

**TRANSCRIPT OF PROCEEDINGS**  
**UNCLASSIFIED**

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**AUSTRALIAN DEFENCE FORCE**

**AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW**

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

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

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

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

**LTCOL P WILKINSON, representing Soldier 2**  
**LTCOL B GREEN, representing Soldier 14**  
**LTCOL T BERKLEY, representing Next of Kin**  
**LTCOL F HOLLES, representing PTE Kovco's Parents**  
**COL L YOUNG, representing PTE Kovco**

**1017 TUESDAY 18 JULY 2006**  
**DAY 5**

**The transcript has been checked and cleared for operational security issues by**  
**MAJ W A Young**

**RESUMED**

**[1017]**

5 PRESIDENT: Yes, good morning, Major.

MAJ HYDE: Good morning, Mr President and Members. I call the first witness SGT Hession, if that's convenient.

10 PRESIDENT: Yes, thank you.

**<STEPHEN DOMINIC HESSION, sworn**

**[1018]**

15 **<EXAMINATION BY MAJ HYDE**

20 MAJ HYDE: SGT Hession, have you been shown the Rights and Obligations of Witnesses of Boards of Inquiries pursuant to Annex F Chapter 7?---Yes sir, I have.

Would you state your full name for the record, please?---My full name is Stephen Dominic Hession.

25 And where are you currently posted?---Currently posted to 3 Section 53 MP Platoon SIB Gaza Ridge Barracks, Bandiana.

30 Were you involved in the investigation process into the death of PTE Kovco?---Yes I was.

Could you tell the Board, please, when you first became involved and what your role was?---First became involved about 0530 hours on the morning of the 22nd of April via a phone call to my home address and from there I departed Wodonga for Melbourne en route to Baghdad.

35 Do you recall what dates you arrived in Baghdad?---I believe it was 23 April or late evening 23 April.

40 Where did you first go when you arrived in Baghdad?---First went to and transport was then arranged through to SECDET IX.

When you arrived at SECDET IX did you interview various people?---Yes sir I did.

45 As part of that interviewing process did you compile various witness

statements?---Yes, sir, I did.

As part of the investigation process did you also compile a brief of evidence?---Yes, sir, I did.

5

Before we move on to that could you tell the board your qualifications in terms of whether you're a crime scene examiner or not?---Yes sir. I completed my Senior Investigators course in 1997 and in 2001 completed the Crime Scene Examiners course.

10

Briefly, would you be able to describe for the Board the nature of that course, that is the Crime Scene Examiners course?---The course is centred around the identification, collection, preservation without contamination of physical evidence at a crime scene and packaging for subsequent analysis by an expert.

15

Can you tell the Board how long in terms of hours was it that you arrived on the scene, that is where PTE Kovco died following his death?---I believe it was about 96 hours after the time of death.

20

Now, for the purposes of these proceedings have you produced a Service Police statement?---Yes sir I have.

25

If the witness could be shown a copy of that statement if you don't have one before you. Do you have the statement before you SGT Hession?---Yes, sir, I do.

30

Could I now ask you to turn to page 3 of that statement and in particular paragraph 8. Do you see that you've referred to 1035 hours on a particular date?---Yes, sir.

35

Is that the first time that you attended room 8 at the embassy?---Actually sir, going back to the first page, I first attended the room at 0810 hours on the 26th of April.

40

And you subsequently attended, did you, at 1035 hours as you've described in paragraph 8 of that statement?---Yes, sir, I did.

45

Can you tell the Board what your observations were when you attended the room on the first occasion?---First occasion I attended the room was 0810 hours. The room door had been sealed with wafer seals. We broke the seals and video recorded the breaking of the seals, opened the door and conducted a preliminary examination of the room. The room was in a state of disarray, general clothing strewn about the place. The room consisted of a small bar fridge on the immediate inside right-hand side of

the doorway, a set of bunk beds. At the end of the bunk beds was a locker. After that locker was another locker facing into the room. Then the back wall of the room consisted of a window. Below the window was a desk. Moving to the side of the desk was an air conditioning unit above a single bed. At the end of the single bed was another locker or a cupboard which returned to the main doorway. On the floor I observed various bits of military equipment. There was also I identified a 9 mm Browning pistol lying on the floor approximately three-quarter of the way down the double bed. Back from the pistol there was a large stain on the floor, which led to another large stain against the cupboard of the rear of the single bed.

At some point did you set about collecting and collating evidential material?---Yes, sir, I did.

Could you describe briefly the process that you adopted for that purpose? ---Okay. The examination was conducted of the room. It was videotaped, it was then photographed. Each item was photographed independently. When collecting those items the items were – in the case of the pistol, the pistol was unloaded and made safe.

Who did that?---I conducted the unloading of the pistol and making it safe.

When you did that, did you pick the pistol up from the floor?---Yes, sir, I did.

Did you mark and photograph the position that it was in prior to making the weapon safe?---Yes, sir, I did.

Sorry, continue?---The pistol was then placed into a cardboard box and affixed with rubber tyres making it secure. A Military Police – or sorry, a service police identification label was then attached to the pistol and placed inside the cardboard box. This process was repeated for all items collected. Some were collected in plastic bags, some were collected in paper bags, depending on what substance was collected.

Could you turn to page 3 of your statement, please?---Yes, sir.

At paragraph 9 there's a reference to SDH/2. Do you see that there? ---Yes, sir.

What is that item?---That item was the 9 mm cartridge case that was in the breach block or in the ejection port of the pistol.

Was that the round that you cleared from the weapon?---That was the expired cartridge case that was in the ejection port of the pistol.

5 Do you have that here with you?---No, all ballistics have been forwarded through New South Wales police for examination.

If you could turn the page, please. Do you see a reference to SDH/3 at the top of page 4?---Yes, sir.

10 What is that item?---That is the magazine that was on the 9 mm pistol.

Was that forwarded to New South Wales ballistics?---Yes, sir.

15 SDH/4, that is a laptop computer?---Yes, sir.

What did you do with that?---That was located on the top bunk bed in room 8, SECDET IX accommodation. I placed it into a clear plastic bag and attached a service police identification label marked SDH/05, signed and dated the label.

20 Has that been provided to the New South Wales police for examination? ---Yes, sir.

25 SDH/5, that is a part of the ceiling, is it not, that has been removed from room 8?---No, sir. SDH/5 is the actual laptop computer, sir.

No, SDH/05 at paragraph 13 appears to refer to a 9 mm projectile?---Yes, sir, that's SDH/06. It is paragraph 13. That was the projectile of the 9 mm round that I located on top of the roof.

30 COL YOUNG: MAJ Hyde, could I interrupt for a moment. If I just take you to the top of paragraph 11 - in bold print it's "SDH/03."

35 MAJ HYDE: Yes.

COL YOUNG: And the last line is SDH/04. Similarly, for SDH/05 in para 13.

40 MAJ HYDE: I'll have that cleared up, sir.

Looking at paragraph 11, SGT Hession?---Yes, sir.

45 Does SDH/04 refer to the 9 mm pistol?---Yes, sir. In each of the cases where I mention any collection of property, the production of the property in bold is written beneath the paragraph that I mentioned.

So above paragraph 11 is a reference to SDH/03?---Yes, sir, which would refer to paragraph 10 on the previous page.

5 Thank you. Does that clear it up?

COL YOUNG: Yes, thank you.

10 MAJ HYDE: You were telling the Board about extracting the 9 mm projectile from the roof or ceiling of room 8; is that correct?---No, sir, the projectile was actually located on top of the roof in the guttering system of room 8.

15 What did you do with that item?---Once again, sir, that was photographed in place and then secured in a plastic bag and attached a service police identification label.

20 Where is that now?---That was forwarded to the New South Wales ballistics for examination.

Which identification number does that have?---SDH/06.

25 SDH/07: could you tell the Board what that is?---SDH/07 is one silver in colour Sony brand one gigabyte USB memory stick and one red in colour Sony brand micro vault USB memory stick.

Do you produce that now before the Board?---Yes, sir.

30 PRESIDENT: Is it proposed ultimately to tender the statement?

MAJ HYDE: Yes, it is. I tender SDH/07.

PRESIDENT: Any opposition to the tender of the memory stick?

35 LTCOL WILKINSON: No, sir.

40 LTCOL GREEN: Subject to this, sir: the point of selecting one piece of evidence in a sequence which ignores 1 through to 6, to select 7 now seems to me to be a little strange.

MAJ HYDE: I can address that. Another witness will produce those items.

45 LTCOL GREEN: Surely, sir, the appropriate way is to simply tender the Sergeant's statement and with it will go the exhibits. They can be

separately marked at a later stage.

PRESIDENT: If I've got them going right, those exhibits aren't with us, they're with the - - -

5

MAJ HYDE: That's correct. They will be produced by another witness. They have been sent to New South Wales Police for testing, et cetera. Mr Hayes will produce those later today. This witness will produce the items which I'm now about to tender.

10

PRESIDENT: Could I invite you to tender the statement now?

MAJ HYDE: Yes, I'm happy to do that, sir.

15

PRESIDENT: Everybody comfortable with the tender of the statement?

LTCOL GREEN: That was my content to do that.

PRESIDENT: The statement is marked as Exhibit 28.

20

**#EXHIBIT 28 - STATEMENT OF SGT HESSION**

25

PRESIDENT: Is there now any comment about the tender of the memory stick?

LTCOL GREEN: No, thank you, sir.

30

PRESIDENT: That becomes 29.

**#EXHIBIT 29 - SDH/07: PTE KOVCO'S SONY USB MEMORY STICKS**

35

MAJ HYDE: Looking at paragraph 15 of your statement, you've referred to a sketch plan of room 8?---Yes, sir.

40

Do you produce the notebook that contains that sketch plan?---No, sir, not my service police notebook. That rough sketch plan was then transcribed and a sketch plan was then developed from the measurements and sketches made at the time, and that was included in the original report.

45

Turning over the page, if you would, to the next exhibit. Would you

identify that, please?---Property labelled SDH/08 was five rolls of undeveloped ASA 400 35 mm film contained in separate canisters.

5 What was that film of?---That film was photographs which I took at the incident scene, the surrounds, the roof.

I tender the photographs.

10 PRESIDENT: Any opposition to the tender of those photographs?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: I take it everybody has seen them. Marked as Exhibit 30.

15 **#EXHIBIT 30 - SDH/08: FIVE ROLLS OF UNDEVELOPED FILM OF THE INCIDENT SCENE, SURROUNDS AND ROOF TAKEN BY SGT HESSION**

20 MAJ HYDE: Next exhibit, SGT Hession?---Property labelled SDH/09.

What is that?---It's a certified true copy of JW/1 and a certified true copy of JW/2.

25 What are JW/1 and JW/2?---They were documents originally taken on by CPL White but we made copies to use as working copies and they were certified true. It appears to be medical documents in relation to PTE Kovco.

30 Thank you. I tender those.

PRESIDENT: Any opposition to that tender?

35 COUNSEL REPRESENTING: No, sir.

**#EXHIBIT 31 - JW/1 AND JW/2: MEDICAL DOCUMENTS**

40 MAJ HYDE: Next item, SGT Hession, if you would?---Next item is property labelled SDH/10. That is 1DPDU pattern-issued 9 mm holster.

45 Is that an item that you collected from the room, that is, room 8?---Yes, sir.

Thank you. I tender that.

PRESIDENT: Any opposition to that?

