

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

AUSTRALIAN DEFENCE FORCE

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

1013 WEDNESDAY 19 JULY 2006
DAY 6

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

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- 5 PRESIDENT: Good morning, ladies and gentlemen.
- MAJ HYDE: Good morning, Mr President and members. Sir, if it's convenient, could we give classified markings to the following exhibits that were tendered yesterday through SGT Hession: Exhibit 30.
- 10 PRESIDENT: I'll go through and consider the marking or otherwise. If there's any objection, to make it known rather than stop and ask every time.
- MAJ HYDE: Exhibit 30, Exhibit 31.
- 15 PRESIDENT: So marked.
- MAJ HYDE: Exhibit 43.
- 20 PRESIDENT: Classified, yes.
- MAJ HYDE: Exhibit 44.
- PRESIDENT: Classified.
- 25 MAJ HYDE: Exhibit 45.
- PRESIDENT: Marked as classified.
- 30 MAJ HYDE: Exhibit 47.
- PRESIDENT: Classified.
- MAJ HYDE: Exhibit 49.
- 35 PRESIDENT: And also 49A?
- MAJ HYDE: Together with 49A, thank you, sir. I overlooked one, Exhibit 39.
- 40 PRESIDENT: Also marked classified.
- MAJ HYDE: Thank you, sir.
- 45 PRESIDENT: Thank you, Major.

MAJ HYDE: I think the witness SGT White has been previously examined.

5 PRESIDENT: Perhaps we might swear him again.

<SGT JEFFREY TROY WHITE, recalled and resworn: [1015]

10 MAJ HYDE: I have nothing further for this witness, but I believe that Counsel Representing may.

PRESIDENT: LTCOL Wilkinson?

15 LTCOL WILKINSON: No, sir.

PRESIDENT: LTCOL Holles.

20 **<EXAMINATION BY LTCOL HOLLES [1017]**

25 LTCOL HOLLES: SGT White, have you had an opportunity overnight to peruse documents in relation to the issue of pistols to other people in the room?---No, I haven't, sir.

30 Would Counsel concede that at least one other member in that room had a pistol at the relevant time?

COUNSEL REPRESENTING: Yes.

LTCOL HOLLES: Thank you. That's the further questions I wish to ask, sir.

35 PRESIDENT: Thank you. LTCOL Berkley.

LTCOL BERKLEY: Nothing further, thank you, sir.

40 PRESIDENT: Thank you.

MAJ HYDE: I ask that the witness be released.

45 PRESIDENT: Any objection to him being released?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Thank you, Sergeant, you're formally released and may go.

5

<WITNESS WITHDREW [1016]

10 MAJ HYDE: I call the next witness, Detective Inspector Hayes, New South Wales Police. Mr President, Detective Inspector Hayes will be producing a number of documents and evidentiary items. If we could take perhaps five minutes to set that up, that would speed up the process of tendering those documents.

15

PRESIDENT: By all means, then we'll leave for five or 10 minutes.

MAJ HYDE: Thank you, sir.

20

ADJOURNED [1018]

RESUMED [1032]

25

PRESIDENT: Thank you, ladies and gentlemen.

30 **<DETECTIVE INSPECTOR WAYNE GEORGE HAYES, sworn [1032]**

<EXAMINATION BY MAJ HYDE

35

MAJ HYDE: Detective Inspector, could you please state your full name and occupation for the record?---I am Wayne George Hayes, spelt H-a-y-e-s, a Detective Inspector of Police attached to the Homicide Squad, New South Wales Police.

40

Could you give a brief history of your experience in the New South Wales Police?---New South Wales Police sworn in 1979 general duties, uniform work, transferred to plain clothes detective duty five years later, served at Darlinghurst, Surrey Hills, Redfern drug unit and for the last 13 years the

45

Homicide Squad where I was promoted to the rank of Inspector.

When were you promoted to the rank of Inspector?---Six and a half years ago.

5

What does your job involve in your current position?---I'm termed Investigations Coordinator, which means I have one of – I'm in charge of team one of six investigative teams of the Homicide Squad. I have two Sergeants and six Constables under my command and we activate – we react, sorry, to current or fresh homicide inquiries.

10

You've had some involvement in this matter that the Board of Inquiry is inquiring into?---Yes.

15

When did that involvement commence for you?---That involvement commenced with the meeting with the New South Wales State Coroner on 28 April 2006.

20

What, if anything, were you instructed to do?---I was instructed to make inquiries into the death of PTE Kovco as per the New South Wales Coroners Act, which basically involves me to inquire into the date, place, nature and manner of his death.

25

In that regard, what was the first thing that you did in terms of your investigation?---Meeting with the Coroner which included a MAJ Michael Pemberton from the Military Police. We set what I term our Terms of Reference out, what cooperation the Military could afford us, and then I made telephone contact with CAPT Shannon Smith in Baghdad.

30

At some point did you travel to Iraq?---I did.

When was that?---I commenced travel on Friday, 5 May.

35

Who travelled with you?---One of my team, Detective Senior Constable Paul Watson, homicide, a ballistics expert, Lucas Vanderwalt, V-a-n-d-e-r-w-a-l-t, and a scenes of crime officer, Sergeant Phil Elliott, E-l-l-i-o-t-t.

40

When you first arrived in Baghdad, what did you do?---First thing was we met the MPs who were in – the Military Police who were in situ there. They took us to the location and we had a brief tour of that. I left my forensic experts there; that's Vanderwalt and Elliott. Watson and I returned to the location where we were barracked and we sat down and read document.

45

Detective Inspector, you have on the table before you a call sign matrix identifying certain soldiers. If you need to refer to any of those persons on that list, could I ask you to use the matrix?---Thank you.

5 Now, could you tell the Board what day and time you first inspected the incident scene?---It was a general inspection of the whole of the embassy complex and the incident scene. That was on the Tuesday, 9 May.

10 When you first arrived there, what did you do in terms of entering the room?---The room was one of the last things we did. We actually toured other parts of the facility as well.

I want to ask you specifically about the room?---Yes.

15 When you first went to the room, was it in a sealed condition?---It was locked, yes.

Who did you go to the room with?---The MPs, the Military Police.

20 What did you do when you got to the room?---It was unlocked, I had a cursory inspection of it, gave certain directions to my forensic staff.

25 What were those directions to your forensic staff?---The directions were that they were that they were to make a record of the general surrounds of the embassy and barracks, video and photographic. They were then to commence investigations, forensic investigations inside the room itself.

Do you know whether they did that?---They did.

30 Can you give an indication of what that investigation entailed?---Okay, it entailed a video presentation of the embassy grounds and ultimate soldiers' barracks. It entailed a still photo presentation of the same. It also entailed a still photo presentation of the room, the measuring the room and those measurements converted to computer-aided diagram and the - sorry,
35 that's Detective Sergeant Elliott, he also took biological swabs in the room. Lucas Vanderwalt, the ballistics officer, conduct a number of tests and I assisted later with some of those tests.

40 What were the nature of those tests?---The ballistics officer?

Yes?---He locates the bullet hole, he applies the path, he inserts a rod through that path which goes from the roof into the room that is basically the trajectory of the round, he then makes certain measures, photographic observations and I played the part of PTE Kovco in some of those things
45 and then he converts that to a statement form.

5 How was it that you knew where to place PTE Kovco for the purposes of the measurements for the location of the round?---The rod that goes through is basically the path of the bullet. For the purpose of the exercise, we placed PTE Kovco in a standing position where that trajectory path goes because we do not know what position he was actually in at the time the shot was fired, whether he was bending down, jumping, et cetera. So we have taken an average, that is standing still and upright.

10 For the purposes of taking your average, did you have any input from any members of SECDET?---As far as - we had already had - I had read the statements of some of the - of some of the - sorry, all the soldiers of SECDET. By this stage I performed the role of PTE Kovco. We had interviewed Soldiers 17 and 19 and I was aware of what they had said and that assisted as such as far as it could with that. But the basic of the ballistic examination was on the scientific evidence available to our expert at the time.

20 Your expert at the time, I think you've said was Mr Vanderwalt, is that correct?---Yes.

You've just mentioned that you took statements from Soldier 17 and 19? ---Yes.

25 Did you conduct those interviews?---I did.

Do you produce today the audio tapes in respect of those interviews?---I do.

30 Do you have them before you?---I do.

They are interviews in relation to Soldier 17 and Soldier 19?---Yes.

