Baghdad, Iraq, on 30 April '06, about 1925 hours.*

30 *(blank), SGT IMVST*

35 Soldier 19, you will see from the reading of that statement that there's a reference to a diagram. I now show you a diagram and ask if you would please identify it. Is that a diagram that you recognise?---Yes.

Does it bear your signature?---Yes.

40 Is it a diagram of the layout of the inside of the room?---Yes.

I tender that document, Mr President and Members.

45 PRESIDENT: Is there any opposition to the tender of that document, gentlemen?

COUNSEL REPRESENTING: No objection.

PRESIDENT: Marked then as Exhibit 22.

5

#EXHIBIT 22 - DIAGRAM DEPICTING LAYOUT OF INSIDE OF ROOM BY SOLDIER 19

10 LTCOL HOLLES: Sir, apart from the signature is that identical to what I think is Exhibit 10? I'm informed they're different documents, sir, it doesn't matter.

15 PRESIDENT: Yes. MAJ Hyde, any other matters you wish to raise with this witness before we close proceedings today?

20 MAJ HYDE: Mr President, there is just one more matter that I'll attend to today if that's convenient, and that is to deal with the record of interview that this witness submitted to during part of the New South Wales Police investigation.

25 Soldier 19, I now show you a transcript of a record of interview. Prior to me doing that, could you tell the Board President and Members whether you had a conversation with a New South Wales Police Officer, which was recorded?---Yes.

30 And showing you that document now, can you advise as to whether that contains the subject matter of your discussion?---That's the original there? Yes.

Mr President, I tender a complete version of the New South Wales Police interview with Soldier 19 and second a redacted version of that statement.

35 PRESIDENT: Any opposition to its tender, gentlemen?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked then as Exhibit 23.

40

#EXHIBIT C23 - ORIGINAL RECORD OF INTERVIEW OF SOLDIER 19 WITH NEW SOUTH WALES POLICE OFFICER

#EXHIBIT R23 - REDACTED VERSION OF RECORD OF INTERVIEW OF SOLDIER 19 WITH NEW SOUTH WALES POLICE OFFICER

PRESIDENT: Any other matters, Major?

MAJ HYDE: No, Mr President, and if that's a convenient moment, the only thing that I would ask is that this witness is part-way through his evidence and if he could be given the usual direction about discussing his evidence with other people, that would be useful.

PRESIDENT: Soldier 19, we're going to adjourn now and I don't think we're totally sure when we're going to come back to you. But in the meantime you're not to discuss this matter with anybody, particularly other soldiers of the detachment. What happened here today is not to be discussed at all. Do you understand that?---Yes, sir.

You may now leave the witness box and go about your normal business and Counsel Assisting will be back to you and let you know when we require to see you again. Thank you.

<WITNESS WITHDREW

[1508]

PRESIDENT: COL Griffin, I'm seeking some help and some guidance as to when we can resume these proceedings. Of course, the wish was to deal with all the people in Baghdad this week and of course your presence in Baghdad is not forever. Have you any thoughts as to the way ahead?

COL GRIFFIN: Mr President, the key witnesses that we intended for you to hear from were essentially the two persons in the room. One of those has been dealt with in full. The other one you have received the evidence in documentary form substantially. My view is that whilst we wish to push on we are unable to do so due to the risk of prejudice to the two potentially affected members who are here in country, in the absence of legal advice to them.

In many ways I would like to continue tomorrow with Soldier 30 and the conclusion of his examination. However, it occurs to me that that in itself may be problematic for those two soldiers given the relationship that they have with him and their absence of counsel at the moment and the matters that would be potentially canvassed by those counsel who are present before you. It follows from that, Mr President, that my advice is that we adjourn now until such point in time after we are able to provide advice to those members but I do not envisage

the resumption of video conferencing hearings this week.

PRESIDENT: Yes, very well. I understand where you're coming from and I think it would be very unwise for us to continue to hear witnesses in the absence of counsel for those potentially affected soldiers. The question then arises as to whether we adjourn to a fixed date or simply adjourn to a date to be fixed. We were going to adjourn until the 17th of course but that may now be in some jeopardy.

COL GRIFFIN: I'm unable to advise you definitively. I will take steps to do so as soon as possible, and therefore I would invite you to adjourn to a date to be fixed, rather than to a particular date at this point in time, sir.

PRESIDENT: Is there any comment from the Bar table or any other propositions that anybody would like to put forward?

LTCOL BERKLEY: No, sir.

COL YOUNG: No, Mr President.

PRESIDENT: Very well then. The Inquiry is now adjourned to a date to be fixed and at a place to be fixed.

**MATTER ADJOURNED AT 1512
TO A DATE TO BE FIXED**