5

COUNSEL REPRESENTING: No, sir.

10 **#EXHIBIT 32 – SDH/10: 1DPDU PATTERN-ISSUED 9 MM  
HOLSTER**

MAJ HYDE: Next item, please, SGT Hession, on your list?---Is property  
labelled SDH/11, four pages of handwritten stories by PTE Kovco.

15

I tender that.

PRESIDENT: Any opposition to the tender of those?

20

COUNSEL REPRESENTING: No, sir.

25 **#EXHIBIT 33 - SDH/11: FOUR PAGES OF HANDWRITTEN  
STORIES BY PTE KOVCO**

MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/12,  
one-page letter from Shelley to PTE Kovco dated 7 March 2006.

30

I tender that.

PRESIDENT: Any opposition to that being tendered?

35

COUNSEL REPRESENTING: No, sir.

40 **#EXHIBIT 34 - SDH/12: ONE-PAGE LETTER FROM SHELLEY  
TO PTE KOVCO DATED 07/03/06**

MAJ HYDE: Next item, please?---Property labelled SDH/13, a two-page  
letter from mum and dad to PTE Kovco.

45

I tender that item.

PRESIDENT: Any opposition to the reception of that document?

COUNSEL REPRESENTING: No, sir.

5

**#EXHIBIT 35 - SDH/13: TWO-PAGE LETTER FROM PTE KOVCO'S PARENTS TO PTE KOVCO**

10 MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/14, one handheld Gillette brand razor.

I tender that.

15 PRESIDENT: Any opposition to the tender of that?

COUNSEL REPRESENTING: No, sir.

20 **#EXHIBIT 36 - SDH/14: HANDHELD GILLETTE BRAND RAZOR**

MAJ HYDE: Next item, please?---Is property labelled SDH/15, one black flash hood.

25

I tender that item.

PRESIDENT: Any opposition to that?

30 COUNSEL REPRESENTING: No, sir.

**#EXHIBIT 37 - SDH/15: ONE BLACK FLASH HOOD**

35

MAJ HYDE: Next item, please?---Property labelled SHD/16, one Oral B toothbrush, battery-operated, and one Coles brand regular toothbrush.

I tender that item.

40

PRESIDENT: Any opposition to that?

COUNSEL REPRESENTING: No, sir.

45

**#EXHIBIT 38 - SDH/16: ONE ORAL B BATTERY-OPERATED TOOTHBRUSH AND ONE COLES BRAND REGULAR TOOTHBRUSH**

5

MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/17, six DVDs with captured CCTV footage from camera within the Australian Embassy from 1500 hours to 1630 hours 21 April '06.

10

I tender that item.

PRESIDENT: Any opposition to that?

COUNSEL REPRESENTING: No, sir.

15

**#EXHIBIT 39 - SDH/17: SIX DVD<sub>s</sub> WITH CAPTURED CCTV FOOTAGE FROM CAMERAS WITHIN AUSTRALIAN EMBASSY FROM 1500 HOURS TO 1630 ON 21/04/06**

20

MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/19, signal log for SECDET IX Australian Embassy for 21 April '06, certified true copy.

25

I tender that item.

PRESIDENT: Any opposition to that?

30

COUNSEL REPRESENTING: No, sir.

**#EXHIBIT 40 - SDH/19: SIGNAL LOG FOR SECDET IX AUSTRALIAN EMBASSY FOR 21 APRIL 2006 CERTIFIED TRUE COPY**

35

MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/20, one TDK compact disc and one-page filled message notebook with a list of song names.

40

I tender that.

PRESIDENT: Any opposition to that?

45

COUNSEL REPRESENTING: No, sir.

5 **#EXHIBIT 41 - SDH/20: ONE TDK CD AND ONE-PAGE FILLED MESSAGE NOTEBOOK WITH A LIST OF SONG NAMES**

MAJ HYDE: Next item, please Sergeant?---Property labelled SDH/21, five pages from a field message notebook with handwritten notes made on 10 21 April '06.

I tender that item.

15 PRESIDENT: Any opposition to that?

COUNSEL REPRESENTING: No, sir.

20 **#EXHIBIT 42 - SDH/21: FIVE PAGES FROM A FIELD MESSAGE NOTEBOOK WITH HANDWRITTEN NOTES MADE ON 21/04/06**

MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/23, one Panasonic mini-DVD cassette containing video footage of room 8 25 SECDET accommodation, Australian Embassy 26 April '06.

I tender that item.

30 LTCOL BERKLEY: Just a point of clarification, Mr President. Is that SDH/24?

WITNESS: No, sir, SDH/23.

35 LTCOL BERKLEY: Thank you very much.

40 **#EXHIBIT 43 - SDH/23: ONE PANASONIC MINI-DVD CASSETTE CONTAINING VIDEO FOOTAGE OF ROOM 8 SECDET ACCOMMODATION, AUSTRALIAN EMBASSY, DATED 26/04/06**

MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/24, one Panasonic mini-DVD cassette containing footage of Australian 45 Embassy security piquet rotation conducted by PTE J Kovco on 21 April '06.

I tender that item.

5 LTCOL HOLLES: Can I just ask who recorded that; are you able to tell me?---Yes, sir. That was recorded by myself as the camera operator and a person was employed with the same height, the same equipment to conduct a walk-through of the rotations conducted by PTE Kovco on that day.

10 PRESIDENT: Any opposition to the tender of that?

COUNSEL REPRESENTING: No, sir.

15 **#EXHIBIT 44 - SDH/24: ONE PANASONIC MINI-DVD CASSETTE CONTAINING FOOTAGE OF AUSTRALIAN EMBASSY SECURITY PIQUET ROTATION CONDUCTED BY PTE KOVCO ON 21 APRIL 2006**

20 MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/25, one Imitation CD rewritable compact disc containing seven photographs.

25 Who took those photographs?---These photographs were taken by - - -

Refer to the matrix, if you would?---By Soldier 26, sir.

30 How did they come to be in your possession?---They were handed to me by the Brigadier when we first arrived in country.

Thank you. I tender that item.

PRESIDENT: Any opposition to that tender?

35 COUNSEL REPRESENTING: No, sir.

40 **#EXHIBIT 45 - SDH/25: ONE IMITATION CD REWRITABLE COMPACT DISC CONTAINING 7 PHOTOGRAPHS**

45 MAJ HYDE: Just one point, if I may, before you proceed to the next item. Do you refer to the Commander of JTF633? Which Brigadier are you referring to?---BRIG xxxx I believe was the name, sir.

Next item, please, Sergeant?---Property labelled SDH/26, copied to DVD compact disc property labelled SDH/23.

I tender that item.

5

PRESIDENT: Any opposition to that tender?

COUNSEL REPRESENTING: No, sir.

10

**#EXHIBIT 46 – COPIED TO DVD COMPACT DISC PROPERTY LABELLED SDH/23**

15 MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/27, copied to DVD compact disc property labelled SDH/24.

I tender that item.

20

PRESIDENT: Any difficulty with that matter?

**#EXHIBIT 47 - COPIED TO DVD COMPACT DISC PROPERTY LABELLED SDH/24**

25

MAJ HYDE: Next item, please, Sergeant?---Property labelled SDH/28, one Olympus XD picture card 128 megabyte containing all images in relation to OP CAT/08/06.

30

I tender that item.

PRESIDENT: Any difficulty with that?

35

COL YOUNG: I wonder if he might just explain what that is?---Yes, sir. This is the memory card from the digital camera which I took certain images, still photographs, of the room 8 and surrounds of the Australian Embassy. This contains all original photographs taken at that time.

40

Thank you, sir.

**#EXHIBIT 48 - SDH/28: ONE OLYMPUS XD PICTURE CARD 128 MEGABYTE CONTAINING ALL IMAGES IN RELATION TO OP CAT/08/06.**

45

MAJ HYDE: Next item, please, Sergeant?---That is it, sir.

5 Thank you.

Now, you've said that for the purposes of this investigation you've produced a brief of evidence?---Correct sir.

10 Is that contained in three folders?---Yes sir it is.

Do you have those folders with you today?---I have our file copy, the original of the report was mailed to the Board of Inquiry.

15 Mr President, Counsel Representing have had access to the MP Brief of Evidence and they've also had a table of contents. It is reasonably voluminous. I propose to tender that brief of evidence as one exhibit. Within that there are various statements and other items that have been collected as part of the investigation process.

20

PRESIDENT: Has anybody got any difficulty with that approach?

COUNSEL REPRESENTING: No, sir.

25 MAJ HYDE: Some of those items I should also point out have already been tendered, but for the sake of completeness and coherence it's probably better that they - - -

30 PRESIDENT: If they stay where they are, yes, fair enough. Marked then as Exhibit 49.

#### **#EXHIBIT 49 - MP BRIEF OF EVIDENCE**

35

LTCOL HOLLES: Just for some certainty I'd invite Counsel Assisting to identify with more particularity how many volumes are contained in that brief so that there is no doubt down the track about what exactly has been tendered.

40

MAJ HYDE: I'm happy to do that sir.

45 LTCOL HOLLES: And I'm happy for it to be prepared at a later stage and tendered as part of exhibit 49, but just that it globally it is fraught with danger as to exactly what the document contains.

5 MAJ HYDE: Can I indicate Mr President that the three volumes are indexed, a copy of the index has been provided to Counsel Representing and I'm quite happy to tender as a separate item or indeed as part of this exhibit the index, but it is contained within the three volumes of the investigator's brief. So whichever is more convenient.

10 LTCOL HOLLES: Perhaps if the index could be tendered as Exhibit 49A if that's a practice which finds favour with Mr President.

PRESIDENT: I'm happy with that if everybody else. The index will be 49A.

15 **#EXHIBIT 49A - INDEX**

20 MAJ HYDE: SGT Hession, you've indicated to the Board that you took certain photographs when you first - or an occasion when you went into room 8 for the purposes of your investigation, do you recall telling the Board that?---Yes sir.

25 And in particular I think you have photographs the 9 mm pistol, that is the pistol where it was located when you first entered the room, is that correct?---Yes sir.

Is that photograph that you took of the 9 mm contained within your brief that is now exhibit 49?---Yes sir.

30 Could I invite you to open that please and turn to that photograph. Mr President, I've taken the liberty of having reproduced colour photo copies of this particular photograph. If it's convenient, I'll hand them out to Counsel Representing.

35 PRESIDENT: I take it everybody is comfortable with that?

COUNSEL REPRESENTING: Yes sir.

40 PRESIDENT: So be it.

45 MAJ HYDE: In addition to that, there are the photographs taken by Soldier 26 and perhaps if Counsel Representing and Members of the Board can be provided with those photographs. I should also indicate that these have been made available to Counsel Representing prior to today.

PRESIDENT: Is there any opposition to the Board viewing those documents or photos now?

COUNSEL REPRESENTING: No sir.

5

MAJ HYDE: Do you have both those photographs before you SGT Hession?---Yes sir, I've blackened my copies as this is the - the copy case file of the BOI.

10

Thank you, now, looking at the photograph that you took and that which Soldier 26 took, are you able to tell the Board whether the 9 mm is in any different location to that in the photograph?---Yes sir, the photograph that I took of the positioning of the 9 mm pistol appears to be in a different position to the photograph taken by Soldier 26.