35 Mr President and Members, the transcript of those interviews have been tendered and they are Exhibit CR17 and Exhibit CR23. I propose now to tender the audio versions of those transcripts.

PRESIDENT: Any opposition to the tender of the tape?

40 COUNSEL REPRESENTING: No, sir.

PRESIDENT: It will be marked as Exhibit 69.

45 **#EXHIBIT C69 - AUDIO VERSION OF TRANSCRIPTS**

5 PRESIDENT: I notice some of the transcript has been marked as classified, so I presume these will be classified also.

MAJ HYDE: Yes, they will, thank you, sir.

10 Now, in relation to your investigation generally, were there any other things that you carried out?---Yes, I conducted what we call a video walkthrough with Soldier 17 and 19 in room 8 of the soldiers' barracks.

15 What was the purpose of the walkthrough in the barracks?---It's a visual and oral presentation of what they know about the incident. It's fairly short because we didn't go into the lead up. It's just the last time they saw PTE Kovco alive and then after they hear the shot.

Do you have that DVD of the walkthrough with you today?---It was actually conducted in video form and converted to DVD, yes I do.

20 Is it the case that that DVD identifies parts of the embassy and grounds other than the accommodation?---The walkthrough does not. There is another DVD of that facility. The walkthrough is specifically in room 8.

25 I now invite the Board to play the video of room 8 and the walkthrough? ---Of the walk-through.

PRESIDENT: Any opposition to that course?

30 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Make it so.

35 MAJ HYDE: Just before that's played, Detective Inspector, is it the case that the names of either of the individuals, that is, Soldier 17 or 19, are mentioned in this DVD?---They are.

Mr President, in those circumstances, it would be appropriate that there be - - -

40 PRESIDENT: There will be a direction to the press that, when reporting it, they use the matrix 17 and 19 rather than the names of the individuals.

MAJ HYDE: Thank you, sir?---That's Soldier 19 and that's 17.

45 This is the DVD of the walk-through?---Yes.

Which would you like to play first, Detective Inspector?---That's Soldier 17.

5

DVD SHOWN

I tender the DVD of the footage we've just seen, Mr President.

10

PRESIDENT: Any objection to that course?

COUNSEL REPRESENTING: No, sir.

15

PRESIDENT: Marked as Exhibit 70.

#EXHIBIT C70 - DVD OF ROOM 8 WALK-THROUGH FOR SOLDIER 17

20

MAJ HYDE: Detective Inspector, you now have a second DVD in respect of Soldier 19; is that correct?---Yes.

25

Does that, in effect, carry out the same walk-through process that we've just seen in relation to Soldier 17 ?---Yes.

I ask that that DVD be played.

30

PRESIDENT: Yes, thank you.

MAJ HYDE: Mr President, if I could also have a similar direction in relation to the publication of names that are referred to.

35

PRESIDENT: Indeed. There will be a direction to the press; I ask them not to publish the soldier's name but to refer to him as Soldier 19.

LTCOL HOLLES: Sir, I think for particularity, both 17's and 19's names were mentioned so it might be best if - - -

40

PRESIDENT: Indeed. I did make a comment about that earlier. I would ask the press not mention either name but mention them by number only.

45

DVD SHOWN

WITNESS: Obviously the times are Sydney times on the – we didn't alter the camera.

5

MAJ HYDE: I'm sorry?---The times record on there as Sydney times. The camera wouldn't have been altered.

Thank you, Detective Inspector. I tender the DVD. Mr President, if that could have a classified marking.

10

PRESIDENT: We didn't classify the other ones. Any particular reason for that one being classified?

MAJ HYDE: Only that the names are mentioned.

15

PRESIDENT: Of course. They're both marked classified. Any opposition to the tender of that video as Exhibit 71?

COUNSEL REPRESENTING: No, sir.

20

#EXHIBIT C71 – DVD OF ROOM 8 WALK-THROUGH FOR SOLDIER 19

25

PRESIDENT: Thank you.

MAJ HYDE: Detective Inspector, do you produce to the Inquiry a photograph of room 8 with Soldier 17 and 19?---Yes.

30

Could I invite you to place that on the whiteboard. Looking at that photograph, how did it come to be in your possession?---It was mentioned during the interview with Soldier 19 and he produced a camera in which that image was downloaded.

35

Do you know the date that photograph was taken?---No, he could not remember the date and it's not recorded on the camera, as far as we or he could find.

40

Are you aware as to what that photograph shows?---It shows room 8 taken from the door of the room, which is taken by Soldier 19. It shows PTE Kovco standing up with the t-shirt on and it shows Soldier 17 lying on the bed with a laptop on his lap.

45

Looking at that photograph, are you also able to identify a holster?---Yes, hanging over the railing of the top bunk is a holster with a firearm.

5 LTCOL BERKLEY: Mr President, I'm sorry for interrupting the witness. My clients ask if the photo could be manipulated so we don't get the flash, as you can see - - -

PRESIDENT: By all means.

10 LTCOL BERKLEY: I think the top should come forward. That's a lot better, thank you.

MAJ HYDE: Looking at that photograph, is there anything else that you would particularly like to draw to the attention of the Board?---There are certain other items. There is a uniform with "Kovco" written on it hanging over open door of a locker. There's also ballistic equipment, helmet, et cetera, lying on the floor, similar ballistic equipment for Soldier 17 is leaning (indistinct). In what I'll term the crime scene photos taken later, some of that equipment appears to be in a very similar position.

20 Are you able to tell the Board by reference to the call sign matrix who it was that took that particular photograph?---Yes, Soldier 19.

I tender the photograph.

25 PRESIDENT: Any opposition to the tender of that document?

COUNSEL REPRESENTING: No, sir.

30 **#EXHIBIT C72 - PHOTOGRAPH OF ROOM 8 TAKEN FROM THE DOOR OF THE ROOM TAKEN BY SOLDIER 19**

35 PRESIDENT: Of course, LTCOL Berkley, if your client wishes to look at it more closely it's certainly viable.

LTCOL BERKLEY: Yes, thank you, sir.

40 MAJ HYDE: Mr President, could that have a classified marking given the name that appears at the foot?

PRESIDENT: Yes, that is classified.

45 MAJ HYDE: For the purposes of your investigation did you have

produced certain diagrams of room 8?---I did.

Which one do you produce first?---I produce a diagram of room 8 in what I'll term a helicopter view, looking down on the - on the room.

5

PRESIDENT: Now, does that give you, LTCOL Berkley and LTCOL Holles enough detail?

LTCOL BERKLEY: No, not really, sir.

10

LTCOL HOLLES: To be candid, sir, no, it doesn't.

COL YOUNG: Can I suggest it be just passed around briefly before - - -

15

WITNESS: I have copies.

PRESIDENT: Excellent, that was my next question.

20

MAJ HYDE: Mr President and Members, we may try and use the document projector to get a slightly clearer view of the sketch plan.

PRESIDENT: By all means.

25

MAJ HYDE: Just while that process is occurring, Detective Inspector, could you tell the Board who produced that plan?---Detective Sergeant Elliott, Forensic Services Group takes the measurements and then it's converted by a photogrammetry unit to that type of diagram, computer-aided diagram.

30

Detective Inspector, do you have a copy of the diagram of room 8 before you now?---The one that's on the screen?

You can see that clearly from your position?---I can, yes.

35

Could I ask you to talk the Board through what is depicted on that diagram?---Starting at what I'll term the southern end, there's the front door which is displayed in an open position in this case. As you enter, there is a broken line, a dotted line in a square pattern depicting the original position of the bar fridge that had been removed by the time we arrived. Immediately in front of that is a large area marked Staining. Going to the left of that is Wardrobe marked and then an area - or two areas sorry marked Blood Staining and there is a cross in one area of Blood Staining. Now, obviously that's the hole in the ceiling which is in the roof because this is a helicopter view looking down on it. Continuing up the left-hand side, a single bed, air conditioner wall mounted behind it.

45

5 Moving to the right a desk, a writing desk type that is, a window which was - I'll use the word sealed by various items so you couldn't see through it, then two lockers, coming back down towards the double bunk, a cabinet and then the double bunk with the notation where the position of the holster on the upper bed post is indicated on the crime scene photos.

10 How is it that you were able to have those items and the positioning of the room established?---All those items, with the exception of the holster were in situ at the time we got there. They were marked and measured and photographs by Detective Elliott and that measuring is done by a laser sighting instrument.