15

And could you describe for the benefit of the Board and others the change in position that you concede?---Yes sir. The photograph taken by Soldier 26 clearly shows that the - the handgrip of the 9 mm pistol is resting on, it looks like, the chest strap of the body armour, whereas the photograph taken by myself clearly identifies that the pistol is no longer resting on the - the chest strap of the body armour.

20

And are you able to estimate, looking at those photographs, the distance that the pistol appears to be moved from the first photograph taken by Soldier 26 and that taken by yourself?---I would only estimate that the distance would be three to 4 inches at best.

25

Looking at that photograph, that is the photograph taken by Soldier 26, are you able to say whether the ejection port is face up or face down?---The ejection port is face down.

30

And in relation to the photograph that you took are you able to say whether the ejection port is face up or face down?---The ejection port is face down.

35

LTCOL BERKLEY: Mr President, just for absolute clarity, I take it the evidence was that the photo taken by Soldier 26 shows the butt of the weapon resting on the webbing belt by SGT Hession - the photo taken by SGT Hession is no longer on that webbing belt?---That's correct sir.

40

Thank you very much for that.

COL YOUNG: Mr President, just a question if it's appropriate at this time if this witness is able to tell us which photograph was taken first?---The photograph taken by Soldier 26 was the first photograph taken.

45

PRESIDENT: Thank you.

5 MAJ HYDE: And just on that SGT Hession, did you or are you aware of when Soldier 26 took that photograph?---I believe Soldier 26 took that photograph within two hours of the incident.

10 Mr President, there is a large amount of material that's been produced by this witness this morning. I have no further questions at this stage, but if I could, I would like to reserve my position if there are matters that arise either in relation to the next witness that's going to produce further items or indeed reserve my position in relation to Mr Hayes.

15 PRESIDENT: Yes, very well.

MAJ HYDE: Thank you.

20 LTCOL BERKLEY: Mr President, I have an application for an adjournment and it's basically on this that some of the items that have been produced are personal to Jake. My client hasn't had the opportunity to physically see the items and to instruct me on them. It's simply to seek half an hour to allow my client to go through the items tendered to view them, to view particularly Jake's property that is amongst those items and give me the opportunity to take instructions.

25 She arrived on Saturday evening, I spent some time with her Sunday evening, but of course the items are now produced today. I have seen them, my client hasn't.

30 PRESIDENT: Not an unusual application.

MAJ HYDE: I have no problem with that.

35 LTCOL HOLLES: Sir, I join that application by my friend LTCOL Berkley.

PRESIDENT: All right then. We'll adjourn then until 11.30.

40 **ADJOURNED** [1055]

**RESUMED** [1137]

45

PRESIDENT: Thank you, MAJ Hyde.

5 MAJ HYDE: Thank you, Mr President and Members. If I may, I have a couple of matters that I would just like to finish with before Counsel Representing take over.

PRESIDENT: Certainly.

10 MAJ HYDE: SGT Hession, I take it you kept a notebook for the purposes of your investigation?---Yes, sir, I did.

Have you brought that with you today?---Yes, sir, I have.

15 Do you produce that now?---Yes, sir.

Do you also have a copy of your police service statement?---Yes, sir, I do.

20 Is there a matter at paragraph 11 on page 4 that you wish to clarify?---Yes, sir, there is.

Please do that?---In my service police statement, paragraph 11, it states:

25 *About 1046 hours that day I located within the magazine of the 9 mm pistol located on the floor of room 131B-8 SECDET IX accommodation one 9 mm Browning pistol magazine (empty). I took possession of that item and placed it into a clear plastic bag and attached the service police identification label marked SDH/04. I signed and dated that label.*

30 However, on viewing my notebook during the adjournment - these were notes made at the time of the collection of the property, I've written:

35 *1046 hours I located within the magazine of the 9 mm pistol located on the floor of room 131B SECDET IX accommodation Australian Embassy, 12 9 mm rounds (live). I took possession of those items and placed them into a clear plastic bag and attached the service police identification label marked SDH/04. I signed and dated that label.*

40 Do you wish to amend the statement that you provided to reflect what you've just stated?---Yes, sir.

45 PRESIDENT: Were those rounds in the magazine or somewhere else? ---They were within the magazine, sir.

MAJ HYDE: For the sake of completeness, I tender the field notebook.

PRESIDENT: Any opposition to the tender of the notebook?

5 COUNSEL REPRESENTING: No, sir.

PRESIDENT: The notebook will be marked as Exhibit 50.

10 **#EXHIBIT 50 - SGT HESSION'S FIELD NOTEBOOK**

PRESIDENT: LTCOL Wilkinson?

15 LTCOL WILKINSON: No questions, sir.

LTCOL GREEN: Thank you, sir.

20 **<EXAMINATION BY LTCOL GREEN** **[1140]**

25 LTCOL GREEN: Sergeant, my name is LTCOL Green; I represent the interests of Soldier 14. I want you to assume for the purposes of these proceedings that the statement of Soldier 14 has become Exhibit C19. Sergeant, on or about 30 April 2006 you took that statement from Soldier 14?---Yes, sir.

30 During the course of you taking that statement from Soldier 14, he told you or advised you that he was in the vicinity of PTE Kovco when they went to the Beach state of weapon readiness following the end of their rotational shift?---Yes, sir.

35 You understood that to have occurred at about 1500 hours?---Yes, sir.

That was the incident when the door was held closed against Soldier 14? ---Correct, sir.

40 Prior to Soldier 14 telling you that information, did you have any other information along those lines?---No, sir.

45 If Soldier 14 hadn't told you that information, would you have become aware during the course of your inquiries that PTE Kovco may not have gone through a complete state of weapon readiness to the Manly - understand by the word "Manly"?---Can I ask you to clarify, sir?

Sir, might the witness be shown a document - Exhibit - Sergeant, do you see from that document what I mean by the word, "Manly"?---Yes, sir.

5 Prior to Soldier 14 telling you that he was in the vicinity when PTE Kovco went to the state of weapon readiness Manly and that this incident occurred as it did, would you have had any other way of finding that information out?---No, sir.

10 During the course of Soldier 14 raising that information with you and telling you about his actions, did you, in your own mind, consider that there was some potential for Soldier 14 to have committed a service offence?---Yes, sir, I did.

15 As a consequence of that, did you raise that with your supervisor, Military Police CAPT Smith?---Yes, sir, I did.

Following you raising that with your supervisor, Military Police CAPT Smith, did he then approach the in-theatre legal officer?---That is my belief, sir, yes.

20

He had a discussion with the in-theatre legal officer and, between the two of them, they decided that no further Military Police action would be taken in respect of Soldier 14?---That's the advice I received from my Captain.

25

Following that discussion and following that decision being taken, the statement from Soldier 14 was completed without him being given any form of warning as to the possibility of incriminating himself?---Correct, sir.

30

Thank you, sir.

PRESIDENT: LTCOL Holles.

35

**<EXAMINATION BY LTCOL HOLLES**

**[1143]**

40 LTCOL HOLLES: SGT Hession, how long have you been a Military Policeman?---Since 1994, sir.

How long have you been an SIB investigator?---Since 1997.

45 How long have you been a Sergeant?---Since January 2001, sir.

Are you qualified for promotion to Staff Sergeant WO2?---I am qualified promotion to Staff Sergeant; I'm one course short of promotion to WO2.

5 As at 2001, the time you did the Scene of Crime Examiners Course, how long was that course?---Six weeks, from memory, sir.

10 Who taught it?---A combination of New South Wales Police, civil contractors and Military Police at the Military Police training establishment.

What was the course aim?---The course aim was to assist in the identification, preservation, collection of evidence located at crime scene.

15 Do you, as a scene of crime examiner, have access to microscopes?---No sir.

20 Do you have access to any technical or scientific devices which would assist you in the examination or measurement of scenes of crime or scenes of incidents?---No sir.

Is it the case that your role then is simply the preservation and collection of evidence, physical evidence?---Yes sir.

25 Is it the case that within the SIB there is no capability to do other than preserve and collect evidence?---Correct sir.

30 It follows, does it, that if there is to be any examination of the scene of an incident or the scene of a crime where scientific or other matters would need to be explored you need to engage an outside agency for that purpose?---Correct sir.

35 It follows, does it not that once the particular circumstances of this event were identified, then the SIB needed an outside agency to assist in the examination of the location and the identification, ballistics identification of items taken, ballistics et cetera?---I concur sir with the identification ballistics and further analysis of items located, yes sir.

40 You first came into this matter, if I can use that expression, you said about 0530 on 21 April 2006, is that correct?---Yes sir.

45 Can I suggest to you it would have been 22 April 2006 because at 0530 2006 - 21 April 2006, the events had not occurred?---Taken sir, yes sir. It - at 0530 hours in the morning when I was first notified I was still asleep sir.

5 Yes, it was the 22nd, not the 21st. Were you warned out in some way as the duty investigative service overseas of rapid deployment?---Yes sir. In January of 2006 myself and several other members of the SIB were force prepped and placed on a 12 month standby roster in case an incident was to take place.

10 It's the case, is it not that there are a number of Military Police located as part of the SECDET?---That's correct, sir.

15 Did you speak to them sometime after you first became involved about the preservation of the scene?---Sir, I had no conversations with any Military Police member in Baghdad at all. I do believe however conversations had taken place between my OC and the Captain, Military Police person in country.

Were there any dedicated SIB personnel in country at that stage?---No sir.

20 Are you are if all members of the Military Police are trained or at least recognise the need to preserve scenes of incidents or scenes of crime?---Yes sir I am. On their basis course all Military Police persons are instructed basically if they should observe a scene, they are to secure that scene till someone who is trained to go into the scene arrives.

25 So is it the case that you had a reasonable expectation when you arrived in country that the scene within room 8 would have been preserved?---A reasonable expectation, yes sir.

30 Is it the case that when you commenced your evidence gathering you knew that within SIB resources you did not have the capability to do other than collect physical evidence for later testing?---That's correct sir.

35 At the time you arrived in country, because according to paragraph 4 of your statement it's 24 April 2006 at about 2030 hours - by then you were in country I should say, had you had any contact with an exterior police agency in relation to conducting scientific and other tests as part of the ongoing inquiry?---Nothing at that stage sir. At that stage we were still unsure of the exact nature of the incident.

40 When was it that you became aware that an external agency was to participate in the investigation?---I can't recall the exact date, but it was some several days after we landed in country and conducted or initiated our investigation.

45 So is it fair to assume from that that it would have been somewhere

around the 28th, 29 April 2006?---It could've been sir, yes.

5 Do you have any note in your running sheets as to when that occurred?---No sir. I believe CAPT Smith, the team leader would be able to answer that.

Pardon me for one moment please sir.

10 PRESIDENT: Yes.

LTCOL HOLLES: You say that the room was sealed at the time that you entered it, that is room 8?---Correct sir.

15 And you say you entered it at about 0810 on 26 April, is that correct?---Correct sir.

Had you been into the room before that?---No sir.

20 Had you seen the room before that?---No sir.

Had you seen any photographs of the inside of the room before that?---No sir.

25 Was there any handover to you of the room?---A very - - -

Do you understand my question?---I believe so sir.

30 Right?---I believe there was a very unofficial verbal handover conducted between the Captain MP on the ground over to my team leader CAPT Smith.

Were you present for that?---No sir, I was not.

35 Were you briefed by CAPT Smith of the contents of that handover?--- Only to say that "SGT Hession, there is the room, start your work".

What method did you use within the room in relation to the location of the items contained therein?---Can you explain the question further please?