15 Using the laser pointer that has been provided to you, is there any other item that you would draw to the attention of the Board?---No.

I tender the diagram.

PRESIDENT: Any opposition to the tender of that diagram?

20 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 73.

25 **#EXHIBIT 73 - DIAGRAM OF ROOM 8**

30 MAJ HYDE: As part of your investigation, did you produce a three-dimensional CD of room 8?---Yes.

Who produced that, that is, who created it?---It's created by again our - a section of our photogrammetry unit going on the measurements provided by Detective Elliott.

35 Do you produce that to the Inquiry today?---I do.

I ask that the 3D CD be played?---It actually shows the trajectory path of the round as well, just for the information of the family, that's all.

40 Before that is played however, could you confirm that the CD only identifies room 8 and no other components?---What you see on the screen is all you're getting, except you can turn the screen - the diagram around.

45 **CD SHOWN**

5 MAJ HYDE: Now, using your laser pen could you talk us through the
item on the screen?---Can I ask the operator to turn it slightly to the
bottom left - other way down please, a bit further and tilt it slightly
forward. That'll do fine, thank you. Obviously the front door, walking in
there's the door in an open position, the locker referred to on the diagram,
the single bunk, the air conditioner, the writing desk, the window, the two
lockers, the cabinet, the double bunk and a stylised person and a trajectory
10 path line.

Now, were you responsible for identifying the trajectory path line or is
that something that one of your colleagues would talk to?---Police Officer
Vanderwalt does that.

15 What is his area of expertise?---Ballistics.

Thank you. I tender the 3D CD.

20 PRESIDENT: Any opposition to that?

COUNSEL REPRESENTING: No, sir.

25 PRESIDENT: Marked as Exhibit 74.

#EXHIBIT 74 - 3D CD OF ROOM 8

30 MAJ HYDE: Detective Inspector, do you also have a further
diagrammatic depiction of room 8 without a trajectory line?---I do; not in
CD form but in diagram form.

35 PRESIDENT: Does that give you enough detail at the Bar table?

MAJ HYDE: I also have spare copies.

COL YOUNG: (Indistinct) so far.

40 PRESIDENT: Perhaps if we could have those spare copies.

45 MAJ HYDE: Detective Inspector, could I ask you to describe what we
see in each of the boxes contained in that diagram. When you do that,
would you be kind enough to not only use the laser pointer on the monitor
that you've been using but also the one that the media has access to up on

the whiteboard itself?---That schematic there is the view which is basically shown on the 3D presentation before. It is just looking down into the room. There is a trajectory line but there is no stylised person in position. The next one right above it is the elevation of the eastern wall. Again, the trajectory line is shown; no stylised person in it. It shows the double bunk, the lockers closest the viewer and the other items on the far side. You can see part of a single bunk and a cabinet and the open door. This is the similar one that I produced before, the helicopter view looking down on it with some items deleted - basically, the blood stains. It just positions everything again. The last item is elevation of southern wall, looking at another angle, so you basically are looking from the door, if I can use that term, into the room if the wall surrounding the door was removed.

15 I tender the diagram.

LTCOL HOLLES: Could I ask a point of clarification just prior to the tender, sir. The top-left diagram has a caption, "Approximate standing location of the body." Are you able to indicate where the body would be standing on that diagram given the ballistic trajectory, or would you prefer to wait for a ballistics person to answer that question?---If you overlay the other one, there is also a diagram with similar position. It places the body closest to the single bunk, if I can use that term, but the ballistics officer will explain why. But as I said in my opening evidence, it is the best possible scenario of a person standing upright standing still. We can't actually place exactly where he is for a number of circumstances.

Is it the case, given the trajectory and the known ballistics, that the body is closer to the single bunk rather than to the double bunk?---Assuming the body is standing upright and still, yes.

Thank you. I'm sorry, sir, I just need that clarified.

PRESIDENT: That's all right. Any other objection or any other comment to be made?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 75.

#EXHIBIT 75 - 3D SCHEMATIC OF ROOM

MAJ HYDE: Detective Inspector, do you now produce to the Board a

further sketch plan of room 8 with a trajectory line?---And a stylised person.

5 Again, could I ask you to take up your laser pen and walk us through each of the four depictions?---Same as before, it is a general view of the room looking down from one angle. The trajectory line is in red in this case and we have a stylised person. Directly above it is the view again with the wall removed, basically, showing the double bunk's position of the stylised person, and the trajectory line. See through the locker the similar
10 bunk is on the other side. The locker and the open door. Left-hand side, the helicopter view as before with the addition of the stylised person, facing the back wall in this case - my terminology - the back wall. Then the southern wall view, that is from the doorway again as if the wall was removed showing the stylised person directly in line, the double bunk,
15 aspects of the single bunk and other items in the room.

I tender the sketch plan.

20 PRESIDENT: Any comment or any objection to the tender?

LTCOL HOLLES: Sir, I don't but, if there are spare copies available, I would be grateful to look at them before tender.

25 PRESIDENT: Are there spare copies available, Inspector? Thank you. Marked as Exhibit 76.

#EXHIBIT 76 - SKETCH PLAN OF ROOM 8

30 MAJ HYDE: Detective Inspector, is the position that the figure is in consistent with the evidence that you were provided with from Soldier 17 and 19?---Bear in mind this stylised figure is facing the back wall, my terminology again, the window. The Soldier 17 and 19 see PTE Kovco
35 facing his bunk, the last version they saw. So on the ballistic evidence available that he would be - PTE Kovco would have been facing towards the back of the room at the time the shot was fired.

40 Is it the case that that is different to where Soldiers 17 and 19 say PTE Kovco was facing when they first became aware of the shot? ---Soldier 17 has him on the ground. Soldier 19 has him slightly over and collapsing.

45 Do you now produce a document showing the Embassy and grounds - and I ask that you don't place that up on the screen for operational secrecy

reasons?---The Embassy grounds or just - - -

Do you have a diagram with the Embassy and the grounds?---I have one, but it doesn't appear to be on the pile with me.

5

Again I ask that you don't display that. Secondly, do you have a diagram depicting the layout of the accommodation?---Yes, sir.

Do you produce that?---I do.

10

Mr President and members, I believe Counsel Representing have seen both of those documents. I tender, firstly, the Embassy grounds diagram.

PRESIDENT: Is everybody comfortable with the tender of the Embassy and grounds document?

15

COUNSEL REPRESENTING: Yes, sir.

MAJ HYDE: That should have a classified marking.

20

#EXHIBIT C77 - DIAGRAM OF EMBASSY AND GROUNDS

PRESIDENT: And the sleeping accommodation, everybody seen that and everybody comfortable with that?

25

COUNSEL REPRESENTING: No objection.

PRESIDENT: Do you need to classify that?

30

MAJ HYDE: Yes, thank you.

PRESIDENT: That's likewise classified.

35

#EXHIBIT C78 - DIAGRAM OF SLEEPING ACCOMMODATION

MAJ HYDE: Detective Inspector, have you produced or have created a DVD of the Embassy grounds, the Embassy itself and the accommodation lines?---Yes, sir.

40

Mr President, for operational security reasons I ask that if that is to be viewed that should be done in closed session.

45

PRESIDENT: Yes, very well. Is it proposed that we close the session now or we do that at some later time?

5 MAJ HYDE: I have a number of items that will need to be shown in closed session. So it may be convenient to either take the morning break or close - - -

10 PRESIDENT: I think we might close the hearing now, which means of course we'll cut off the feed to the media. Any of those persons who are not authorised to be here during closed sessions will leave us.

MAJ HYDE: Thank you, sir.

15 PRESIDENT: The hearing is now closed.

(Continued in closed session)

NTS

(Open session)

5 MAJ HYDE: Sir, the next item that I'm going to ask Detective Inspector Hayes to produce are post-mortem photographs and I should indicate that they may be distressing for family members, so I just flag that, whilst they're not going to be put up on a screen, they may not wish to view them.

10 PRESIDENT: Yes, very well, that's understandable and, LTCOL Berkley and LTCOL Holles, if your clients wish to leave, then we understand.

LTCOL BERKLEY: Thank you, sir. Mrs Shelley Kovco has decided to go outside.

15 PRESIDENT: Indeed, if mum wishes to leave at some later time as the proceedings progresses, that will certainly be understood.

LTCOL HOLLES: My instructions are, sir, that Mrs Kovco will remain.

20 PRESIDENT: Yes, thank you.

MAJ HYDE: Detective Inspector, do you now produce post-mortem photographs?---I do, numbered 1 to 95.

25 Who has created these photographs?---They were created by a Forensic Services Group officer acting under my direction.

30 When were they created?---They were taken in situ at the time at Glebe Institute of Forensic Medicine and subsequently printed out and supplied to me.

Where is that institute?---At Glebe in Sydney.

35 Thank you. I tender those photographs.

PRESIDENT: Is there any formal opposition to the tender?

COUNSEL REPRESENTING: No objections.

40

#EXHIBIT 81 - PHOTOGRAPHS

45 PRESIDENT: I take it you've seen these, gentlemen, or have copies.

COUNSEL REPRESENTING: Yes. No objection.

MAJ HYDE: Detective Inspector, do you have on the table before you the 9 mm weapon?---I do.

5

Could you take that up, please. Could I ask you to identify what is on the police label?---Sydney Police Centre, K for kilo, 45, SE11/D272244, an exhibit reference number.

10 Is that a reference number of the New South Wales Police or the Military Police?---New South Wales Police.

15 Could you tell the Board how it was that you came to be in possession of the 9 mm weapon?---Yes, this weapon was supplied to me by Military Police officers on 29 April.

Who was it that supplied you with that weapon?---Military Police officers Fenton and Francis.

20 In what condition were you provided with the weapon, that is, was it in a plastic bag sealed or - - -?---No, it was not. It was mounted on a hard piece of cardboard in a cardboard box.

25 Is the 9 mm pistol separately marked?---For military purposes or my purposes?

For New South Wales Police purposes?---No, it's one exhibit. We give it one exhibit number and then just give it item A one, two, three, four, five, six, et cetera.

30

Could you identify for the Board what the additional items are and their numbers?---It's the same reference number New South Wales Police. There's the expended cartridge case. There is a bullet, empty magazines and live ammunition. Also forming part of the same exhibit but bagged separately is the cardboard box and its wrappings.

35

Was the entirety of the exhibit that you have in your hand provided to you at one time?---Yes.

40 Does the 9 mm weapon have a serial number on it that you can identify? ---I could refer to a statement to get it, but I can't read it through the plastic.

Are you unable to read the serial number?---I can read it on a label.

45

If you could read it on the label, please?---ARN245MY06578.

I tender that exhibit.

5 COUNSEL REPRESENTING: There's no objection.

PRESIDENT: In its entirety?

MAJ HYDE: In its entirety, sir.

10

PRESIDENT: Any opposition to that tender?

LTCOL HOLLES: I'd like to have a look at it before it's tendered, sir.

15 PRESIDENT: Yes, certainly.

COL YOUNG: Can I just clarify if the bag is being tendered or not.

MAJ HYDE: Yes, I will tender the bag separately.

20

LTCOL HOLLES: May I be permitted at this stage to ask questions?

PRESIDENT: Yes, certainly.

25

<EXAMINATION BY LTCOL HOLLES

[1212]

30

LTCOL HOLLES: Detective Inspector Hayes, the forensically sealed bag contains a service police identification label?---Yes.

I appreciate this is not a New South Wales Police document, but is that purported to relate to all of the contents of each of the individual sleeves? ---As I understand it, it should do, yes.

35

SGT Hession says one 9 mm Browning pistol magazine empty. The packet in fact contains three magazines - - -?---I'm just checking the statement. You may have noticed I may have misled you slightly before. There are – what happens is I get certain of those items which you're now referring to, I assume, and we gain other ammunition sources for testing, and I've now realized that's all been included in the same exhibit later.

40

So that there's significantly more than 20 rounds of ammunition?---Yes, correct. We take quite a number of rounds for testing.

45

There were three magazines and the other items appear as described?
---Yes.

Thank you, sir.

5

PRESIDENT: Any opposition to the tender?

LTCOL BERKLEY: I need to just check with my client.

10

PRESIDENT: Yes, certainly. I take it there's no objection to the tender of the pistol?

COUNSEL REPRESENTING: No, sir.

15

#EXHIBIT 82 - 9 MM BROWNING PISTOL

20

PRESIDENT: Is there any opposition to the tender of what I'll call the bag?

COL YOUNG: I'd like to see what's in the bag.

25

MAJ HYDE: Perhaps if the bag could be provided to Detective Inspector Hayes?---That's actually a notation that the seal has been broken.

30

MAJ HYDE: Could I get you to first identify the bag and then the content of the bag by looking at the label?---New South Wales Police field item label bag, Sydney Police Centre, exhibit and property section reference number K45SE11-D272244 and it's got a six circle; that means it's item number six on that entry. Do you want me to break the next seal?

35

MAJ HYDE: Could you describe what you have in your hand, Detective Inspector?---Cardboard box containing various plastic sleeves, other bits of cardboard, some with New South Wales Police labelling on it which is done by - what happens when I receive this box, I take it to the ballistics unit and they receipt it and there they do their own testing and labelling procedures. So there's a - - -

40

COL YOUNG: Can I just ask, the pistol was in that box?---Yes.

Can you just describe how it was - I think you referred to being mounted?
---I can produce photographs of it, that makes it even easier.

45

That might be done later perhaps.

MAJ HYDE: If you have the photographs, I'm happy to produce them now. Perhaps if that photograph could be shown.

5 WITNESS: There are several photographs labelled 1 to 13. I have spare copies if that will assist.

PRESIDENT: Yes, thank you. The Inspector has got spare copies.

10 WITNESS: Could I ask that some care be taken handling the box, there is potential for DNA examination of one item in it.

LTCOL BERKLEY: I'm grateful for that opportunity.

15 PRESIDENT: Is there any opposition to the tender of the bag and its contents.

COUNSEL REPRESENTING: No, sir.

20 PRESIDENT: Marked as Exhibit 83.

#EXHIBIT 83 - BAG AND CONTENTS

25 LTCOL HOLLES: Sir, if the bag is to be retained for future testing, perhaps it would be sufficient if the photographs are tendered because for the purpose of the Inquiry, I would think they would be adequate.

30 PRESIDENT: Well if the bag and its contents are an exhibit it can always be released at a later time. Is it proposed to tender the photographs?

MAJ HYDE: Yes it is.

35 PRESIDENT: Any opposition to the tender of the photographs?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: That will be Exhibit 84.

40

#EXHIBIT 84 - PHOTOGRAPHS NUMBERED 1 TO 13

45 MAJ HYDE: Detective Inspector Hayes, when you received the 9 mm

weapon from the Military Police was it in a plastic bag of some description?---It was as per the photographs still in the box.

5 Do you have any comment on the manner in which it was handled in that respect?---I'm not a ballistics expert. The ballistics officer that gives evidence could possibly answer that question for you.

10 Now, was there gunshot residue tests conducted at any stage in relation to this investigation?---Yes.

15 Could you describe the nature of those tests and when they were undertaken?---They were undertaken on the Saturday, 29 April - sorry, they were undertaken on Sunday, 30 April 2006, the Glebe Institute of Forensic Medicine prior to the examination of PTE Kovco's body. They consisted of a swabbing of the hands - PTE Kovco's hands and a swabbing of the entry wound.

20 Are you able to comment on the timeliness or otherwise of those tests being conducted?---The hands, it was way too long. They were - it was a negative result. I'm able to produce a certificate which will explain if you wish. There is gunshot residue found around the entry wound.

25 You say that the timeframe was too long, what do you mean by that?---I can produce a gunshot residue expert in about two weeks which is when we'll have a certificate I'm told which the - which will just explain the delay I've explained about this. Basically in the case of a deceased person, if the body is immobile and untouched then the gunshot residue, if there is any on the hands will remain for a considerable period of time. Once there is some activity with the body, it rapidly is transferred or dropped off, whichever words you wish to use. In PTE Kovco's case the treatment in the room, transference to the hospital, the treatment at the hospital et cetera and the timetable - most likely, and bear in mind I'm not an expert, I'm just going to what I've been told, would result in probably the transference of gunshot residue off his hands. Certainly the gunshot residue testing that we've conducted indicates there is no gunshot residue on his hands.