40 Yes I can. Did you use a grid pattern of search, did you draw a diagram of the room, identify where the items were located against the markings on the diagram? How did you physically identify where in the room each of the items were located?---I drew a diagram of the room with measurements gained by using a measuring device and then I placed all items located in the room into my diagram with measurements using a  
45

triangulation method.

Did you notice any staining on the wall?---No sir.

5 Did you notice any staining on the floor?---Yes sir.

Did you notice any staining on the roof?---Yes sir.

10 Apart from the 9 mm you located on the floor, were there any other weapons in the room?---Yes sir.

What weapons were they?---There was one F88 Austyre placed at the end of the single bed occupied by Soldier 17.

15 Did you conduct an exterior examination of that weapon?---An exterior examination, yes sir.

Did you notice anything on it?---I did see some substance on the weapon sir, yes.

20

Where was that?---Towards the rear of the weapon, near the butt plate and on the - the weapon sling itself.

Was it very much?---Not a considerable amount, no sir.

25

Did you have to look for it? Had your attention been drawn to it?---Yes, sir.

30 If you'd looked at it without having your attention drawn to it, would you have noticed it?---Yes, sir.

The room itself is quite small, is it not?---It's a reasonable size accommodation considering where they are, sir, yes.

35 You've given dimensions of it which I think are 2.36 metres high. So, what, about a seven foot ceiling?---Yes, sir.

4.18 metres long, so about 15 feet long?---Yes, sir.

40 And 2.47 metres wide, so about seven, eight feet wide?---Yes, sir.

In that seven and eight feet width are two bunk beds?---One bunk bed, sir.

And one single bed?---Yes, sir.

45

Three feet bed?---Wide, sir?

Yes?---Yes, sir, approximate.

5 So leaving a passage between the two beds of about two feet?---Correct, sir.

There are also in that area a number of lockers?---Correct, sir.

10 How many?---Three lockers, from memory, sir.

There's combat clothing, combat equipment?---Correct, sir.

15 There's a small desk and there's a bar fridge just inside the door?  
---Correct, sir.

20 Could you open the door without it banging on the bar fridge?---Yes, sir, the door opened inwards and to the left. The bar fridge is located on the right-hand side.

So the bar fridge is basically adjacent to the door jamb. Is that correct?  
---Correct, sir.

25 Was there much space between the bar fridge and the bunk bed next to it?  
---I believe there was up to a foot of space.

That is, between the edge of the bar fridge and the edge of the bed. Is that correct?---Correct, sir.

30 You've taken a number of pictures of blood stains on the floor. Is that correct?---Correct, sir.

Or what you perceived to be blood stains?---Correct, sir.

35 Did you have any testing kit with you to do presumptive test on blood stains?---No, sir.

40 Did you have any testing equipment with you to do presumptive testing for any substance at all?---No, sir.

What is your understanding as to the location in which you found the 9 mm pistol?---Could you explain it further, sir?

45 Yes, certainly. You were briefed as to the contents of the room?---No, sir, I was not.

Were you briefed as to whether there were weapons in the room or not?  
---I was told by the Platoon Commander that the weapon is in the room,  
but that's about it.

5 Were you made aware that the Styer was in the room also?---No, sir.

So you were told the weapon is in the room?---Correct.

10 Were you given any information as to the condition of the weapon,  
loaded, unloaded, et cetera?---No, sir.

Were you made aware if anybody had touched the weapon prior to you  
going into the room?---No, I wasn't, sir.

15 So far as you're aware, from the time the incident happened to the time  
the room was sealed the weapon may have been moved?---It could very  
well have been, sir, yes.

20 How many magazines did you locate in total near the weapon?---Could I  
have that question again, sir?

Yes, certainly. You located a magazine on the weapon?---Correct.

25 Did you locate another magazine approximate to where the weapon was  
located?---No, sir.

Did you locate another magazine within the webbing of the deceased?  
---No, sir.

30 Did you locate another magazine in the leg holster?---No, sir.

How many magazines did you recover from the room?---One 9 mm  
magazine, sir.

35 One only?---Correct, sir.

Now, you've indicated in evidence that when you picked up the weapon  
that it was – it had a magazine on it?---Correct, sir.

40 That magazine contained nine ball rounds of 9 mm ammunition?---No, sir,  
it was a full magazine containing 12 live rounds and the one cartridge case  
in the ejection port.

45 A 13-round magazine?---Correct.

Is there any reason why you omitted that detail from your statement?  
---Sir, that beach I was attempting to be clarified through my service  
5 police notebook. The only thing I can suggest it is an unfortunate typo  
conducted by myself when I was transcribing my notebook into a  
statement format.

Did you make any inquiries as to the location of a second magazine?  
---Inquiries were conducted by another investigator in relation to what  
10 exactly was issued in relation to magazines, weapons.

When is it your understanding that the room was sealed prior to your  
breaking the seals and gaining access on the morning of 26 April 2006?  
---I believe the room was sealed possibly two to three hours after the  
15 incident.

Is it your understanding the seals were broken at any stage between that  
time and the time you entered the room?---I don't believe so, sir, no.

20 You were the primary statement taker from the people located  
approximate to where the incident happened?---Correct, sir.

Could you explain to the Court the process that you undertook when  
taking those statements?---Yes, sir. I occupied a room within the foyer  
25 region of the Australian Embassy itself and depending on the availability  
of the members through shift work, et cetera, I worked my way through  
those members available at the time until I completed speaking to all  
members of the Embassy.

30 How did you actually take the statements themselves?---As I said, we sat  
down inside the foyer region. I had a laptop computer. I spoke to the  
individual first and went through his recollections verbally first, and then  
we transcribed those verbal comments into a typed statement.

35 Did you at any stage put words into their mouth or make a suggestion to  
them as to what the formal word should be?---No, sir, not at all.

Sergeant, can you explain why the phrase "an American padre was also  
present and he led us in the Lord's prayer" occurs in about a dozen  
40 different statements?---Yes, sir. That is what had happened.  
Unfortunately, the only thing I can come up with in relation to the use of  
similar words and similar phrases is that it took me a considerable period  
of time to record all the statements. The soldiers living in the Embassy all  
live in close quarters with each other. Each of the soldiers were afforded a  
45 copy of the statement recorded with them at the time that it was signed. I

cannot control what the soldiers do after I leave the area. I can only suggest that it is very probable that soldiers may have discussed what the SIB sergeant was going to discuss with them and the best way to answer those questions. So when it comes to phrases like that, that is one way to describe why similar words appear in similar statements.

5  
10 So a significant number of them said exactly the same thing, "An American padre was also present and he led us in the Lord's prayer"?  
---Yes, sir.

10 That wasn't a phrase you suggested to them?---No, sir.

It wasn't a phrase that you had typed before they spoke to you?---No, sir, no.

15 They all came up with that statement independently of each other; is that the case?---Yes, sir. From memory, the Lord's Prayer is what we call the Lord's Prayer in the Army. We call priests padres; an American padre is an American padre.

20 Some people refer to that prayer as the "Our Father," don't they?---Sir, I refer to it as the Our Father because I'm a Roman Catholic.

25 So am I but every single one of these soldiers called it the Lord's Prayer; is that what you're saying?---Sir, that's what they told me. Sir, I will admit that there was a considerable amount of templating involved in the production of the statements. The first page to two pages of each of those statements were recorded from soldiers in the same area doing the same thing for a period of time. As such, yes, their initial pages would all be identical because that's what they do. They completed their training at the same time, they qualified on the same weapons at the same time, so there was a fair amount of templating done in relation to a lot of the stuff in the statements. But when it came down to what their actions were in relation to 1500 onwards on 21 April, they are all their own words.

35 The majority of these statements appear to have been taken some nine days or so after the events in question; is that correct?---Correct, sir.

40 Given that you were in-country from 24 April, that is, 96 hours, I think you described as, after the events in question, didn't you feel it was appropriate to get statements as early as possible?---Sir, a lot of the soldiers involved had been brought back to Australia to assist with matters back home and didn't return to country till eight to 10 days after I had arrived.

45

In the search that you conducted of PTE Kovco's effects, at no stage did you locate a shoulder holster, did you?---That's correct, sir, no, I did not.

5 The holster was an issue leg holster?---Correct, sir.

A fire holster, to be precise?---Correct, sir.

10 The laptop you located on top of the bed: was that open or closed at the time you located it?---Sir, as per the photographic supplements included in the report, the laptop was closed and - still plugged in, however, turned off and closed.

Do you know who did that?---Sir, I do not know.

15 Did you participate in or were you present for any of the - if I can use the term - "recreations" within the room?---No, sir, I wasn't. That was conducted by the New South Wales Police ballistics when they attended.

20 Who gave permission for the room to be cleaned prior to the arrival of the New South Wales Police?---Once I finished conducting the work within the room, I handed the room over to the Platoon Commander and said that the Military Police had finished with the room. This is before that I was aware or the Military Police were aware that New South Wales Police were attending. As no one else was attending, we handed it back, however, within hours we had found that New South Wales Police were coming. So we contacted the Platoon Commander again and told him to hold off on the cleaning. Unfortunately, that was some two to three hours after the room had been handed over to them, so cleaning had commenced.

30 Sergeant, didn't you think it was likely that some external agency was going to come and conduct forensic tests on this location?---Sir, no, I did not. Overseas, jurisdiction falls back on Military Police so, no, I did not think any external agency was going to be attending.

35 Sergeant, as long ago as the Vietnam war, the Military Police used external agencies in forensic investigations; you'd be aware of that, wouldn't you?---Yes, sir.

40 Didn't you think it was likely that given the profile of this matter it was that some external agency was going to be involved?---Sir, the use of external agencies I - I was under the impression from my past work was that anything collected will be transferred to their labs for analysis and their expert statements would be then tendered to assist our report.

45

5 Sergeant, you would be aware, would you not, from your attendance at the crime scene course that forensic examiners traditionally visit incident scenes or crime scenes for what might be called a first-hand look at the location?---Sir, as this crime scene was in Baghdad it wasn't what I would call traditional.

10 Irrespective of its location, it was reasonable to assume that forensic examiners would wish to look at the site, was it not?---Sir, once again I - I wouldn't have thought so. I was under direction of my Captain team leader, he provided me with my advice. At no stage did he ever suggest to me that New South Wales were going to be involved until it was confirmed to us by phone calls. We were speaking to Australia on a daily basis, several times a day. As soon as we were informed that New South Wales Police were going to be involved, then it changed obviously the parameters in which we were conducting our investigation.

15 Sergeant, was it you or was it CAPT Smith who made the decision to hand the room back to the SECDET?---Conversation the night before when I spoke with CAPT Smith and I said to him "What do you want done with the room once I've finished with it?". He then said "When you finish with it and you're happy with it, you are free to hand it over".

20 As a matter of interest, when you did your map of the room did you include details as to the precise diameter of stains on the floor?---Sir, I boxed them to a square formation and then I placed them into my model using the measurements of the locations of known items to compare the measurements of the stains.

25 Did you retain samples of the stains?---No, sir, I did not.

30 Is there a reason for that?---I did not believe that the stains were being called into question as to what they were and I didn't see any reasonable need to retain what we knew was what it was.

35 So I presume your position is that you disagree with the assertion you can never have too much physical evidence?---No, sir. As I said, there was no question what the stain on the carpet was and where the stains came from. As a result of that, there was no requirement, in my belief, to take samples of stains on the carpet sir. The stainage on the carpet was not called into question.