35
40 Is that a surprising result?---Not - bearing in mind the delay that we had in getting the body, the condition of the body which I believe the hands had been - or the arms - the hands and arms had been washed and the amount of - interference is the wrong word, but when they're treating him I use the word interference with the body because at that stage he was still alive, so it's very understandable that there would have been gross transference because they would've been moving the arms, they would've been picking him up. Gunshot residue is basically a chemical and heavy metal

compounds as I understand it and it can be easily dislodged.

5 I think your evidence is that you would expect it to be dislodged in the
treatment process, that is, from the time PTE Kovco sustained the wound
to his time of death, I assume you mean treatment - - - ?---I would assume
there would be massive transfer – it’s just a word – of that residue in some
format, either by dropping off or people brushing his hands or washing or
10 medical treatment bandages or what. I would expect that would be
significant. I spoke to a gunshot residue expert last night just to get some
information from him. For an alive person, for example, that moves
around rule of thumb is two hours substantial loss, another two hours
basically – I would say four hours if they’re a live person.

15 In the current situation in an ideal circumstance, and bearing in mind that
the gunshot wound was sustained and that he was then transferred to the
hospital next door to the Embassy, in terms of preservation of evidence,
what, if anything, further could have been done?---Our standard protocol
is to bag the hands. You put a paper bag around the hands and you tie it
20 on. That way if any residue is there it will fall off and be captured in the
bag for later analysis. That can also be done for the head wound or what
other wounds, if required. The other possibility may be – and this is left-
field type of thinking – maybe if the American Military Police were in situ
if they had gunshot residue testing available, that may have been done.

25 Ordinarily, would you expect the treatment of the person to take
precedence over things such as bagging of the hands, et cetera?---Most
certainly. There’s no argument about that; treatment comes first.

30 Are you able to comment on whether, given the environment in Baghdad
with persons carrying weapons constantly, that may influence the
effectiveness or otherwise of residue testing?---Yes, one of the memos I
got from our section in relation to delaying the gunshot residue testing had
a codicil on it which basically said be aware of the fact that soldiers carry,
35 use, maintain weapons, discharge them, that they and their equipment
particularly, which is not washed regularly, the ballistic belts, the weapon
belts, whatever, that they carry could be grossly contaminated from their
normal duties on the range, loading, unloading weapons, cleaning it.

40 Would it be fair to say that may be a complicating factor even if there was
a positive analysis and gunshot residue was present on PTE Kovco?---I
would say yes.

45 Is it the case that your organisation has conducted some DNA testing on
the 9 mm pistol?---Yes.

Are you able to say what those results show?---Just on the pistol?

5 Yes?---There was a swab on the grip of the pistol, on the slide of the pistol, on the trigger of the pistol. PTE Kovco's DNA is found on item – the easiest way to phrase it, PTE Kovco has some DNA on the trigger, but there is a large amount of unidentified DNA on the grip and the slide of the weapon.

10 Are you able to say whether when the MPs secured the 9 mm pistol they had appropriate protection on their hands to ensure that their DNA was not transferred to the weapon?---SGT Hession tells me that he was double-gloved at the time of handling the weapon. SGT Hession has supplied elimination DNA sample, as have I, as have our two ballistics experts and the forensic services officer New South Wales who took the swab. We are not the unknown profile. We also caused swabs to be taken from the other Military Police officer who is in Australia now, SGT White, and officers Fenton and Francis either have been swabbed or are in the process of being swabbed today to eliminate them – to eliminate or confirm their profile.

20 The DNA that appears on the weapon other than PTE Kovco's, is it possible that the weapon has been touched by others after the fatal gunshot wound?---I would say yes.

25 In what circumstances might you expect the weapon to be handled?---I suspect several circumstances. The first is the treatment of PTE Kovco in the room itself. That weapon must be somewhere close to the body. And there are photographs existed of it showing it in a position which would indicate it was close to the body. The walk-throughs I did if you look at the position of the body and the two soldiers treating him initially they probably – and they don't remember specifically – may have come into contact with that weapon when they're treating him. Their clothing styles, they're either in shorts or t-shirts. Even though that room is air-conditioned, and apparently it's left on 24 hours seven days a week, I would imagine, bearing in mind the situation your mate is shot and he's on the ground bleeding in front of you, you would immediately perspire and there could be potential for massive contamination that way. Clearly when the soldiers were allowed back in the room and they removed various items of property, I looked at the photos and, clearly, the gun could have been handled in that case. That's the possibility of it.

40 Why do you say that?---If you look at some of the photos - and I'm not familiar with the military terms here - there appears to be some sort of webbing or something underneath the weapon at one stage and, when you go to the next series of photos, that webbing is no longer there. To

remove it, the person could have picked the firearm up or moved it to one side. There's the possibilities there.

5 What further investigations would you consider appropriate given the DNA tests that have been conducted and given that they showed another person's DNA other than that of PTE Jacob Kovco ?---Assuming that it's not the remaining - I'll use the term - MPs in Australia, I would seek permission to return to Baghdad and obtain volunteer swabs from all members of the unit in Baghdad for elimination purposes.

10 When you say, "for elimination purposes," what do you mean by that? ---Basically, the DNA is on a volunteer basis. Everybody that supplies their DNA in this case has to volunteer. There is no lawful reason for us to demand it. I would hope that everybody would volunteer; we would take whatever number of swabs that is; return to Australia, have them analysed and see whether or not we can identify or not identify the DNA that is on there.

15 How long would that process take?---It depends on how many people volunteer, if I can use that term. If you want a number - can I specify a number?

20 If you would?---Of soldiers - let's assume there's 30 soldiers for a figure. We anticipate, using our protocols, we could get that done, assuming their availability, in a maximum of two days, maximum.

25 When you say you can have that process completed in two days, how long would it take for you to then produce appropriate test results?---We could prioritise this matter and we would select certain soldiers on a priority basis obviously. We could probably get, I'm hoping, a result within a maximum of two weeks.

30 By reference to the callsign matrix, which soldiers would you prioritise in terms of testing and the obtaining of results?---Soldiers 17, 19, 1, 2 would be my priorities.

35 So that's a total of four?---That's the priority, that's how I would start and work my way from there. For completeness, you would obviously want to swab as many as you could because, even though I nominate those soldiers, I only nominate them because of their proximity to the deceased. I could easily be wrong, it may not be them, it might be Soldier 30, for example.

40 Notwithstanding testing of those soldiers, and I'll refer specifically to the four that you've mentioned, notwithstanding a testing of them and

45

notwithstanding that their DNA appears on the weapon, that would not lead you to make any firm conclusions in relation to how this incident occurred; would that be a fair comment?---Probably not. They may come up with an explanation which may be very simple. They may not be aware of the fact they've done it - for example, the soldiers treating PTE Kovco may have knelt, brushed aside the weapon or similar and not realised, due to the circumstances of the incident.

10 You referred earlier to there being, I think, a gross amount of someone else's DNA on the - - -?---My terminology "gross amount," it's significantly larger than PTE Kovco's, yes.

15 Is it possible - and you may not be qualified to comment - to have a gross amount of DNA on the weapon simply by someone's body fluids coming into contact with it or would it require a physical handling of the weapon? ---I'm not sure I'm actually qualified to make that comment.

20 Who is qualified to make that comment?---I can phone up the laboratories at Lidcombe that do our testing for us and find out if they can make an opinion for you.

Thank you?---Would it be sufficient if I repeat their opinion?

25 PRESIDENT: I would be comfortable with that, at an initial stage, yes. We may have to investigate it further, but as a preliminary inquiry, certainly. I take it everybody is comfortable with that as a preliminary inquiry?

30 LTCOL HOLLES: From a previous life I know that SGT Elliott is probably capable of giving that evidence himself.

MAJ HYDE: Detective Inspector, can you confirm that it is only PTE Kovco's DNA that has been found on the trigger?---Perhaps if I read it it will be easier because - - -

35 Yes?---All right.

40 *The DNA recovered from swabs of the trigger(item 6) is a mixture, which also appears to originate from two individuals. Jacob Kovco has the same DNA profile (in the Profiler Plus System) as the major component of this mixture. This major profile is expected to occur in fewer than one in 10 billion individuals in the general population. Individual 'A' -*

45 which is the only identified DNA -

cannot be excluded as the minor contributor to this mixture.

5 So the bulk of it is Kovco's on the trigger.

Thank you. Is that a convenient time, Mr President?

PRESIDENT: Yes. We will take the adjournment now until 1.30.

10

<WITNESS WITHDREW [1238]

LUNCHEON ADJOURNMENT [1238]

15

RESUMED [1340]

20

MAJ HYDE: Mr President and Members, this is not a closed session, as I understand it.

PRESIDENT: Indeed it's not.

25

<DETECTIVE INSPECTOR WAYNE GEORGE HAYES, recalled [1340]

<EXAMINATION-IN-CHIEF BY MAJ HYDE

30

MAJ HYDE: Thank you. Detective Inspector Hayes, just before the luncheon adjournment you were referring to a report produced by the Institute of Clinical Pathology and Medical Research Sydney West Area Health Service?---Yes.

35

Could you identify the author of that report and the date that it was provided to you, please?---Yes, the author is Michelle Anne Franco who is employed by the Division of Analytical Laboratories Lidcombe, and it was faxed to me on 17/7/2006.

40

I tender that report.

PRESIDENT: Any opposition to that document?

45

LTCOL BERKLEY: Sir, I haven't seen it.

MAJ HYDE: I have copies here.

5 PRESIDENT: Is LTCOL Wilkinson delayed for some reason?

COL YOUNG: I think he's making some inquiries in relation to his client who'll be coming from Baghdad in the next few days, I understand, sir.

10 PRESIDENT: Is he happy for us to continue?

COL YOUNG: I can't answer that.

15 PRESIDENT: I wonder, when she's got a spare moment, if Mrs Harris could make an inquiry of him as to whether he wants to join us or not.

MAJ HYDE: Mr President, would you like me to wait while LTCOL Wilkinson is - - -

20 PRESIDENT: Yes, please, and also people looking at the analyst certificate and see whether they're comfortable with it. So if you just give us a couple of minutes.

25 MAJ HYDE: Can I indicate as well that it's proposed the author of the report will be called. So Counsel Representing shouldn't feel constrained in any way in terms of their approach to the document.

COUNSEL REPRESENTING: No objection.

30 PRESIDENT: Thank you, we'll proceed.

MAJ HYDE: Detective Inspector Hayes, I'd now like to ask you some questions about the clothing items that PTE Kovco was wearing at the time of his death.

35 PRESIDENT: Before we do that, I haven't formally marked that exhibit. I take it everybody is comfortable with it.

COUNSEL REPRESENTING: Yes.

40

**#EXHIBIT 85 - REPORT PRODUCED BY THE INSTITUTE OF
CLINICAL PATHOLOGY AND MEDICAL RESEARCH, SYDNEY
WEST AREA HEALTH SERVICE**

45

MAJ HYDE: Detective Inspector, in reference to the clothing that PTE Kovco was wearing at the time of his death, is that something that in the ordinary course would have a forensic value?---Potentially, yes.

5

Could you describe what that is?---In this case I would consider gunshot residue. Even though I explained some of the difficulties, there's potential for that, and very difficult to say without actually looking at maybe the bleeding aspect of the – where the blood lies on the clothing. But it's very difficult to say without actually seeing it. But GSR is what I'd be principally interested in.

10

Are you aware of what happened to the clothing?---I'm told it was destroyed.

15

Are you aware as to whether that destruction occurred at the hospital in Baghdad?---I have been told it just happened at the hospital, yes.

20

I'd now like to ask you some questions about delay in terms of the commencement of the investigation process. Ordinarily, what is the best circumstance in which an investigation should be commenced in terms of time frame?---As soon as possible.

25

Are you able to comment on the lapse in time between the date of death and when you commenced your investigation?---Certainly the time lag potentially impeded my investigation. At the time we arrived we had asked for the scene to be secured and not cleaned. Bearing in mind we were not tasked with this investigation until 28 April and I communicated that afternoon with soldier – I don't think he's here – CAPT Smith. I can't find him on the list, CAPT Smith, Mr President – and asked him to retain the scene. I had been told they'd actually started cleaning at that stage. So I asked for a halt to be put on it until we got there and we would get there as soon as we could.

30

35

Could you indicate the nature of your conversation in terms of what you recall was said?---It started off with introductions because obviously we never met, explanation of my role with an apology that I, you know, seemed to be coming over the top of him, an update about what had occurred. There were some security provisions that he couldn't tell me certain things because of the telephone lines over there. I told him that I would be bringing what experts I proposed to bring with me and I would like the scene secured as much as possible. He briefed me what he had found or he and his investigators had found as much as he could.

40

45

What did he tell you precisely about the cleaning of the room?---He said

that it had started but he would have it stopped. We didn't go any further than that.

5 When you got to the scene in Baghdad in terms of the room itself, what did you observe?---The blood splatter on the ceiling around the bullet hold, if I can use that terminology, had been cleaned obviously. Clothing and other items had been removed from the room, bedding, that sort of stuff.

10 Now, are you aware of whether PTE Kovco's body was washed at all? ---I've been told it was washed.

Where did you get that information from?---Military Police.

15 What were you told?---That it was washed as part of the hospital process.

20 Which hospital was that?---That is a little unclear. I think part of it probably was at the American military hospital and then subsequently at the Kuwait facility. That part of the inquiry doesn't form part of my inquiries, the Kuwait facilities.

25 In terms of your investigation, would it have been your preference that the body not be moved from the hospital?---If the bagging had been done of the hands, et cetera, or a gunshot residue swab had been taken and photos had been taken as soon as possible, bearing in mind we don't get there for some considerable time, there are relatives to consider, et cetera, that's a really difficult one for me to answer. I couldn't see that you could retain a body for the length of time it took us to get there. For my purposes I don't think I could justify forensically because if those tests had been done, as they were done, the evidence was probably lost by that stage anyway. It does take us some time to get there.

30 Detective Inspector Hayes, would it have assisted you in your investigation if US facilities in terms of investigative processes were made available early in the piece as opposed to when you arrived?---If, for example, gunshot residue had been taken by another – that potentially yes, it could have been of benefit. Bearing in mind, as I said, contamination aspect with soldiers using firearms, but yes, I think it would have been beneficial.

40 Are there any other investigations that you would like to have seen done earlier rather than later?---Probably some sort of version taken off the Soldier 17 and 19, the two in the room at the time, before – there's some days before they're interviewed formally and there is a contamination aspect there from witness where they undoubtedly will talk about it and

5 the - we call it contamination, their versions can be influenced by talking
with each other, plus their - their versions can be - I'm trying to think of
the right words, sorry. As well as contaminated their versions can be
influenced by other people. And I'm not saying anything bad there, it just
- you know, you see something, I thought that was red and somebody else
said, no, no, it was blue and they say, oh may be I've got it wrong, that
sort of influence.

10 You've spoken with Soldier 17 and 19?---Yes.

You've interviewed them at length, what was your impression of the
evidence that they gave to you?---I concentrated mostly on watching - on
my questioning. My offsider Detective Watson watched the soldiers, he
formed the opinion that they were truthful.

15 Mr President and Members, if I may, could I tender, I think, what has
been marked as Exhibit 43, I'm not sure that was done properly, that is
with a classified marking.

20 PRESIDENT: It's the video footage?

MAJ HYDE: Yes.

25 PRESIDENT: Yes, we did classify that.

SECRETARY: It wasn't actually tendered as an exhibit in accordance
with the transcript.

30 PRESIDENT: You formally tender it now as Exhibit 43 and mark it
classified.

#EXHIBIT C43 - SDH/23: VIDEO FOOTAGE

35 COL YOUNG: Could I just clarify what that is? It's a CD mini cassette?

40 MAJ HYDE: Yes, it's described on the Service Police Identification
Label as One Panasonic Mini Cassette Containing Video Footage of
Room 8 SECDET Accommodation Australian Embassy 21 April '06.

COL YOUNG: SDH/23, that might be from the Military Police
statement.

45 PRESIDENT: Yes, it is.

COL YOUNG: Yes, thank you.

5 MAJ HYDE: Detective Inspector Hayes, to the right of your table there is another photograph?---Yes.

Would you describe what is placed on the whiteboard please?---Yes, this is a alteration photograph I referred to as - - -

10 RECORDER: Sorry, can you use the microphone, please.

15 WITNESS: Sorry. This is an alteration of the photograph I referred to earlier in my evidence taken by Soldier 19. For investigative purposes we had a drop-box enlarging the holster and pistol inserted on the photo. We did that for two purposes: to assist the Court and also to see if we could pick up whether or not there was anything particular about the firearm, that is if there was a magazine in it even if this predated his death. We also tried to enlarge it to see whether we could pick up on the reflection of the window at the back of the room, whether or not he magazine, if it was
20 a magazine, could be seen at the back of the pistol, bearing in mind it faces towards the rear. We can't see anything and also, I think, the locker with the trousers on it interferes with the view any way.