40 Yes, thank you, sir. I have no further questions at this stage.

45 PRESIDENT: Yes, thank you. LTCOL Berkley?

LTCOL BERKLEY: Yes, thank you, sir.

<EXAMINATION BY LTCOL BERKLEY

[1213]

5

LTCOL BERKLEY: Sergeant, I'm LTCOL Berkley and I appear for Shelley Kovco and I want to ask you some questions as well, okay?---Yes, sir.

10

Have you ever been made aware of a quick assessment done just after or in the immediate period following the fatal injury to the deceased?---Sir, I did have a chance to read that quick assessment the evening before I attended the room, I had a quick perusal in my accommodation area.

15

Now, I note that Soldier 21 - have you got the matrix in front of you?---I do, sir, yes.

20

Soldier 21 made a statement to you on 30 April at about 1230, or at least that's when he witnessed it. Do you have a copy of Soldier 21's statement to you?---If you give me one second, sir, I'll - - -

Yes, please?---Yes, sir.

25

Now, when that statement was taken by you, was that statement taken in the form that you asked the soldier questions and that soldier gave you answers which you recorded?---Yes, sir. As I said before, all statements were recorded after - on paper after a verbal discussion was taken place between myself and the soldiers where I asked them to explain in their own words what they saw, what they did, where they were, what they heard.

30

I want you to refresh yourself with paragraphs 18 and 26 of the statement of Soldier 21 and it's not a memory test, so you can scan it?---Right, sir.

35

In the quick assessment that you'd seen prior to entering the deceased's room were you aware of an interview note which Soldier 21 has allegedly said:

40

*I am sure I heard someone call Ali Akbah about 10 seconds before the gunshot.*

?---Sorry, sir, can you please repeat that?

45

Ali Akbah, this is the way to pronounce it, the spelling is wrong, but it's

A-l-i A-k-b-a-h, at least in this statement. See that?---Yes, sir, I'm aware of that, yes.

5 I think you questioned Soldier 21 about that matter?---Correct, sir. I spoke to every single soldier I spoke to and raised that point.

Sir, you'll have to give a direction to the press.

10 PRESIDENT: I'm sure that the Lieutenant Colonel down the back there will look after that for us.

LTCOL BERKLEY: So, in Soldier 21's statement he said he'd not heard any of the Platoon members saying this, other than in training scenarios prior to deployment. He said:

15

*I have heard on one occasion of a Platoon member using the phrase in a joking fashion whilst we've been deployed. The times it's been said was during joking around, but nothing specific. This happened a considerable time ago and they've been no repeats. I did not hear that phrase said by anyone on 21 April '06.*

20

Do you see that in Soldier 21's statement?---Yes, sir.

25 Now, did you question Soldier 21 as to what he had allegedly said to the quick assessment officer?---Yes, sir. I raised the point that the phrase had been heard and it was reported to the quick assessment officer and he said, "Well I didn't hear it" and as this is his statement, I can only record what they tell me.

30

Yes indeed Sergeant. So you specifically put the statement attributed to him by the quick assessment officer to Soldier 21 and he said it wasn't him that said it?---Correct, sir.

35 I think it appears in most of the statements when you've asked the other soldiers dutifully as you must, had they heard it and they all gave a negative response as well?---That's correct, yes.

40 When you entered the room to work it for the first time, I think you've told LTCOL Holles that the seals were in tact, the wafer seals were in tact? ---That's correct, sir, yes. The breaking of the wafer seals was recorded on the video of the room that I made showing the wafer seals to be in tact and then me breaking them.

45 Did you inquire of anyone as to whether anyone else had been in that

5 room and if so, who prior to you breaking those wafer seals?---I spoke to the Platoon Commander out there at the time and he'd informed me that Soldier 2 had allowed members back in to retrieve Military equipment. He'd also had Soldier 26 take photographs of the room and after that, the room was then secured.

10 Now, when you entered the room, was the first thing that you did was to mark out what physical items found in the room, such as beds, fridges, clothing, et cetera, or did you start taking measurements?---No, sir. The first thing I did when I entered the room was to just observe the room itself. I then went back outside and retrieved my video camera where I made a digital video recording of what the room and its contents looked like. I then photographed the room. I then marked out the location of certain items, took the measurements, drew a sketch before removing any items from the room.

15 Did you test Soldier 17 and 19 for gunshot residue?---Unfortunately, sir, after not - getting to the area some 96 hours afterwards both soldiers had been allowed to wash their clothing and wash themselves and their body.

20 If a trained SIB investigator had been in situ, would you have expected that trained investigator to have taken the gunshot residue swabs prior to them washing?---Absolutely, sir. Those testing and swabbing would have been done at the local medical facility by getting a doctor. In those situations we would have used a sexual assault kit that has the swabbing materials.

25 So you'd grab a sexual assault kit and you'd take the swabbing materials from that?---Correct, sir.

30 Were you aware whether there was any liaison with the American hospital, whether they had swabbing kits available?---They do have swabbing kits available, sir, yes.

35 Of course I think you spoke to the American doctor, LTCOL Mazur, about Jake's clothes?---Correct, sir, yes. I was informed that the American hospital treated PTE Kovco for his injuries and obviously their first priority is the first aid and medical treatment. All clothing had been removed in haste by the doctor, been cut off, and subsequently destroyed.

40 Did you inquire of the doctor what particular items of clothing that Jake was wearing when he first got into the operating theatre?---PT attire, shorts, t-shirt.

45 Were you aware whether he had any footwear?---I wasn't aware, no.

When you went into the room you wouldn't describe it as an inspection order, would you?---No, sir, I would describe it as what I would expect a couple of young blokes in their mid-20s to look like and live by.

5

Certainly alongside the double bunk and at the bottom of it there was military kit which is a destructive pattern, webbing and packs and that sort of thing?---Yes, sir.

10 Evidence we've got so far, there's some evidence that when the bullet entered Jake's head – and I apologise if any of this distresses anyone – he is very close to the double bunk. We've had that evidence. Given that, was your assessment that when the bullet entered Jake's head he was very close to that double bunk?---Owing to the size of the room I would suggest that yes, standing anywhere near the room you'd be close to the double bunk.

15

Did you test any of the military equipment that was still in the room, take it uncontaminated for gunshot residue?---No, I did not, sir.

20

Why didn't you?---Being military equipment I would suggest that every time they go down the range they would carry their military equipment and the chance of gunshot residue being on the military equipment would be fairly high.

25

Did you test Jake's laptop computer for gunshot residue?---No, I did not.

30 Would you agree that if you could match the residue from the particular rounds that were being fired they can assist you in finding out where the shot was fired and even fired from?---Correct, sir.

30

So there was no residue testing done of any item in the room?---I'm unaware if New South Wales ballistics conducted residue testing on the laptop.

35

Certainly yourself you didn't see any forensic value in having any of the items in the room tested for gunshot residue?---No, sir.

40 What about say the bedding? That would have been unwashed and uninterfered with, uncontaminated?---Yes, sir.

40

Did you test any of that for gunshot residue?---No, I did not.

45 Let's go to DNA testing. You've presented to this Inquiry Jake's toothbrushes and flash hood?---Correct, sir.

45

Are they likely sites from which you would obtain DNA for comparison purposes?---Yes, sir.

5 Were they ultimately subject to any DNA testing?---I don't believe at the end of it all there was a requirement to conduct DNA testing as in the identification. There was no question.

10 You collected them for that purpose, but that purpose seemed to be rather frustrated from the start because it wasn't a question of Jake's identity in issue. Do you understand what I'm saying?---I do, sir. As I said, I collected those on the pre-chance that if identification was ever called into question we would have a source sample of DNA that we could use. As the identification was never called into question, obviously those items I  
15 still have. They have not been tested for DNA.

When you'd completed working the room did you remove any property from the room?---Other than the items that I've indicated and presented today, no, sir.

20 I'm sorry, I should have made that more clear. I take it that the items presented today were the only items you removed from the room and that was when you worked the room?---Correct, sir.

25 Do you know if anyone else had removed property from that room prior to your working the room?---Sir, I'm aware that certain members were allowed into the room and a quantity of military and personal equipment was removed prior to me attending.

30 Do you know when Jake's journal was removed?---Yes, sir. I located the journal during my initial search of the room. As there was some conversation in regards to a particular letter to his wife, on reading the journal I located that letter and I handed the journal over to the Platoon Commander at the time to copy and send that letter home. At a  
35 subsequent time the journal was then handed back to the military police where another investigator has tagged and bagged it as such.

40 Did you become aware that both the Company Sergeant Major and the Platoon Commander had items of Jake's in their possession?---Yes, sir, I did.

45 What were those items, can you recall?---From memory, I think there was a soft toy of some description and some documents, I believe, from memory.

When were they removed from the room?---I'm unsure of the actual timing, but I believe it was in the preceding two to three hours before the room was secured after the incident.

5 So prior to your arrival?---Yes, sir.

Do you know who removed them from the room?---Once again, the actual person I'm unsure. I believe it may have been Soldier 2 or Soldier 1.

10 In relation to those items removed from the room, other than the journal, do you know their disposition? What happened to them?---Could I just get you to table that question, sir?

15 What happened, say, to the soft toy? Do you know what happened to it? ---I believe that was held by either Soldier 1 or Soldier 2, as I said, sir, and returned to Australia with the remaining - - -

20 Say that item alone, had that left for Australia by the time you worked the room?---No, sir.

So it was still there and it was available for your inspection?---Correct, sir.

25 Did you consider that there was any need for any forensic testing at all of any of those items?---No, sir. I asked where those items were located and because they were identified as being located inside the locker I thought there would be no requirement to conduct any forensic testing on those items.

30 Are you aware whether Jake had a Canon compact camera with him at all?---No, sir, I did not see any camera like that.

Did you inspect the locker that was at the foot of the double bunk?---I did indeed, sir, yes.

35 That's what you were told was either Jake's locker or a locker that he shared?---Yes, sir.

40 What did you understand the arrangements to be? What were you told? Was that locker just for Jake or was it to be shared with other soldiers? ---When I first conducted the examination of the room it became apparent that each soldier had a designated locker by the clothing and personal equipment located within each of those lockers.

45 Who showed you what items of clothing were Jake's and what belonged to other soldiers?---No-one, sir. I conducted the inspection of each of the

lockers myself. At a subsequent time I was informed of the layout of the room and who actually owned the lockers.

5 PRESIDENT: I wonder whether this might be an appropriate moment to take the adjournment.

LTCOL BERKLEY: Yes, sir.

10 MAJ HYDE: Sir, can I also just ask that there be a direction to the media not to publish the name of Soldier 21. There was a reference, inadvertent reference.

15 PRESIDENT: A mistaken reference. I'd be grateful to the media they don't publish the name but again use the matrix user number. Thank you.

**<WITNESS WITHDREW [1233]**

20 **LUNCHEON ADJOURNMENT [1233]**

**RESUMED [1338]**

25 PRESIDENT: Thank you, Sergeant. You are of course bound by the oath that you took earlier this morning. Thank you, LTCOL Berkley.

30 **<SGT STEVE HESSION, recalled on former oath [1338]**

**<EXAMINATION BY LTCOL BERKLEY**

35 LTCOL BERKLEY: Sergeant, LTCOL Berkley again. On 21 April 2006 Soldier 26 took a photo of PTE Kovco's 9 mm pistol; do you agree? ---Yes, sir.