25 MAJ HYDE: Mr President, there is a reference to Soldier 19 on there by name, if a direction could be given for that not to be published.

PRESIDENT: Yes, the name of the soldier will not be published and includes Soldier 19 only. Do you propose to tender that?

30 MAJ HYDE: Yes, I do and I tender the photographic depiction of the room only.

PRESIDENT: Any objection to that course, gentlemen?

35 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 86.

40 **#EXHIBIT 86 - PHOTOGRAPHIC DEPICTION OF ROOM 8**

45 MAJ HYDE: In relation to Exhibit 86 and the box with the holster on it, are you able to comment on whether that is a leg or shoulder holster?---I would refer to that as a leg holster.

5 Is there any other aspect of the holster and its location that you would like to comment on?---Two things: it appears to be unclipped, if that's the right terminology to use, it's certainly the term I'd use. It appears to be unclipped and also it's in the situation where it is shown in the Military Police photographs and also in the general situation as referred to by Soldiers 17 and 19 during the course of interviews with me as to where it was regularly located by PTE Kovco.

10 Indeed is that PTE Kovco with is back to us in that photograph?---Yes.

15 Are you able to say whether he's leaning against his bunk or some other? ---He appears to be leaning against his bunk. According to Soldier 19 who took the photograph, he was actually accessing his laptop at the time he took this photograph, even though it's not clear, Soldier 19 has a recollection of that.

20 Do you also have in your possession a DVD with certain photographs on it?---Yes, those photographs which I've just referred to are depicted on this CD.

That is the photographs in Exhibit 87?---Yes.

25 I tender the CD of those photographs. Perhaps that should go with Exhibit 87, marked as 87A, sir.

PRESIDENT: 86.

30 MAJ HYDE: Sorry, 86.

PRESIDENT: Everybody comfortable with it being marked as Exhibit 86A?

35 COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: It is so marked.

40 **#EXHIBIT 86A - CD OF PHOTOGRAPHS**

MAJ HYDE: Yes, I have nothing further, sir.

45 PRESIDENT: Yes, thank you.

LTCOL BERKLEY: Before my friend starts questioning, sir, might I be provided with a copy of Exhibit 86, just while my friend is questioning?

5 PRESIDENT: Would anybody else like a copy, I think there is some available? LTCOL Wilkinson, any questions?

LTCOL WILKINSON: No questions, sir.

10 PRESIDENT: LTCOL Green?

LTCOL GREEN: Thank you sir.

15 <EXAMINATION BY LTCOL GREEN [1357]

LTCOL GREEN: Detective Inspector Hayes, you made reference to Exhibit 86 which is the photograph which was just behind you which is the photograph which you used the drop-box of the slung leg holster?
20 ---Yes.

Do I understand your evidence to be that you could not identify whether or not the magazine was within the pistol-grip housing of the pistol?---I've not able to tell that, no. I'm not able to tell whether it is or it isn't.

25 PRESIDENT: Anything further? LTCOL Holles?

LTCOL HOLLES: Thank you, sir.

30 <EXAMINATION BY LTCOL HOLLES [1358]

LTCOL HOLLES: Detective Inspector Hayes, the two walkthroughs, if I can so characterise them that were shown earlier with Soldier 17 and Soldier 19 in which you played the part of the deceased, if I could just refer to those. It's known that the deceased was about 185 cm tall and I think about 85 kilos in weight, are you able to say how tall you are and how much you weigh?---Yes.

40 I have to apologise for asking that sort of information?---About 101 kilos and I'm 182 cm and I had shoes on that got - we actually measured myself to 185, the shoes I had on were high heeled.

45 So you're basically, as far as possible, replicated the - - -?---Yes, we didn't

want to use a soldier for obvious reasons.

Obviously?---I was the closest that it came to.

5 You'd agree that in those walkthroughs you basically occupied most of the available floor space between the bunk and where the fridge had been and the wall?---Yes.

Relatively little room to move around?---Yes.

10 You conducted those after the bar fridge had been removed from the room?---The bar fridge was not in the room when we arrived in Baghdad.

15 No, I appreciate that. At the time that you conducted the walkthrough and pardon me from so characterising it again, did you allow for the presence of the bar fridge which I think was delineated on the carpet when you were in the position on the floor?---We asked the soldiers to position soldiers as best they could. We don't like to reconstruct the scene because you can't get an accurate - - -

20 I appreciate that, yes?---So we just went with what we had been presented with.

25 Would you agree that the position that both soldiers gave for the location of the deceased when they last observed him or where they perceived him to be at the time that he received the fatal gunshot wound is different to where the ballistics reconstruction would have him?---Yes, they had him facing the bed – the wall over the double bunk.

30 If I can put it much further, towards the single bed in the room. He's much closer to the single bed in the room than he is towards the bunk? ---Is this at the time they place him or at the time of the ballistics - - -

As depicted in the ballistics reconstruction of his location?---Yes.

35 In fact in the ballistics reconstruction he's almost at the foot of the single bed, is he not?---He is, but bear in mind, as I said, the ballistics expert should really comment on that. That is, as I understand it, the best case scenario for a person 185 centimetres standing still with the ballistic line, if I can use that term. Nobody can tell us actually what – how he was standing at the time that he was shot, whether he was slightly bending, standing upright, et cetera.

40 The ballistics line basically extends well below his natural body height and indeed below where the location of the wound would be is - - -?---It

45

was - - -

Standing upright?---Sorry, yes, it was continued for that purpose.

5 Are you aware if forensic testing was conducted on the three stains on the floor?---As far as swabbing is concerned?

Yes?---Yes, we took blood – swabs which indicated blood.

10 That is the two stains which are located closer towards the single bed?
---Correct.

15 Was the other stain tested?---Excuse me. I refer to Detective Elliott's statement. Detective Elliott has been informed that blood stains – that's right, they were saying it was body fluids, not blood. According to this, the only swabs are the blood stains.

20 So the decision not to swab the larger stain was based on information provided by Military Police at the scene?---I would assume it's also of his experience in relation to recognising blood as against fluids.

I appreciate it's a question probably directed towards Detective Elliott. But he had some sort of presumptive testing kit with him I presume?
---Yes.

25 Thank you, sir, that concludes the cross-examination.

<EXAMINATION BY LTCOL BERKLEY

[1403]

30

LTCOL BERKLEY: Inspector, as you know, I'm LTCOL Berkley and I represent Shelley Kovco?---Yes.

35 You would agree I think – and this follows on from my learned friend LTCOL Holles' questioning – that those soldiers at the time of the fatal shot were in very close proximity to each other?---Yes.

40 Was it your impression that Soldier 17 knew where Soldier 19 was at the time the fatal shot was fired?---My perception was that Soldier 17 said that Soldier 19 was kneeling – sorry, bending over at the bar fridge.

45 So he was able to tell you that from his recollection Soldier 19 was at the bar fridge and he could tell you his posture?---But he doesn't say that's at the time the fatal shot was fired. That's his last recollection of seeing

PTE Kovco standing up and Soldier 19 at the bar fridge.

5 Did you find it unusual, if the evidence of the soldiers is correct, that Soldier 17 wouldn't have seen PTE Kovco obtain the weapon even in his peripheral vision?---I sat on the bed approximately where Soldier 17 said he was. I had my book as representation of a laptop. Bear in mind people are different. My peripheral vision did not pick up that height as such. So it's very difficult to replicate what he could or could not see.

10 Given the reconstruction evidence, the indicative reconstruction using the trajectory of the bullet and the nominal figure of Jake's height, you would have thought at that the time that the fatal shot was fired that PTE Kovco would virtually stand over Soldier 17?---Yes, Soldier 17 in the video walked through – puts himself further down the bed than right next to the
15 bed end, if I can use that term. Secondly, as I keep emphasising, according to the ballistics expert – and he should give this evidence – we can't actually put an X on the floor and say PTE Kovco was right there. There are very many variables with it such as – even though we have a trajectory path for the bullet, there can be variations with the bullet
20 entering and leaving a skull for obvious reasons.

In your experience, could you give a percentage difference in those variations?---No, I couldn't.