40 You took a photo of that pistol at a later time and it appears the pistol has been removed. Do you agree with that?---Yes, sir.

45 When you took your photo I understand that prior to taking that photo you had conducted a videotape inspection of the room?---Correct, sir.

I think the Board has already seen that. In that inspection you physically manipulate the pistol by picking it up and turning it over, et cetera. Do you agree with that?---Yes, sir.

5 To save some unintended excitement, could that be an explanation for why the pistol is in a different position?---Yes, sir, it could.

I've no further questions, thank you, sir.

10 PRESIDENT: Thank you. COL Young.

**<EXAMINATION BY COL YOUNG**

**[1339]**

15 COL YOUNG: Sergeant, my name is COL Young. I represent the interests of PTE Kovco. I just have a few questions for you. When you first entered the room and picked up the pistol and unloaded it to make it safe, were you wearing gloves at that time?---Yes, sir, I was.

20 Before you picked it up, did you draw an outline at all with chalk or something else so that you could replace it in the same position?---No, sir, I didn't.

25 So you just put it back in what you thought was the same position? ---Correct, sir.

LTCOL Berkley has just referred you to the two photographs which were part of Exhibit 49 and you've agreed that the pistol has been moved from when the photo was taken by Soldier 26 to when you took a photograph?  
30 ---Correct, sir.

Apart from the explanation he's put to you as to how it might be moved, did you make any inquiry as to whether anybody else had touched the pistol at all?---Sir, at all times when I spoke to any of the soldiers during the statement-taking process I asked all soldiers if they had entered the room and if they had entered the room did they notice the pistol, and further still, if they had moved the pistol at any stage.  
35

40 The 9 mm pistol that you found and photographed, was that the only pistol you found in the room?---Yes, sir, it was.

45 Do you know if any of the other occupants had 9 mm pistols issued to them?---Sir, I was under the belief and informed later that no other person in the room held a 9 mm pistol.

5 When did you make those inquiries?---Sir, those inquiries were made in the subsequent days after initially attending the incident room. During the statement process taking both by myself and the other investigator who was recording statements back at the SECDET IX area.

10 From what you've told us, it's your understanding that the other two occupants of that room did not have 9 mm pistols issued to them?---That's correct, sir.

15 That's all I have, sir. Thank you.

PRESIDENT: Counsel Assisting?

15 MAJ HYDE: Nothing further, sir, with one exception. That is, a number of the documents that have been tendered ought to have a C classification.

20 PRESIDENT: Yes, perhaps we better talk about which ones they are so that we don't disclose them to the press.

20 MAJ HYDE: The list is being brought to me shortly. Perhaps if I can put that to one side and before we adjourn this afternoon advise the Board of the precise documents.

25 PRESIDENT: Certainly. Thank you.

MAJ HYDE: I ask that the witness be released.

30 PRESIDENT: Of course. The ones that ultimately become classified will not be released to the press of course. Thank you, Sergeant.

LTCOL HOLLES: Sir, just before the witness is excused, there's just one issue I'd like to check. May I ask the witness a further question, please?

35 PRESIDENT: Yes, certainly.

**<EXAMINATION BY LTCOL HOLLES**

**[1343]**

40 LTCOL HOLLES: Sergeant, who was it that told you that none of the other persons in the room had pistols?---Sir, my belief and recollection is that those inquiries were made by one of the other investigators and it was a question that I asked him at the conclusion of working in the embassy on  
45 a particular day. When we got back to where we were accommodated we

would sit down and debrief amongst ourselves and obviously that question I raised and through his inquiries he could confirm through the paperwork collected that none of the other soldiers in that room had been issued a 9 mm pistol for that period.

5

Did you ask that question of either of the soldiers in the room?---When I recorded their statements, they indicated in their statements what weapons they carried. Neither of those soldiers identified that they were carrying a pistol at the time.

10

If I put it to you that at least one of the other soldiers in that room had a 9 mm pistol on issue, what would you say?---I would say that I was very surprised with that information, sir.

15

Did anybody, within your knowledge, check the issue of weapons against the names of the occupants of the room?---I believe that was conducted by the other investigator who was in the area where the issues were conducted and he would have that paperwork and that knowledge.

20

At the risk of repeating myself, you didn't ask either of the other persons in the room if they had a 9 mm on issue to them?---Not specifically, no, sir.

25

Well, I don't mean to be rude, but did you or didn't you?---No, sir, I did not.

30

Can I take you please to the statement of Soldier 19, that's a Service Police statement dated 30 April 2006, do you have that statement with you? ---Just confirming, sir, dated 30 April, has that been penned incorrect to reflect 01 May?

Not on the document I have, but do you have the matrix of people there that - - -?---I do indeed, sir, yes.

35

For certainty we're talking about Soldier 19?---Right, sir.

Do you have a copy of his statement in front of you?---I do, sir.

40

Paragraph 2 reads:

*My full name is (blank), I'm currently 24 years of age, I'm a Private in the Royal Australian Infantry Corps.*

45

Is that correct?---Correct, sir.

If you go, please, to paragraph 5 of that statement?---Correct, sir.

*During my deployment, my 9 mm pistol was issued through the Q store and at that stage pistols were issued (blank).*

5

So is it not the case that Soldier 19 was an occupant of the room?---He was an occupant of the room. However, sir, during the period that they were on rotation or detachment over to the SECDET, one Platoon at a time rotated through the embassy and of the members of that Platoon, (deleted) soldiers carried 9 mm pistols. That's not to say that when they rotated back through the SECDET and task specifics they were not then issued a pistol to conduct those taskings in other locations.

15 So it's your understanding that pistols were in fact, if I can use the expression, handed around among the people in the location?---I wouldn't use the term "handed around", sir. I would say that upon the completion of each soldier's usage of the pistol, it would be returned to an armoury and then redrawn by another soldier for that specific task.

20 So your understanding from the statement by Soldier 19 was that he was issued a pistol at some stage, is that correct?---Correct, sir.

It was withdrawn and at the time that this incident happened he didn't have it?---That's correct, sir.

25

Can you take me to the point of the statement where he says the pistol was withdrawn?---It's not in there, sir.

30 Do you recall him saying that to you?---I can't recall, sir, no.

Nothing further, sir.

PRESIDENT: Yes, thank you. Anything arising out of that, gentlemen?

35 LTCOL BERKLEY: No, sir.

PRESIDENT: Yes. MAJ Hyde?

40 MAJ HYDE: Nothing further to ask.

PRESIDENT: Yes, thank you, Sergeant, you may stand down, thank you.

<WITNESS WITHDREW

[1349]

45

PRESIDENT: Yes, Major.

MAJ HYDE: I call SGT White.

5

LTCOL HOLLES: Sir, would you allow me to approach Counsel Assisting to raise a matter with them?

MAJ HYDE: Mr President, whilst we're waiting for SGT White to attend, I've just been reminded that there may be some operational security issues in relation to the last questions asked by LTCOL Holles dealing with the issue of weapons to SECDET and the embassy and it may be appropriate that an order be made in relation to the disclosure of that information.

10  
PRESIDENT: Is there any difficulty from the people at the Bar table if we treat that as being secret and don't release it?

COUNSEL REPRESENTING: No, sir.

15  
PRESIDENT: Yes, it won't be released to the press.

<SGT JEFFREY TROY WHITE, sworn

[1352]

20  
25

<EXAMINATION BY MAJ HYDE

MAJ HYDE: Could you please state your full name and rank for the record?---I am SGT Jeffrey Troy White.

30

Can you tell the Board whether you've been provided with a copy of Annex F to Chapter 7, the Rights and Obligations of Witnesses?---Yes, I have, sir.

35

For the purposes of these proceedings, have you prepared a written statement?---Yes, sir.

Do you have that before you?---Yes, sir, I do.

40

Is that a statement of 15 pages signed by you on 22 May 2006?---Yes, that's correct, sir.

I tender that statement.

45

PRESIDENT: Any opposition to the reception of that document?

COUNSEL REPRESENTING: No, sir.

5 PRESIDENT: Marked as Exhibit 51.

**#EXHIBIT 51 - STATEMENT OF SGT WHITE DATED 22/05/06**

10

MAJ HYDE: Sergeant, could you tell the Board where you're currently posted and what exactly you do?---Yes, sir. Sir, I'm currently posted to 2 Section 53 MP Platoon in Puckapunyal, Victoria, where I hold the position of Investigator for the Military Police.

15

How long have you had that position?---I was posted there in May 2004, sir.

20

Have you completed any formal training as an investigator?---Yes, sir, in May 2004 I completed my Service Police Investigator course and I've also completed in December 2000 my Military Police basic course.

25

Can you give a brief description of what each of those courses involves? ---Yes, sir. Sir, a Military Police basic course covers basically the general duties of a service policeman, including basic investigation capabilities, statement taking, processing of minor scenes, an initial appreciation of incidents. My investigator qualification course covers the investigation of service offences in accordance with the DFDA.

30

Could I ask you to now refer to your statement that's before you. Have you referred to certain items of evidence in that statement?---Yes, I have, sir.

35

Is the first one described as JW/1?---That is correct, sir.

Could you tell the Board what JW/1 is?---Yes, sir. JW/1 was: one hospital report of death for Kovco, Jacob, service number 822939310/00/8624 consisting of four photocopied pages.

40

Do you produce that to the Inquiry?---No, sir, that document has previously been tendered.

JW/2: is that a document that you produce to the Inquiry?---No, sir, that document has also previously been tendered.

45

JW/3: is that a document that you produce to the Inquiry?---No, sir, that has previously been tendered as well.

5 Turning over the page, is the next item of evidence JW/7?---That's correct, sir.

10 What is that?---That is one black-coloured leather-bound notebook with gold-coloured embossing on the front cover bearing the name, "Kovco, J B 3816117," inside front cover with handwritten notes and one black and clear-coloured ballpoint pen.

I tender that document.

15 PRESIDENT: Any opposition to that tender?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Yes, marked as Exhibit 52.

20 MAJ HYDE: Mr President, could that have a classified prefix.

PRESIDENT: Yes, marked classified.

25 **#EXHIBIT C52 - JW/7: ONE BLACK-COLOURED LEATHER-  
BOUND NOTEBOOK WITH GOLD-COLOURED EMBOSSING  
ON THE FRONT COVER BEARING THE NAME, "KOVCO, J B  
3816117," INSIDE FRONT COVER WITH HANDWRITTEN  
NOTES AND ONE BLACK AND CLEAR-COLOURED  
30 BALLPOINT PEN**

35 MAJ HYDE: The next item that you produce to the Inquiry, Sergeant? ---Yes, sir, is item marked JW/4, is a three-page printout of nominal roll for SECDET IX, entitled, "Member's service/PERS details."

I tender that document.

40 COUNSEL REPRESENTING: There's no objections.

PRESIDENT: Marked, then, as Exhibit 53.

MAJ HYDE: Could that also have a classified record, please.

45 PRESIDENT: Also classified. If we're going to mark these things

classified, gentlemen, if you've got some objection, please let me know, otherwise I'll react accordingly.

5       **#EXHIBIT C53 - JW/4: THREE-PAGE PRINTOUT OF NOMINAL ROLL FOR SECDET IX, ENTITLED, "MEMBER'S SERVICE/PERS DETAILS"**

10       MAJ HYDE: The next item of evidence, please, Sergeant?---The next item, sir, is marked JW/10, which is one original DDR42T Technical Inspection General for 9 mm Browning ARN245MY06578, dated 3 October '05.

15       I tender that document.

PRESIDENT: Any objections?

COUNSEL REPRESENTING: No, sir.

20       PRESIDENT: Marked as Exhibit 54.

COL YOUNG: Could I just clarify if the inspection is of a particular pistol. Did you give us a serial number of the pistol?---Yes, sir, it is ARN245MY06578.

25       Thank you.

30       **#EXHIBIT 54 - JW/10: ONE ORIGINAL DDR42T TECHNICAL INSPECTION GENERAL FOR 9 MM BROWNING ARN245MY06578, DATED 03/10/05**

35       MAJ HYDE: Next item, please, Sergeant?---Yes, sir, the next item is marked identification number JW/11, which is a printout of signal, titled, "Group 1 mod pistol," dated 03/05/07Z, February '06, consisting of two pages.

40       Does that relate to a particular weapon?---It is for pistol L9A1 9 mm pistol, sir. It's a group signal.

I tender that document.

45       PRESIDENT: Any opposition to that document?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 55.

5

**#EXHIBIT 55 - JW/11: PRINTOUT OF SIGNAL, TITLED, "GROUP 1 MOD PISTOL," DATED 03/05/07Z, FEBRUARY '06, CONSISTING OF TWO PAGES**

10

MAJ HYDE: Next document, please, Sergeant?---Is JW/12, which is one printout of electrical and mechanical engineering instruction, modification instruction for pistol 9 mm semi-automatic MKIII, consisting of three pages, sir.

15

I tender that document.

20

PRESIDENT: Any opposition to that?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 56.

25

**#EXHIBIT 56 - JW/12: ONE PRINTOUT OF ELECTRICAL AND MECHANICAL ENGINEERING INSTRUCTION, MODIFICATION INSTRUCTION FOR PISTOL 9 MM SEMI-AUTOMATIC MKIII, CONSISTING OF THREE PAGES**

30

WITNESS: Next item, sir?

35

MAJ HYDE: Thank you?---It is marked with identification number JW/13, which is one original GI042 Technical Inspection Report General for SECDET IX MKIII 9 mm pistols, dated 19 March 2006.

I tender that document.

40

PRESIDENT: Any opposition to that?

COUNSEL REPRESENTING: No, sir.

45

PRESIDENT: Marked as Exhibit 57.

5 **#EXHIBIT 57 - JW/13: ONE ORIGINAL GI042 TECHNICAL  
INSPECTION REPORT GENERAL FOR SECDET IX MKIII 9 MM  
PISTOLS, DATED 19 MARCH 2006**

10 MAJ HYDE: Next document, please?---It is marked identification  
number JW/14, which is one copy of electrical and mechanical  
engineering instructions, equipment inspection and examination data for  
pistol 9 mm semiautomatic mark 3.

I tender that document.

15 PRESIDENT: Any difficulty with that?

20 COL YOUNG: I'm just having a little difficulty making a note of  
precisely what these exhibits are, whether things are just going a bit too  
quick for me I'm not quite sure.

MAJ HYDE: I can slow it down, sir.

COL YOUNG: Thank you.

25 **#EXHIBIT 58 - JW/14: ONE COPY OF ELECTRICAL AND  
MECHANICAL ENGINEERING INSTRUCTIONS, EQUIPMENT  
INSPECTION AND EXAMINATION DATA FOR 9 MM  
SEMIAUTOMATIC MARK 3**

30 MAJ HYDE: Sergeant, the next document, please?---Sir, it is marked  
identification number JW/15, which is one printout of electrical and  
mechanical engineering instruction, inspection of small arms annual and  
breaching inspection procedure, sir.

I tender that document.

40 PRESIDENT: Any objection?

COUNSEL REPRESENTING: No, sir.

45 **#EXHIBIT 59 - JW/15: ONE PRINTOUT OF ELECTRICAL AND  
MECHANICAL ENGINEERING INSTRUCTION, INSPECTION**

**OF SMALL ARMS ANNUAL AND BREACHING INSPECTION  
PROCEDURE**

5 WITNESS: Next item, sir?

MAJ HYDE: Sergeant, if you could just slow your reading of the police identification tag down so that details can be recorded. Thank you?---Yes, sir.

10

Next item, please?---Next item is marked identification number JW/16, which is described as one SI185 summary of articles on issue for SECDet IX dated 21 March 2006.

15

I tender that. Mr President, that will need a classified marking.

PRESIDENT: I took it there were no objections.

COUNSEL REPRESENTING: No, sir.

20

**#EXHIBIT C60 – JW/16: ONE SI185 SUMMARY OF ARTICLES  
ON ISSUE FOR SECDet IX DATED 21 MARCH 2006**

25

MAJ HYDE: Next item, please?---Next item, sir, is marked identification number JW/17, which is one SQ80 ammunition issued record dated 12 April '06 and issued to Soldier 2.

30

Could I ask that you refer to the call sign matrix in relation to that last remark. Is he Soldier 2 on that matrix?---Yes, sir.

PRESIDENT: Any opposition to that tender?

35

COUNSEL REPRESENTING: No, sir.

**#EXHIBIT 61 – JW/17: ONE SQ80 AMMUNITION ISSUED  
RECORD DATED 12 APRIL 2006 AND ISSUED TO SOLDIER 2**

40

MAJ HYDE: Mr President, given the reference to an individual's name, could we have an order that not be published.

45

PRESIDENT: That individual's name will not be published. We'll use

the matrix instead.

5 MAJ HYDE: Next item, please, Sergeant?---Sir, the next item is marked identification number JW/18, which is one original welfare Internet suite user application form for 8229393, PTE Jacob Bruce Kovco, dated 15 March '06.

I tender that document.

10 COUNSEL REPRESENTING: No objection.

15 **#EXHIBIT 62 – JW/18: ONE ORIGINAL WELFARE INTERNET SUITE USER APPLICATION FOR 8229393, PTE JACOB BRUCE KOVCO DATED 15 MARCH 2006**

20 MAJ HYDE: Next item, please?---Next item, sir, is marked identification number JW/19, is one compact disc titled “Email Jacob Kovco” downloaded from SDH/05.

PRESIDENT: Any opposition to that document?

25 COUNSEL REPRESENTING: No, sir.

MAJ HYDE: If that could have a classified marking as well, please, sir.

30 **#EXHIBIT C63 – JW/19: ONE COMPACT DISC TITLED "EMAIL JACOB KOVCO" DOWNLOADED FROM SDH/05**

35 MAJ HYDE: Next item, sir?---Is marked identification number JW/20, which is one compact disc titled “Military VIDS” removed from SDH/05.

Entitled “military”?---Military VIDS, sir, V-I-D-S, sir.

40 Thank you. I tender that and if that could similarly have a classified marking.

45 **#EXHIBIT C64 – JW/20: ONE COMPACT DISC TITLED "MILITARY VIDS" REMOVED FROM SHD/05**

MAJ HYDE: Next item, please, Sergeant?---Next item, sir, is marked identification number JW/21, which is one OC114 radio operator's log for SECDet IX for the period 21 to 26 April 2006.

5 I tender that document.

PRESIDENT: Any opposition to that document?

COUNSEL REPRESENTING: No, sir.

10

PRESIDENT: Is there any classified material in that?

MAJ HYDE: Thank you, yes, there is.

15

**#EXHIBIT C65 – JW/21: ONE OC114 RADIO OPERATOR'S LOG FOR SECDet IX FOR THE PERIOD 21 TO 26 APRIL 2006**

20 MAJ HYDE: Next item, please, Sergeant?---Next item, sir, is marked JW/22, described as two-page radiologic examination report for Kovco, Jake, compiled by CAPT P Mitchell, USA radiologist.

I tender that document.

25

COUNSEL REPRESENTING: No objection.

30 **#EXHIBIT 66 – JW/22: TWO-PAGE RADIOLOGIC EXAMINATION REPORT FOR JAKE KOVCO COMPILED BY CAPT P MITCHELL, USA RADIOLOGIST**

35 WITNESS: Next item, sir, is marked with identification number JW/28, described as one personal file marked "Support Company DFSW Platoon" 8229393, PTE J Kovco.

MAJ HYDE: I tender that document.

40 COUNSEL REPRESENTING: No objection.

45 **#EXHIBIT C67 – JW/28: ONE PERSONAL FILE MARKED "SUPPORT COMPANY DFSW PLATOON" 8229393, PTE J KOVCO**

5 PRESIDENT: Is there any personal information in that which is not discloseable or should be guarded?

MAJ HYDE: Could I reserve my position on that and inform the Board?

10 PRESIDENT: Indeed, particularly LTCOL Holles and LTCOL Berkley might like to have a look at that and see whether there's anything in that that they're not comfortable with.

LTCOL BERKLEY: Yes, thank you, sir, I would make the same application as the last time; mark the exhibit - - -

15 PRESIDENT: By all means.

LTCOL HOLLES: Sir, might the document be classified in the meantime. Then perhaps - - -

20 PRESIDENT: That might be the safer way, it be classified now and be released at a later time. The Exhibit 67 will be marked "classified" subject to review.

25 MAJ HYDE: Next item, please?---Next item, sir, is marked identification number JW/29, described as one three-page technical inspection report general for bulk personal weapons dated 16 November '04.

I tender that document.

30 COUNSEL REPRESENTING: No objection.

MAJ HYDE: That should have classified marking.

35 **#EXHIBIT C68 – JW/29: ONE THREE-PAGE TECHNICAL INSPECTION REPORT GENERAL FOR BULK PERSONAL WEAPONS DATED 16 NOVEMBER 2004**

40 MAJ HYDE: Does that complete the documents that you produce to the Inquiry, Sergeant?---Yes, sir, it does.

45 Thank you. Now, you have had some involvement in this Inquiry as an investigator. When did you first become involved?---Yes, sir, on 21 April – correction, no, 21 April 2006. At about 0500 hours I received a

telephone call informing me to be on stand-by for a flyaway team to Baghdad for inquiries into the sudden death of an Australian soldier.

5 Would that be the 22nd bearing in mind the time of the incident on the 21st?---I believe it was the 21st, sir, at the time, with respect.

Is that because there's a time differentiation between Baghdad and Australia?---Yes, sir.

10 When did you arrive in Baghdad?---I arrived in Baghdad on 25 April, sir.

15 What was the first thing you did in terms of the investigation into this matter when you arrived?---Yes, sir, I arrived in Baghdad on the 25th at the headquarters of the taskforce over there and from there I was given a small briefing from my supervisor at the time. That was followed by moving to the incident site or the area of the incident of the unit where they were currently being housed. We received further briefing at that point.

20 What was the first thing that you did in a practical sense in terms of your investigation in relation to the room or its immediate environment?---Yes, sir. I attended the Australian Embassy where the incident occurred and I was shown to the room where the incident had occurred. I was accompanied by SGT Hession and CAPT Smith, my supervisor. Upon attending that room we saw that the area had been concealed via tarpaulin and was covered. I remained outside the room with CAPT Smith and I observed SGT Hession to open a number of door seals which had been placed on the door prior to him entering the room. Upon SGT Hession entering the room myself and CAPT Smith remained outside and observed the interior of that room from the doorway standing outside.