25 One per cent, 2 per cent?---No, the ballistics expert would have to give that evidence I'm sorry.

30 But in any event, at least on the forensic reconstruction based on the trajectory of the bullet, it appears that PTE Kovco was not at that time typing on his computer on the top bunk of his bed?---No.

If Soldier 19 is correct, he would have been facing away from PTE Kovco at the time the fatal shot was fired?---Yes.

35 There's of course no gunshot residue swabs from Soldier 17 and 19? ---That's correct.

40 And you've given us the reasons for that is that they've simply showered for their normal hygiene purposes. Of course we're left with the situation that neither is there any gunshot residue on PTE Kovco?---On his hands.

The only gunshot residue is at the site of the entry wound?---Correct.

45 I apologise if I distress anyone. I don't mean to. In the analytical report of analysis at Exhibit 85 hair was taken from the ceiling?---Yes.

I take it the entry hole of the bullet was taken from the scene and blood was found there?---Yes.

5 Both the hair and blood belonged to PTE Kovco?---Yes.

Was there anything about the bullet's entry into the ceiling, at least the hole that it left, that you would like to comment on or found unusual?
---Not as such.

10

It looked to you as it should look given the composition of the ceiling?
---Certainly the ceiling is not a solid structure per se, it's a very thin – I'm not even sure what material it is, possibly a plywood sort coated. Then there is a very thin foam insulation and then there's the galvanised iron roof. But, you know, apologies to the family. That bullet did go through two sides of a skull and brain and I imagine – again a ballistics comment but there obviously would have been significant deceleration of the round as it passed through PTE Kovco.

15

20 Were you or Mr Vanderwalt informed where the bullet was found?---Yes.

SGT Hession informed you of that?---Yes.

25

Did SGT Hession provide the pistol to you?---In continuity segments, yes.

You only received one magazine?---Subsequently we received three magazines and a large number of ordinates.

30

As to the weapon itself, you received the weapon?---Yes.

Initially one magazine?---Just wait a minute, I will check, please. Projectile and cartridge case.

35

Now, the issue in relation to the gunshot residue on Jake's hands, it's only an issue upon the proposition that he fired the fatal shot. Is that correct?
---Could you say that again, sir?

40

There is only an issue in respect of the lack of gunshot residue on Jake's hands if it's presupposed that he fired the fatal shot. Would you agree with that?---Yes, but again we come back to that contamination aspect of soldiers in the normal course of their duty that is of great concern to our gunshot residue staff.

45

On the weapon itself you've told us that you're aware that there's Jake's DNA and as yet unidentified DNA?---Yes.

Is there anything else on the weapon that is of forensic note?---Nothing that's been brought to my attention as such.

5 I'm not restricting that just to DNA?---No, ballistically I've been told the weapon is in proper working order, capable of discharging a round as per its normal function.

Thank you, nothing further.

10

<EXAMINATION BY COL YOUNG

[1413]

15 COL YOUNG: Inspector, my name is COL Young and I represent the interests of PTE Kovco. This might be a question for your ballistics expert, but do you know whether PTE Kovco was left-handed or right-handed?---I've been told he was right-handed.

20 When you received the 9 mm pistol you gave evidence about receiving it in a box?---Yes.

25 Did you take any action to ensure that weapon was safe or did you accept that it was safe?---I accepted it was safe and the condition it was in it posed no danger and it was rendered safe by ballistic staff as per the normal protocols.

30 By your ballistic staff?---New South Wales Police ballistics staff. I'm aware that SGT Hession had done certain things to it beforehand because I was getting data briefings from Baghdad.

35 Were you told that the weapon had been extensively handled by people before it was received by New South Wales Police?---No, in fact my investigations of reading of the statements indicates that very few people refer to seeing it. Are you talking, sorry, since the shooting I'm assuming?

40 I'll just rephrase the question. When you received the weapon were you give any information by Military Police that the weapon had been extensively handled before you received it?---No.

You've told the Board that the weapon was tested for DNA?---Yes.

45 Was it tested for fingerprints?---Yes.

It was?---Nil.

What was the result?---Nil.

5 Nil, is that recorded somewhere in the documents we've been given?---No, it's a negative result, so we don't bother with it.

10 You don't bother with it?---I actually cannot ever think that - I can be proved wrong here that we actually got a fingerprint off a firearm, I'd have to check that. I'm not aware if it ever happened.

15 Is that an area of your expertise?---Only ever from being in the homicide squad with firearms, but I can check that, but no. I was told it was fingerprinted, but nil result.

Do you do any teaching or lecturing at Scenes of Crime Examiner's courses?---No.

20 You don't?---I do lecture, but not at Scenes of Crime Examiner's course.

So what courses do you lecture?---Senior Detective course.

Do you have any Military Police at all attend those courses?---No.

25 Nothing further, thank you, sir.

PRESIDENT: Any re-examination?

30 MAJ HYDE: Just one, sir.

LTCOL HOLLES: Sir, there's just one matter which I might just ask by further leave if I could.

35 <EXAMINATION BY LTCOL HOLLES

[1416]

40 LTCOL HOLLES: Was there a presumptive test carried out for blood on the firearm itself?---There is an indication on the firearm, yes. It was swabbed as I understand it and nothing found. I particularly refer to the statement by Detective Schibeci in relation to be handed a barrel swab by Detective Inspector Hoffman from my recollection.

45 Yes, thank you, sir.

PRESIDENT: Re-examination?

MAJ HYDE: Yes, one topic if I may, sir.

5

<EXAMINATION BY MAJ HYDE

[1416]

10 MAJ HYDE: Detective Inspector Hayes, in terms of gunshot residue tests
and outcomes, are you able to say as a result of those tests how close the 9
mm pistol was to PTE Kovco's head at the time of discharge?---Tests - the
actual ammunition was obtained for the purpose of testing for that and
other things. Our experts from ballistics tell us it was not a contact
15 wound, that is the firearm was not placed against the side of the head, but
it is no greater than 5 cm from the side of the head.

20 Does that indicate anything in particular to you, other than that it was very
close to his head?---I have some difficulty with finding how it would get
there unless it had been put in that position. A deliberate action to put it in
that position.

Nothing further, sir.

25 PRESIDENT: Before the Inspector stands down, we had the conversation
earlier about DNA testing of the soldiers in Baghdad, does anybody want
to make any comment about that or make any submissions about that?

30 COL GRIFFIN: There are proposals in respect of further evidence
Mr President and I understand that Inspector Hayes is making certain
inquiries that will assist the Board in terms of evidence we would place
before you and once those inquiries are completed, I will address you
further.

35 PRESIDENT: Now, is any action required of the Board?

COL GRIFFIN: No, sir.

40 PRESIDENT: Thank you Inspector, you may stand down and the Board
is very grateful to you.

<WITNESS WITHDREW

[1418]

45 COL GRIFFIN: Mr President, tomorrow we have two of the specialist

5 witnesses to whom or about whom you've heard the Inspector speaking in
the course of his evidence today. Those two persons will speak to
ballistics expert evidence and the crime scene examination. They are
scheduled to appear tomorrow. There is a volume of material relating to
their reports which is contained in the Military Police record that was
recently tendered to you which is a classified document. I propose for the
remainder of the afternoon that material which is currently being cleared
for operational security reasons be made available to Counsel
Representing so that they're in a position to commence tomorrow with
10 those two witnesses with as little delay as possible in terms of closing
proceedings.

15 It would assist me in achieving that aim if we could take the adjournment
for the day now so that that classified material can be dealt with in the
presence of Counsel Representing their clients this afternoon so that the
witnesses are ready to go first thing in the morning.

PRESIDENT: Anybody wish to make any comment about that?

20 COUNSEL REPRESENTING: No, sir.

COL YOUNG: I wonder if just might ask the names of the witnesses?

25 COL GRIFFIN: Their names are Mr Vanderwalt and, excusing ranks,
Mr Hoffman who is the supervisor of the crime scene examination issue.
You have those statements in the classified report. You will have the
redacted statements by close of business today so that you are fully
revised of their material before tomorrow.

30 PRESIDENT: Yes, very well, 10 am tomorrow?

COL GRIFFIN: Thank you, sir.

35 PRESIDENT: We will formally adjourn.

**MATTER ADJOURNED AT 1440 UNTIL
THURSDAY 20 APRIL 2006 AT 1000**

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