25 Did you enter the room at any stage on that visit?---No, sir, I didn't.

30 Did you observe SGT Hession doing anything in the room?---I didn't observe SGT Hession processing anything in the incident site and I did not observe him entering the room or what he did inside the room, sir. I basically stood there and observed the incident site itself.

35 You've mentioned that there was a tarpaulin attached in some fashion. Can you describe that to the Board, please?---Yes, sir. The tarpaulin was draped from the top of the facility, being the Connex type structure that it was, draped over the doorway of the room and surrounding the exterior of that doorway so as to hide observation from – or to cover observation from inside that room from the other unit members.

40  
45

Was the door to the room closed, as far as you could see, behind the tarpaulin?---I couldn't see the doorway from outside the tarpaulin, sir. But upon going in behind the tarpaulin door was closed and sealed.

5 Did you subsequently have any involvement in taking statements from any members?---I did, sir. The members I obtained statements from were other unit members who are not at the Australian Embassy.

10 Could you tell the Board how you went about that process?---Yes, sir. Basically how that worked was I obtained a copy of the nominal roll of unit members and spoke to each member who was located in the

15 Did you produce statements following those interviews?---Yes, I did, sir. Each member I spoke to a witness statement was recorded from those individuals.

20 Roughly how many statements did you produce in conjunction with those members?---From recollection, sir, I believe it was about 60 statements I recorded myself.

25 Did you use a recording device or some other method?---No, sir, it was done with personal interviews and it was typed to a laptop computer prior to being printed out in hard copy.

30 Did you undertake that process?---Yes, sir.

35 Did you use a standard format for the questioning of those members or how was it that you conducted those interviews?---Sir, the interviews were conducted using a standard service police format. Basically I asked each member their qualifications, their employment within the unit and where they were on the date and time and if they had any information in relation to the incident. Each member was also asked their knowledge of PTE Kovco and how well they knew the member and the background on their relationship with him.

40 Did you have any involvement in securing evidence, that is, items in the room, other than the items that you've produced to this Inquiry today? ---As in the items removed by SGT Hession, sir?

45 Correct?---No, sir. Those items were held from SGT Hession, passed over to CAPT Smith, who is the property custodian. A couple of those items which were removed by SGT Hession were passed onto me by CAPT Smith as the property custodian for further witness examination or their comments.

Were any of those items items that you have referred to and produced today?---I have not produced those items, sir, but they have been referred to in a number of my exhibits.

5 Sergeant, I understand that you've recently been promoted. Were you a Corporal or a Sergeant at the time you travelled to Baghdad?---Yes, sir, I was a Corporal at the time.

You've recently been promoted?---Yes, sir.

10

When was that?---That was on about 19 May this year, sir.

Those are my questions.

15

PRESIDENT: Thank you. LTCOL Holles.

**<EXAMINATION-IN-CHIEF BY LTCOL HOLLES [1414]**

20

LTCOL HOLLES: SGT White, did you make any inquiries as to weapon issues within the SECDET at that stage?---Yes, I did, sir.

25

Did you make any inquiries as to how many members of the room, that is, room 8, the relevant room, were issued with pistols?---Sir, I conducted inquiries into the issue of weapon ARNs for SECDET members, which was gathered from the CQMS of the unit, being the Company Quartermaster Sergeant, which was – I refer to – whose name I cannot find on the list, sir.

30

It's all right, but you've made inquiries?---Yes, sir.

35

Did you check the statement of issues, for want of a better word. They used to be called F12Bs. I suspect they've got some other name now – against the relevant soldiers from the room?---Against the relevant soldiers no, I didn't see it. I just collected the item which was the issue register for SECDET at that time.

40

So you're given a document which shows what weapons are issued to what people. Is that correct?---Yes, that is correct, sir.

45

Did you make any check independent of the document itself to see if the document reflected reality?---I did, sir, in relation to PTE Kovco's weapon; I did, sir.

Did you make that same check in relation to the two other members in the room?---No, I didn't, sir.

5 What is your understanding as to whether or not the other members in the room had pistols?---I am unsure, sir, if they were issued pistols at time of arrival when that issue sheet was compiled that I took on as an exhibit.

10 Did you regard that as a relevant factor in the investigation?---I believe it is, sir.

Did you make any attempt to see if they were in fact issued with pistols? ---I did not conduct the inquiries with those members, sir, that was SGT Hession.

15 Did you pass on to SGT Hession any information you may have had about the issue or otherwise if pistols to other people in the room?---No, I didn't, sir.

20 Do you now regard that as being a relevant consideration in the investigation?---That's correct, sir, yes.

25 Would it have been standard practice if other members in the room had had pistols that those pistols were in fact obtained and tested?---Sorry, sir, in what way tested?

Tested ballistically, tested forensically?---I can't comment on that, sir. I didn't coordinate the testing of those weapons.

30 You're a trained SIB investigator, are you not?---Yes, I am, sir.

You're aware that in criminal investigations it is necessary to eliminate possibilities, other scenarios?---I would agree with that, sir, however, I was working under the direction of my supervisor at the time.

35 I appreciate that. Did you think to say to your supervisor, "Shouldn't we check to see if other people have pistols and seize those pistols and check them"?---I did not do so at the time, sir.

40 I presume your answer is that no, you didn't?---That's correct, sir, no.

Was there a reason why you didn't do that?---No, sir, I can't give any reason.

45 So the reality is that the SIB investigation, so far as you are concerned, proceeded in the blind assumption that nobody else in the room had a

pistol?

5 MAJ HYDE: Mr President, if I might just interrupt LTCOL Holles. Soldier 19's statement specifically refers to him handing in a weapon because of a shortage and I just draw that to his attention. I don't mean to cut him off, but - - -

10 LTCOL HOLLES: No, I appreciate that. I also appreciate the evidence from Soldier 17 about the same issue.

MAJ HYDE: Yes.

LTCOL HOLLES: That's the - - -

15 PRESIDENT: No, that's a legitimate line of inquiry. Yes, carry on, Colonel.

20 LTCOL HOLLES: So far as you're aware the SIB proceeded on the blind assumption that there was only one pistol in the room and that belonged to the deceased?---I wouldn't say that there was the assumption there was only one weapon, sir, or one pistol, sorry.

25 But you would agree that no steps were taken to check to see if there were other pistols in the room?---I am not aware of SGT Hession's examination, sir, but yes.

30 You were the person who was basically charged with collating or collecting the technical evidence in relation to the issue of the pistols? ---That's correct, sir, yes.

There was no attempt to seize such a weapon to preserve it for testing? ---The weapon of PTE Kovco, sir?

35 No, I'm not talking about PTE Kovco, I'm talking about any other weapons in the room?---No, sir.

The other pistols in the room for position?---No, sir.

40 Nor was it within the contemplation of the SIB investigators that such a weapon should be seized for ballistic testing?---On my part no, sir. But I cannot comment on CAPT Smith's actions or decisions either.

45 I appreciate that, but certainly as far as you're aware nobody else took any other pistols from anybody else in the room?---That's correct, sir.

You as the person charged with the responsibility for collecting and collating the technical information would have been aware if that had happened?---That's correct, sir, yes.

5 Yes, thank you, sir, nothing further.

PRESIDENT: Yes, thank you. LTCOL Berkley?

LTCOL BERKLEY: Yes, thank you, sir.

10

<EXAMINATION BY LTCOL BERKLEY

[1440]

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

Sergeant, did you produce then the private journal of PTE Kovco?---Yes I did, sir.

20

Where did you get that from Sergeant?---Sir, that item was handed to me by - I was in the presence of CAPT Smith and - and Soldier 30, sir. They had a conversation in my presence and that document was handed to me by Soldier 30.

25

So it was within Soldier 30's possession at some stage?---That's correct, sir.

30 Prior to you seeing it and did you inquire as to how Soldier 30 got that document?---Sir, that document or that item, I believe, is covered in that member's statement which was covered by CAPT Smith.

That wasn't the answer to the question?---No, sir - - -

35 Did you make inquiries?---No, sir, I did not because I was - it was basically just handed on to me as an investigator to take on that item.

40 It's your position, you go to see Soldier 30 in the company of your senior officer, your team leader and you're given that document and other items as well, I suppose?---Just that one item was handed to me then, sir.

In relation to the other items, did you collect them yourself or were they given to you?---The other items, sir, were collected by myself.

45 It's only that item that was given to you?---That's correct, sir.

Thank you, I've no further questions.

PRESIDENT: Yes, thank you. COL Young?

5

COL YOUNG: Just one question Mr President.

**<EXAMINATION BY COL YOUNG**

**[1421]**

10

COL YOUNG: Sergeant, my name is COL Young, I appear and represent the interests of PTE Kovco?---Yes, sir.

15

In respect of the personnel file that you've produced this morning which was marked C67, how did you come by that, where did you get that from?---Sir, that item was handed to me by Soldier 33.

20

Is that something you asked for or someone just came to you and gave it to you?---No, sir, I asked for that item.

You asked for it. Nothing further, thank you.

PRESIDENT: Yes, thank you. Re-examination?

25

MAJ HYDE: Yes, there is some re-examination, sir, if I may.

**<EXAMINATION BY MAJ HYDE**

**[1444]**

30

MAJ HYDE: Sergeant, you were asked some questions by LTCOL Holles about whether there were other 9 mm pistols contained in the room, do you recall those questions?---Yes I do, sir.

35

Are you aware that in a New South Wales Police record of interview in relation to Soldier 19 that he did not have a pistol in the room?---No, sir, I'm not aware of that.

40

Are you similarly aware of Soldier 19 being in a similar position, that is, he did not have a weapon in the room either, that is a 9 mm?---No, sir, I'm not aware of that.

Thank you.

45

PRESIDENT: Now, people will no doubt want to read the exhibits with some care. Can we reach this witness or do we need him to return to us at a later time?

5 LTCOL BERKLEY: I'd ask that he remain, sir. The reason for that is that I'm going to ask for a short adjournment so that my client can give me instructions on the items produced. My client has not had an opportunity to see those items and prior to the witness being dismissed, we'd seek that opportunity.

10

PRESIDENT: I know that your client has got a commitment at 3.30.

LTCOL BERKLEY: Yes.

15 PRESIDENT: I just wonder whether is there a short witness we can take now?

20 MAJ HYDE: Mr President, the next witness is Mr Hayes from the New South Wales Police, he won't be a short witness, but I'm happy to make a start with him if that's - - -

PRESIDENT: Well, I'm at the hands of the assemblage.

25 LTCOL HOLLES: Sir, there's one issue I really need to clarify with Counsel Assisting if I might which I'd be grateful for a brief adjournment as well.

30 PRESIDENT: Well we're certainly going to have a brief adjournment. I'm just wondering whether we adjourn now for the day or whether we come back and take a half hour a little bit later.

LTCOL HOLLES: Might I have a word with my friend LTCOL Berkley?

PRESIDENT: Certainly.

35

LTCOL HOLLES: Sir, if I could make this submission; it might, in the overall scheme of things, save time if we were to adjourn at this stage and start afresh tomorrow morning with Inspector Hayes.

40 PRESIDENT: That won't cause the inspector undue inconvenience?

MAJ HYDE: No, it won't, sir.

45 PRESIDENT: I suspect he's been used to being mucked around by Courts far more than most. All right then, we'll take the adjournment now and

we'll resume at 10 am in the morning.

<WITNESS WITHDREW

[1425]

5

**MATTER ADJOURNED AT 1425 UNTIL  
WEDNESDAY 19 JULY 2006 AT 1000**

NTS